

Registration of the Premises in 2D Cadastral System in Poland

MARCIN KARABIN, Poland

Key words: cadastre, land register, premises, cadastral system

SUMMARY

In Poland cadastral system is 2D based system. System is using 2D parcels in order to register rights to the land. But according to the cadastral law in Polish cadastral system there are registered 3 types of cadastral objects: land parcels, buildings and premises. Premises registered in the cadastre should be considered as premises defined as (§2.1. the Cadastral Law) independent dwelling premises or premises of other destination, as understood by the Act of June 24, 1994 on property of premises.

This cadastral object may have two legal statuses: premises included in a land and building real estate or it may be a separate premises real estate. The cadastre registers data concerning both types of premises. The cadastre registers technical and legal data concerning premises and in paper those data and its sources will be specified in details. In paper there will be discussed main important problems concerning premises: the lack of obligation to apply any technical standards concerning the way of calculation the useful size of premises, the differences between the Polish Standard PN-70/B02365 "The size of buildings. Division, specifications and rules of measurements" and international standard PN-ISO 9836:1997 "Useful properties in building industry. Determination and calculation of size and volume factors". Due to differences in the resulting size of premises, calculated basing on various technical standards, it may result in conflicts between purchasers of premises and developers. This parameter is important not only for its registration in the real estate cadastre, because it is used for calculation the share of the owner in the common real estate, which consists of a land parcel on which the building with premises is located and of common parts of the building (staircases, installations etc.). Unfortunately, this share appears in the cadastre (as the owner's share in the land) as well as in records of land register. So in paper there will be discussed the problems with registration of premises not only in cadastre but also in land register, among other things the problems concerning the registration of changes in the case when technical parameters of given premises are changed (reconstruction, modernisation), which results in modification of useful size of those premises, the new calculation of shares of the all premises' owners in the common real estate is required. Propositions of changes in registration of premises in Polish cadastre will be shown in paper.

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1. DEFINITION OF PREMISES

Issues related to property of premises are regulated in Poland by the act of June 24, 1994 on ownership of premises.

Article 2, items 1-2 of the Act of June 24, 1994 on ownership of premises states, that an individual habitable premises, as understood by the Act, is a chamber or a group of chambers, separated by permanent walls within a building, designed for permanent stay of people; together with auxiliary facilities they serve for meeting housing demands of people. That regulation is also applied to individual premises, used for purposes other than housing. Individual housing premises, as well as premises used for other purposes, may become separate properties.

The fact that requirements related to independence of premises are met is stated by the starost (district authorities) in the form of a written certificate (Art. 2, item 3 of the Act).

The so-called, accessory rooms may belong to premises as their components. There is no obligation that such rooms directly adjoin premises; they may be located within a land property, outside a building in which given premises have been separated. Such accessory rooms are, first of all, cellars, sheds, attics and garages (Art. 2, item 4 of the Act on Ownership of Premises).

Premises, together with accessory rooms, are marked on projections of appropriate storeys of buildings; in the case when accessory rooms are located outside a dwelling building, they are also marked on a copy of cadastral map. The above documents become an annex to an act which establishes a separate ownership of premises (Art. 2, item 5 of the Act).

In the Resolution of June 10, 1989 (III CRN 66/89, published OSNC No. 1/1991, item 14) the Supreme Court resolved that – if rules concerning separation of ownership of particular properties permit, it is possible to introduce changes in composition of those premises, following the agreements, between owners of separated premises, by detaching a part of premises and attaching it to other housing premises (see Siciński, 2007). The only condition is that premises remain individual. i.e. after such changes each premises must meet the criteria of independence.

The Act on Ownership of Premises does not define a term „a chamber”; definitions of „a chamber” and accessory rooms are specified in the Technical Instruction G-5. Following that Instruction, its §23 item 2-4 states that a chamber in housing premises, is a room separated with permanent walls within those premises, dedicated for permanent stay of people, such as a kitchen, a sleeping room, a living room, a rest room, a room for work; a chamber in non-housing premises is a room, separated with permanent walls within those premises, dedicated for implementation of functions, following the functions of premises. Accessory rooms in premises, dedicated, first of all, for sanitary purposes and internal communication, as well as to store clothes, housing equipment, food products, are not chambers, as understood by the Decree of the Minister of Regional Development and Building Industry of March 29, 2001 on cadastre.

Bojar (2005) has also stated that there are no statutory limitations of requirements concerning the size of individual premises. Bojar (2005), following Bieniek and Marmaj (2003) quotes, that considering the function of ownership of premises, as separate properties, it may be assumed that premises are individual, if: they meet appropriate building and technical requirements, as well as when they may be used without the necessity to use other, individual premises.

Besides, Bojar (2005) states, that considering the definition of premises, legal regulations on building laws should be only applied in the context of meeting requirements concerning the permanent stay of people in premises, i.e. regulations, which are included in § 72-75 of the decree of the Minister of Infrastructure on April 12, 2003 on technical requirements which must be met by buildings and their location (Dz.U. of 2002, No. 75, item 690). Those requirements concern: heights of rooms dedicated for permanent stay of people, size of doors to a room dedicated for permanent stay of people and to a kitchen.

2. A TERM OF “A COMMON PROPERTY”

Art. 3, item 2 of the Act on Ownership of Premises states that – together with separation of ownership of premises, the owner is entitled to share the common property, following the right related to ownership of premises. Besides, until separate ownership of premises exists, it is not possible to apply for elimination for the common ownership of the common property. The common property consists of lands and parts of a building and installations, which do not exclusively serve for owners of premises.

If a building was built on lands used under the leaseholds conditions, this right is a subject of the common property (Art. 4, item 3 of the Act on Ownership of Premises).

Following the resolution of the Supreme court of October 22, 2004 (CK 98/04), provisions of an agreement, establishing a separate ownership of premises, determines that particular rooms belong the common property. Precise and detailed provisions of such an agreement influence the necessity for the owners to claim for their rights in court, or not. This is an important issue, since arguments concerning qualification of particular rooms arise as a result of the necessity to cover – or not – the costs of current exploitation or renovation of those rooms.

As it results from the sentence of the Supreme Court of October 3, 2003 (III CZP 65/03), when it is not possible to eliminate the common ownership of those parts of buildings, which are absolutely common (such as staircases), it may be eliminated with respect to those parts of buildings, which may be used as accessory rooms after elimination of the common ownership (see also Bielecki, 2007).

3. CALCULATION OF SHARES OF OWNERS OF SEPARATED PREMISES IN A COMMON PROPERTY

Art. 3, item 3 of the Act on Ownership of Premises states, that the share of an owner of separated premises in a common property corresponds to the ratio of the living space of premises, including the size of accessory rooms, to the total living space of all premises, including accessory rooms. The share of the owner of individual premises (those which have not been separated) in a common property, corresponds to the ratio of the living space of those premises including the size of accessory rooms, to the total living space of all premises,

including accessory rooms.

In order to determine that ratio (share) it is necessary to determine, separately for each individual premises, the living space of premises, including the size of accessory rooms. (Art. 3, item 4 of the Act on Ownership of Premises)

An exception to those rules is introduced by Art. 3, item 6 of the Act on Ownership of Premises; following that Article, if – basing on a legal operation performed by an owner or by all owners of a property, all premises are separated, the shares of owners of particular premises, separated in a common property, are respectively determined by an owner or by owners, in an agreement.

Art. 3, item 7 of the Act on Ownership of Premises specifies the method of determination of a share of an owner of separated premises in a common property in buildings in which the ownership of at least one premises took place, and the existing determination of shares in the common property was performed without consideration of the size of accessory rooms or in a way that differs from a way described in this part of the paper and when successive shares in the common property were determined in the same way. Following the legal regulation, until the last premises are separated, the same rules of determination of shares in a common property, as for the first premises, are applied, unless all owners of separated premises and the existing owner of the property, agree for new provisions concerning the level of shares in the common property.

Bojar (2005) may be quoted here: „It should be assumed, that in many cases it may turn out that – in the process of prior separation of ownership of premises - those shares were determined incorrectly (the author’s comment: this concerns shares of owners of separated premises in a common property). Correction of such incorrectness may become difficult, when there is no consent of parties (owners of premises), since the form of a notarial deed and an entry in the land register are required in such situation”.

The share of and owner of separated premises in the common property is important when the level of incomes, as well as burdens related to functioning of the common property, assigned to owners of particular premises, are determined.

4. RULES CONCERNING CALCULATION OF LIVING SPACE OF ROOMS AND PREMISES

Following §63, item 3 of the decree of the Minister of Regional development and Building Industry of March 29, 2001 on cadastre (Dz.U. of 2001, No. 38 item 454). The living space of premises is specified according to rules specified in provisions of the act of June 21, 2001, on protection of inhabitants’ rights, municipal housing resources and on changes of the Civil Code (Dz.U. of 2001, No. 71, item 733).

Following the Art. 2, item 1 point 7 of the Act of June 21, 2001 on protection of inhabitants’ rights, municipal housing resources and on changes of the Civil Code the living space of premises should be understood as the space of all rooms, included in premises, in particular, all rooms, kitchens, larders, corridors, recesses, halls, bathrooms and other spaces which are used for living demands of inhabitants, regardless their destination and ways of use. Those spaces should not include balconies, terraces, loggias, mezzanines, wardrobes and stores in walls, laundry rooms (outside a premises), drying rooms (outside a premises), places for storing perambulators, attics, cellars and sheds for storing fuel.

Living space of premises, discussed above, is surveyed in the clearance of finished walls. The size of rooms or their parts, of the height in clearance equal to or greater than 2.20 m should be in 100% considered in calculations, of the height equal to or greater than 1.40 m, but smaller than 2.20 m – in 50%, of the height smaller than 1.40 m, they are not considered. Other rules concerning calculation of space should be assumed in accordance to the Polish Norm, respective for determination and calculation of space and volumetric indexes applied in building industry.

Another important issue is related to the fact that two different norms concerning calculation of space indexes in building industry exist in Poland; those different norms were used in the past for surveys of premises and determination of living space.

Since October 28, 1997, the Polish Norm PN-70/B-02365 has been substituted by the Polish Norm PN-ISO 9836:1997, since the date of coming into force the act of September 12, 2002 on normalisation (Dz.U. of 2002 no. 169, item 1386) application of the Polish Norm PN-ISO 9836:1997 is not obligatory, although the norm is still valid; therefore that norm may be arbitrarily applied, e.g. as a result of appropriate provisions included in the contract for designing works, as a basis for calculation space in newly designed buildings.

Comparing of the rules of calculation living space of rooms and entire premises, following the norms PN-70/B-02365 and PN-ISO 9836:1997 is presented below.

Subject of surveys	PN-70/B-02365	PN-ISO 9836:1997
Level, where a given room is surveyed	1.00 m above the floor	At the floor level
Conditions of rooms, which should occur when surveys are made	At the raw state, no plasters or coverings	Completely finished
Accuracy of linear surveys	to 0.01m	to 0.01 m
Accuracy of space calculation	to 0.1 sq.m	to 0.01 sq.m
Inclusion of recesses in walls of the size up to 0.1 sq.m in the living space	Not added to the size of a given room	Not added to the size of a given room
Inclusion of recesses in walls of the size greater than 0.1 sq.m in the living space	Added to the size of a given room	Not added to the size of a given room
Inclusion of pilasters and overhangs in walls of the size up to 0.1 sq.m in the living space	Not subtracted from the room size	Not subtracted from the room size
Inclusion of pilasters and overhangs in walls of the size greater than 0.1sq.m in the living space	Subtracted from the room size	Not subtracted from the room size
Inclusion of doorways, doors in rooms, balcony doors in the living space	Not added to the size of a given room	Not added to the size of a given room
Ways of inclusion of rooms with slanted ceilings, of diversified heights, in the living space	<ul style="list-style-type: none"> - parts of a room, of the height greater than 2.20 m are added to the living space in 100%, - parts of a room, of the height between 1.40 and 2.20 m are added to the living space in 50%, - parts of a room, of the height below 1.40 m is not added to the living space 	The total room size is calculated, according to the size of its floor and it is divided into two parts: a part of the height of 1.90m and more and a part of the height below 1,90, which may be added only to the accessory space.
Way of inclusion of outer spaces, not closed on all sides, which are accessible from given premises (balconies, terraces, loggias etc.) in the living space	Outer spaces are not added to the size of a room, an apartment or other useful premises	They are added to the size of premises (an apartment, useful premises) and uncovered surfaces (balconies, terraces) and covered surfaces (loggias) are listed separately

Source: basing on the PN-70/B-02365 and PN-ISO 9836:1997 norms, listed by the author

As it may be seen from the above table, presented norms include various rules of survey and calculation of living space of rooms and entire premises.

Provisions of the norm PN-70/B-02365 are closer to rules specified in legal regulations concerning the cadastre, since besides regulations which recommend to perform surveys of premises at the raw state, i.e. with no plasters and internal coverings, this norm is coherent with those regulations. It additionally recommends that, in the course of calculating the size basing on performed surveys of buildings with facades, the obtained dimensions should be corrected assuming the thickness of internal coverings of 2cm and internal covering of 3cm. Therefore, application of the norm PN-70/B-02365 is problematic, considering that it became invalid since October 28, 1997.

Considerable differences existing in the rules of surveys in both norms, do not allow for their interchangeable application. It is also not possible to determine a universal (possible to be applied for each premises) coefficient, serving for automatic calculation of the living space of premises, calculated basing on one of the discussed norms, to the values obtained following the rules of the second norm. In the case of the necessity to calculate the living space of premises, according to the second norm, it means that size of all rooms included in given premises, must be calculated from the beginning.

Therefore it is worth to share the opinion of Kubica, presented in his publication (Kubica,2006), that all calculation of spaces in a building, performed when the previous norm (PN-70/B-02365) was obligatory, should be considered as valid and still used as a basis for surveys and calculation of sizes, and, finally, as the basis for all decisions and other legal acts (including records in land register) and all financial reconciliations, based on those surveys and calculations. Following Kubica, the same rules should be applied to all changes in a building, which may influence the calculation of size of a building or its part; otherwise parametric relations of sizes of particular parts of that building might be changed.

In the author's opinion, those incoherencies should be urgently regulated, since many interpretation possibilities of the existing regulations exist.

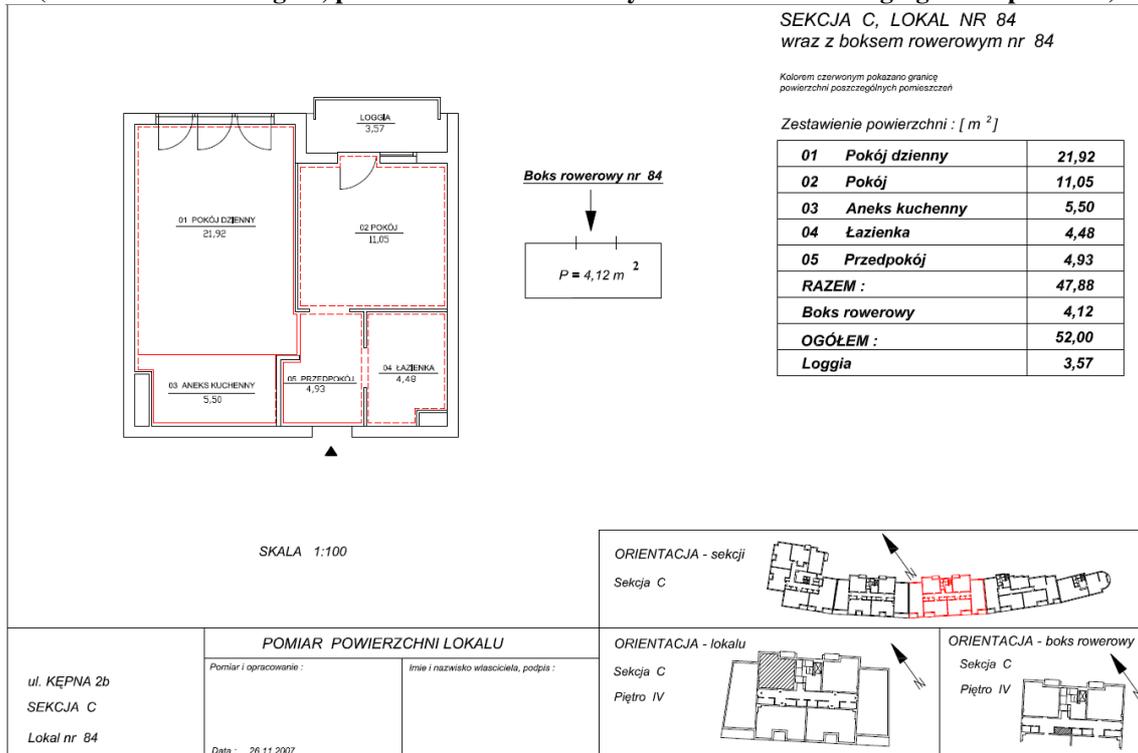
5. RULES OF REGISTRATION OF SEPARATE OWNERSHIP OF PREMISES IN THE CADASTRE AND THE LAND REGISTER

At present, Art. 7 item 1 of the Act on Ownership of Premises states that separate ownership of premises may be established as a result of an agreement, as well as a legal operation performed by the property owner or a court sentence, which eliminates the co-ownership. An agreement establishing a separate ownership of premises should be made in the form of a notarial deed. In order to establish the property (a separate ownership of premises) an entry in land register must be made.

An agreement establishing a separate ownership of premises should determine, in particular: the type, location and size of premises and accessory rooms, as well as the volume of shares assigned to the owners of particular premises in the common property. (Art. 8, item 1 of the Act on Ownership of Premises). As a result, before such an agreement is made, it is necessary to perform architectural-and-building inventory of premises and other rooms, including the

survey of their living space. Example of such a documentation is presented below.

**An Example of Architectural and Building Inventory of Premises and Accessory Rooms
(Section C of building 2b, premises No. 84 and a bicycle shed No. 84 belonging to the premises)**



Source: Kloka (2011)

An example of calculation of shares of owners of separated premises in a common property is presented below. In table presented below, individual columns are: number of section of building, number of floor, number of premises, number of rooms in a premises, living space of premises (area), number of a bicycle shed belonging to the premises, size of bicycle shed (area), sum of areas, shares of owners of separated premises in a common property.

**An example of calculation of shares of owners
of separated premises in a common property**

SEKCJA	PIĘTRO	NR SAMODZIELNEGO LOKALU	ILOŚĆ IZB	POW. MIESZKANIA	NR POM. PRZYNALAZNEGO (boks rowerowy)	POW. POM. PRZYNALAZNEGO (boks rowerowy)	POW. RAZEM (kol. 5+7)	UDZIAŁ	
1	2	3	4	5	6	7	8	9	
C	I	61	2	47.19	61	2.86	50.05	5005/1237120	
		62	3	78.33	62	2.86	81.19	8119/1237120	
		63	3	57.20	63	4.10	61.30	6130/1237120	
		64	3	57.11	64	4.14	61.25	6125/1237120	
		65	3	77.71	65	2.86	80.57	8057/1237120	
		66	2	47.68	66	2.86	50.54	5054/1237120	
	II	67	2	47.26	67	2.85	50.11	5011/1237120	
		68	3	78.99	68	2.85	81.84	8184/1237120	
		69	3	57.36	69	4.13	61.49	6149/1237120	
		70	3	57.27	70	4.13	61.40	6140/1237120	
		71	3	78.58	71	2.85	81.43	8143/1237120	
		72	2	47.76	72	2.85	50.61	5061/1237120	
	III	73	2	47.14	73	2.84	49.98	4998/1237120	
		74	3	79.21	74	2.84	82.05	8205/1237120	
		75	3	57.31	75	4.13	61.44	6144/1237120	
		76	2	57.88	76	4.11	61.99	6199/1237120	
		77	3	78.41	77	2.84	81.25	8125/1237120	
		78	2	47.87	78	2.86	50.73	5073/1237120	
	IV	79	2	47.19	79	2.85	50.04	5004/1237120	
		80	3	79.03	80	2.86	81.89	8189/1237120	
		81	3	57.47	81	4.13	61.60	6160/1237120	
		82	2	57.65	82	2.84	60.49	6049/1237120	
		83	3	78.40	83	2.86	81.26	8126/1237120	
		84	2	47.88	84	4.12	52.00	5200/1237120	
	V	85	2	47.12	85	2.85	49.97	4997/1237120	
		86	3	78.83	86	2.85	81.68	8168/1237120	
		87	2	57.29	87	4.13	61.42	6142/1237120	
		88	2	57.27	88	4.14	61.41	6141/1237120	
		89	3	78.32	89	2.85	81.17	8117/1237120	
		90	2	47.85	90	2.86	50.71	5071/1237120	
RAZEM							1 834.56	1 932.86	193286/1237120

Source: Kloka (2011)

Basing on provisions of Art. 18 item 1 of the Act on Ownership of Premises, owners of premises – in the agreement on establishing separate ownership of premises or in an agreement concluded later in the form of a notarial deed – specify the way of administration of a common property and in particular, they may commission such administration to an individual or a legal entity.

Issues related to registration of separated premises in the property register, are regulated by the Act of July 6, 1982 on land register and the mortgage system (Dz. U. of 2001, No. 124 item 1361 with later amendments). Following Art. 24 of that act, a separate land book (in digital form) is maintained for each property, unless other procedures are specified in detailed regulations. This also concerns premises and properties, in which premises have been separated. In the land register, maintained for the particular property in which ownership of premises have been separated, the way of administration of that property, specified in the agreement, is disclosed; in the case when it is not disclosed, the way of administration, resulting from the legal act, is considered as default.

Following the provisions of the Decree of the Ministry of Justice of August 20, 2003 on establishing and maintaining computerised land register (Dz. U. of 2003, No. 162, item 1575 with later amendments), entries in particular sections (§92) are made in the following columns of the land register, maintained for a premises property:

1) in Section I-O:

- in the column 1.2 „property number” (the current number of the property),
- in the column 1.3 „location” (specification of the province, district, municipality and district),
- in the column 1.4 „designation”,
- In the sub-column 1.4.4 „premises” (premises identifier, according to the cadastre, street name, building number, apartment number, premises destination, description of premises with specification of types and numbers of rooms, types and numbers of accessory rooms, floor number, when the premises are located, information on the separateness of premises),
- in the column 1.5 „size” (living space of premises),
- in the column 1.7 „basis for designation (correction)” (this information is included in a list of columns of bases for entries placed at the end of the Section I),
- in the column 1.8 „data on application and the moment of entry” (this information is included in a list of columns of data on applications and moments of entries, at the end of the Section I),

2) in the Section I-Sp:

- in the column 1.11 „list of issues”,
- In sub-column 1.11.1 „list of issues related to the ownership” (number of rights, type of rights, related shares and pointing to the property register number, where the serving property is described – shares of the owner of separated premises in a common property is specified in this place together with specification of volumes of those shares and specification of the land register maintained for the common property),
- in the column 1.12 „basis for the entry”,
- in the column 1.13 „data on the application and the moment of entry”,

3) in the Section II:

- in the column 2.2 „owner” (number of share in the right, volume of shares; in the list of shares in the right – data concerning the owner – for an individual: the first and second name, the family name, the father’s name, the mother’s name, the personal number),
- in the column 2.6 „basis for purchase”,
- in the column 2.7 „data on the application and the moment of entry”.

Thus, as it may be seen, the land register, maintained for separate premises, is „burdened” with an entry of the share of the owner of separate premises in the common property, together with specification of the volume of that share and specification of the land register maintained for the common property. Therefore, in the case of the necessity to change that share, an appropriate entry in the land register, maintained for the given premises, should be made and due to the method of specification of that share – also changes in land registers for remaining premises should be also entered.

Following the provisions of §93 of the above discussed Decree, in the land register,

maintained for a property, where a building located, in which the separate ownership of premises has been established, the following entries are made:

1) in the Section I-O:

- in the column 1.2 „property number” (the current number of the property),
- in the column 1.3 „location” (specification of the province, district, municipality and district),
- in the column 1.4 „designation”,
- in the sub-column 1.4.1 „a cadastral parcel” (a parcel identifier, a parcel number, a number of a cadastral district, a name of a cadastral district, street name and the current number, way of use)
- in the sub-column 1.4.2 „building” (a building identifier, a parcel identifier, address data, i.e. street name and the building current number, number of floors in the building, number of individual premises, the building destination),
- in the field 1.4.2.14 „information on separated premises” (number of separated premises and specification of land register maintained for premises),
- in the field 1.4.2.15 „common parts after separation of premises”,
- in the column 1.7 „basis for designation (correction)”,
- in the column 1.8 „data on the application and the moment of entry”,

2) in the section II:

- in the column 2.3 „owner of separated premises” with respect to the owner of separated premises (number of the share in the right, the volume of share in the common property, which is land and a part of a building and installations, which do not exclusively serve for the premises owner, specified in the form of a simple fraction, specification of the number of premises and the number of the land register maintained for the given premises),
- in the column 2.6 „basis for purchase”,
- in the column 2.7 „data on the application and the moment of entry”.

As it may be seen from the above explanations, the land register, maintained for a common property, also includes entries concerning the share of owners of separated premises in the common property, together with specification of the volumes of those shares and specification of the land register, maintained for the given premises. In the case of the necessity to enter changes in shares, appropriate entries should be made in the land register, maintained for the common property.

In the case of modification of a surface parameter of any premises, such a structure of land register results in modification, not only in the land register maintained for the common property, but also in land registers, maintained for remaining premises. In the author’s opinion, this is a considerable disadvantage and specification of that shares in the land register for premises creates successive difficulties – the necessity to change that share in land register for all premises, separated in the building. This situation should be changed and following the author’s opinion, in the Section I.Sp. of the land register, maintained for the premises, in the sub-column 1.11.1 „list of rights related to the ownership” the type of right should be specified (e.g. information that the owner of separated premises has the shares in the common property) and the land register, maintained for the common property should be pointed to; the

volume of that share could not be specified, since it is specified, for the second time, in the land register, maintained for the common property (in the Section II, in the column 2.3).

Following the provisions of §29 of the Decree of the Ministry of Justice of September 17, 2001 on maintaining land register and sets of documents (Dz. U. of 2001, No. 102 item 1122 with later amendments), premises, being the subject of a separate ownership are marked basing on a notarial deed or a court sentence, as well as an official extracts of cadastre (copy of the register of premises or copy of the list of premises), unless other procedures are specified in separate regulations.

However, following Art. 2, item 5 of the Act on Ownership of Premises, premises, together with accessory rooms, are marked on projections of appropriate floors of the building; in the case when accessory rooms are located outside the housing building, they are also marked on an official copy of the cadastral map. The above documents become the annex to a notarial deed, which establishes the separate ownership of premises.

Provisions of the Technical Instruction G-5 „The cadastre”, states (§121, item 3) that a notarial deed, concerning the establishment and transfer of leasehold and establishment of a separate ownership of premises, is the basis for disclosing in the cadastre, if it has been disclosed in the land register.

According to §71 of the Decree of the Minister of Regional Development and Building Industry of March 29, 2001 on cadastre, the cadastral data concerning premises – if it is not included in documents delivered to the starost (the district authorities) – notarial deed submitted by notarial chancelleries, following Art. 23 of the act of May 17, 1989, the Geodetic and Cartographic Law), is disclosed in the cadastre, following the application of individuals, organisational units and bodies, which are discussed in §11, item 1, point 1 of the above decree, basing on the documentation submitted by them and developed by an authorised individual, having appropriate, professional, building qualifications.

Coherent provisions are included in the Technical Instruction G-5, which states, that data concerning individual premises, being separate properties, is disclosed in the cadastre, basing on entries to land register and additionally, notarial deed, prepared in relation to separation of those premises, and data concerning premises, which are not separate properties, is disclosed in the register, following applications submitted by appropriate register units, specified in §10, item 1 point 2 and item 2 of the cadastral act or individuals, organisational units and bodies, listed in §11, item 1, point 1 of that decree, basing on: a certificate issued by the starost, which states the individuality of premises (in accordance to Art. 2, item 3 of the Act on Ownership of Premises) and documents listed in §18, item 2, point 1 of the Technical Instruction G-5, developed by an individual having appropriate, professional, building qualifications. (§21, items 3 and 4 of the Technical Instruction G-5).

Thus, following §18, item 2 of the Technical Instruction G-5 the documentation discussed above, should contain:

- 1) drawings of horizontal projections of particular floors of the building, at the scale of 1:100 or 1:200, which present:
 - a) outer walls of particular storeys and walls of particular rooms and dimensions of those walls,
 - b) boundaries and numbers of particular, individual premises and boundaries and designation of particular accessory rooms, if those rooms are located inside the building,
 - c) window and door openings in the building,

- 2) a copy of the cadastral or the base map, including designations and boundaries of particular accessory rooms, if those rooms are located outside the building,
- 3) a list of individual premises in the building, with the following information:
 - a) the cadastral number of the building,
 - b) premises number,
 - c) basic functions of premises,
 - d) living space of premises,
 - e) information, whether premises are separate properties or elements of land property,
 - f) the number of the property in land register (maintained for premises, if premises are separated properties),
 - g) designation of accessory rooms, their basic functions and living space,
 - h) total size of the living space of premises and accessory rooms,
 - i) total size of the living space of all premises in the building and accessory rooms.

Besides, those documents should contain the name of the cadastral unit, the name and the number of the cadastral district, or only the number of the cadastral district and numbers of cadastral parcels, on which the building is located, and the contractor's name and the family name with the contractor's signature, the date of production of documents and the number of the contractor' building qualifications.

Following §21 item 1 of the Decree on cadastre, data concerning those individual housing premises and non-housing premises, as understood by the Act on Ownership of Premises, which are the components of land or building properties, and which are individual premises properties, are listed.

Following §70 of the Decree on cadastre, the following data, concerning premises, should be registered in the cadastre:

- 1) the number of premises, as a component of the premises identifier,
- 2) the building cadastral number, in which premises are located,
- 3) designation of useful functions of premises,
- 4) the number of rooms included in premises and the number and types of accessory rooms,
- 5) the size of the living space (expressed in m²) of premises and the size of accessory rooms.

Additionally and besides the above data, the following data should be registered for premises, being and independent property:

- 1) number of the property in land register,
- 2) designation of documents which specify rights to premises, other than the ownership rights,
- 3) the cadastral number of the premises cadastral unit, to which premises have been assigned,
- 4) the value of premises and date when that value was specified.

As it turns out from the above provisions, with respect to registration of premises in the cadastre, the minimum quantity of data are registered, together with technical parameters, such as size of living space of premises and accessory rooms. If we assume that issues concerning the rules of calculation the living space of rooms, being elements of premises and entire premises would be strictly specified, the author does not present any doubts about the

idea concerning registration of such data concerning premises.

6. CONCLUSIONS

As it turns out from performed analyses, the basic problems related to premises are in Poland related to:

- the lack of accurate definition of many basic terms related to premises; this results in the necessity to precise many terms in the course of procedures in courts,
- unclear legal regulations concerning the rules of surveys of rooms in premises, and surveys of entire premises, and calculation of the size of the living space of rooms and premises (there is no specification of obligatory standards, the standard, which is not valid is specified, there is no obligation to apply any standards with respect to specification of space indexes in the building industry) and inaccurate specification of the accuracy of calculation of areas,
- the standards PN-70/B-02365 and PN-ISO 9836:1997 present various rules concerning the surveys and calculation of sizes of living space of rooms and entire premises, high differences occur, which do not allow for exchangeable application of both standards and therefore, it is not possible to specify a universal (possible for application for each premises) coefficient, to be used for automatic re-calculation of the living space of premises, following one of those standards to the value obtained basing on the other standard,
- the way of calculation of the owner's share of separated premises in the common property, which relates it with the size of living space of all premises, separated within a given building, what – following provisions of Art. 3, item 7 of the Act on Ownership of Premises may cause many difficulties, since modification of that share is not possible if an agreement between the owners of premises, in the form of a notarial deed is not concluded,
- various definitions of the living space in legal regulations related to the cadastre and in other regulations,
- registration of shares of owners of separated premises in the common property in land register, both in the land register of the common property and in land register of particular premises; this is disadvantageous from the point of view of introducing changes. First of all, the basic disadvantage is related to „burdening” the land register, maintained for separated premises, with the entry of the share of the owner of the separated premises in the common property, together with specification of the volume of that share,
- legal regulations, which may limit the executability of operations related to practical changing the share of an owner of separated premises in the common property (e.g. by demolishing partition walls in premises), which change – due to the rule of calculations of the above shares – results in the necessity to re-calculate those shares for all premises.

Following the performed analyses and with respect to the issue of calculation of the living space of premises and rooms, the author considers two possible solutions, In the first solution the rules concerning calculation of the living space basing on principles included in one of the

sectoral norms should be strictly determined and they should be used in the process of disclosing the living space of premises in the cadastre and in property registers. Unfortunately, such a solution would not eliminate issues concerning the changes of shares in the common property, in the case when the area parameter of one of premises would be changed. The second proposed solution would consist of introduction of such rules of calculating the living space of premises, in which the change of the system of rooms (e.g. as a result of demolition of partition walls) would not result in the change of the size of the living space. Therefore, the principle saying, that the living space of premises is the room size calculated in the clearance of construction walls, should be introduced. In this case the living space of premises would contain spaces under the partition walls, but – with such approach – any changes in the system of rooms, would not result in modification of that parameter.

While there is no doubt about the registration of premises on the cadastre, in the author's opinion the way of registering premises in land register should be modified.

The present structure of land register, maintained for the common property and separated premises results – in the case of changes of area parameters of any premises – in changes not only in land register maintained for the common property, but also in land register maintained for other premises. In the author's opinion, it is significant disadvantage and specification of that share in the land register for premises causes additional difficulties – the necessity to change that share in land register for all premises, separated in the building. That situation should be changed and, according to the author's suggestions, in the Section I.Sp. of the land register, maintained for premises, in the sub-column 1.11.1 „list of issues related to the ownership” the type of right should be specified (e.g. information, that the owner of the separated premises has the share in the common property) and the land register, maintained for the common property should be determined; specification of the volume of that share should be eliminated, since it is disclosed, for the second time, in land register, maintained for the common property (in the Section II, in the column 2.3).

With respect to registration of premises in the cadastre, the minimum amount of data is registered, together with technical parameters, such as the values of living space and accessory rooms. If it may be assumed that issues concerning the rules of calculation of the living space, included in premises, as well as entire premises, may be regulated, the idea concerning registration of such data about premises in the cadastre, following the author's opinion, creates any doubts.

Introduction of a rule to enter “the association of owners”, which members would be owners of all separated premises in the property register, could be considered. Therefore, shares in costs and benefits and other incomes from the common property, would be established at the meeting of the co-owners. Each modification of a parameter of individual premises would not result in the necessity to modification of shares in property registers; only the entry concerning the size of given premises would be corrected and the new share in costs would be established on the above discussed meeting.

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BIOGRAPHICAL NOTES

Marcin Karabin Ph.D. Born in Warsaw in 1976. Studies of Geodesy and Cartography at the Warsaw University of Technology. Graduated his (M.Sc.) in Geodesy in 2000. Obtained his Ph.D. with a dissertation "Conception of the model of cadastral system in Poland based on chosen solutions in European Union countries" at the Warsaw University of Technology in 2005. Licensed surveyor. Has professional license in the field of: „Land Surveying, implementation and inventory surveys” and ”Delimitation and division of real estates (plots) and preparation of documentation for legal purposes”. Current position: full-time research worker at the Warsaw University of Technology (Department of Cadastre and Land Management, Faculty of Geodesy and Cartography), providing surveying services as a licensed surveyor (since 2006).

CONTACTS

Marcin Karabin
Plac Politechniki 1
PL 00-661 Warsaw,
POLAND
Tel. (48-22) 625-15-27
(48-22) 660-73-69
Fax: (48-22) 625-15-27
Mobile: +48-608-402-505
E-mail: M.Karabin@interia.pl