

Results from the Reorganisation, Digitalisation and Centralisation of the Icelandic Land Register – Has our dream come true?

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Key words: Iceland, system development, cadastre, land registration system

SUMMARY

This paper describes the Icelandic land registration system and deals briefly with property legislation. It outlines who the registration authorities are in Iceland and what their individual roles are in the property registration process. Next the development of the current property register and the ideas underpinning it will be covered. Of course the register will never be completed and its development will continue to meet changing demands of the nation. The guiding principle is that the register should be multi-functional and satisfy the requirements of the public, business and government. Finally the paper will summarise the benefits that the Land Register (LR) has brought since it was established in its current form and what the prospects for the future are.

SUMMARY

Grein þessi lýsir fyrirkomulagi fasteignaskráningar á Íslandi og í stuttu máli löggjöf um fasteignir. Gerð er grein fyrir hverjir eru skráningaraðilar og hvert er hlutverk þeirra með tilliti til fasteignaskráningar. Þá er lýst hvernig núverandi fasteignaskrá hefur verið byggð upp og hver er hugmyndafræði hennar. En skránni verður aldrei endanlega lokið þar sem þróun hennar fer stöðugt fram til að mæta nýjum þörfum í þjóðfélaginu. Leiðarljósið er að skráin sé fjölnota skrá sem mætir þörfum annarra stjórnvalda, fyrirtækja og fasteignaeigenda. Farið er yfir hvað hefur áunnist frá því að Landskrá fasteigna í núverandi mynd var sett á fót og hver er framtíðarsýnin.

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1. INTRODUCTION

The Land Registry of Iceland (Icelandic: Fasteignamat ríkisins; hereafter: FMR) was established in law in 1976. The agency's role was to maintain a cadastral register of all real estate in Iceland and carry out property valuation. Initially FMR received all property data from the municipalities, who at the time numbered over 200. Each municipality maintained a register of properties in its own district. Under the provisions of the law it was planned that legal registration would become part of the LR when such a change was deemed timely. This became a reality 25 years later when the LR came into being on 1. January 2001.¹

2. THE TERM “REAL PROPERTY”²

The definition of the term “real property” is found in the law on The Registration and Valuation of Real Property³ and reads as follows: “A real property is a defined piece of land, including its organic and non-organic parts along with all rights and structures which attached thereto.”

In the law on The Purchase of Real Property⁴ the concept is defined as follows: “In the context of this law real property is a defined piece of land together with its natural parts; organic and non-organic, and those structures which are permanently attached to the land. Real property also includes an share of ownership of a jointly owned house or other structure, where ownership is divided.”

In urban areas in Iceland it is usually the case that plots of land are owned by the municipality and leased for extended periods, typically 50-75 years. The plot lessee has the same rights of disposal of the plot that they would have if they owned it; i.e. they may build a house, mortgage and sell the property. It is also common that summer house plots in the Icelandic countryside are owned by the owner of the estate on which they are located. The duration of the lease on summer house plots is usually shorter than those on urban plots, typically 25-50 years. Additionally leases on summerhouse plots sometimes limit the rights of disposal of the lessee, e.g. by prohibiting them from selling the summer house together with the plot lease.

¹ Guðmundur J. Guðmundsson. „Fasteignamat á Íslandi – Frá tíundarlögum til Landskrár fasteigna“, *Ársskýrsla 2000, Fasteignamat ríkisins*.

² See Viðar Már Matthíasson, „Fasteignahugtakið“, *Ársskýrsla 2003, Fasteignamat ríkisins*.

³ Law on Registration and Valuation of Real Property, nr. 6/2001, article 3.

⁴ Law on the Purchase of Real Property, nr. 40/2002, article 2.

In recent years there have been efforts to define boundaries of ownership of land in the Icelandic highlands. This work has proved problematic and the Uninhabited Areas Board was established to rule on boundary positions based on the competing claims of estate owners and the Ministry of Finance (acting on behalf of the state). It is possible to appeal the decisions of the Uninhabited Areas Board in the courts. All highland land that has no established history of ownership is classified as National Land, defined in law as “*An area of land outside private or state ownership; notwithstanding any limited title held by individuals or other parties.*”⁵. It is intended that National Land will be registered in the LR.⁶

In Icelandic law there is no definition of how far below or above ground level title extends. It is assumed that title extends as far the land is usable as long as there is no special limitation in law.

3 REGISTRATION LAW

3.1 Registration of Real Property Information

The law⁷ states:

“Real Property, parts thereof and discrete structures shall be registered as separate units in the Land Register as follows:

- a) land, i.e. every parcel of land that can be viewed as an independent unit due to special ownership or usage rights, characteristics, boundaries or utilisation,*
- b) structures that have been made in or on the ground or that are otherwise connected to the ground,*
- c) discrete property units in multi-unit properties according to the law on multi-unit properties,*
- d) parts of structures if they have a separate use,*
- e) arable land*
- f) profits á prendre,*
- g) other rights related to the property.*

By means of setting regulations the Minister can determine a more precise registration consistent with the above and also to register more property units than those which are mentioned in article 2.”

3.2 Registration of Rights

The Law on Legal Registration (nr. 39/1978) applies to registration of legal rights. This law does not give a clear definition of the term “legal registration”, but it implies that: *legal registration is the public registration of documents pertaining to rights over a specific*

⁵ Law on National Lands and the determination of National Land, Highland Pasture and Freehold Land Boundaries, nr. 58/1998.

⁶ See Gunnar F. Guðmundsson, „Afréttareign í sögu og samtíð“, *Ársskýrsla 2001, Fasteignamat ríkisins.*

⁷ Law on The Registration and Valuation of Real Property, nr. 6/2001, article 3.

*property. There are certain legal consequences that follow this public registration.*⁸ Thus legal registration essentially produces a register of rights in which documents are registered with the purpose of protecting the interests of registered right-holders from third parties.

Generally it is not compulsory to register contracts or other documents although there are exceptions, e.g. it is compulsory to register first registration, subdivision and transfer of part documents as these all create a new property in the register. Sales contracts and transfer deeds are not subject to compulsory registration but in practice they are almost always registered. Whether a contract is registered or not does not materially affect the contractual relationships that are created by it.

There are no restrictions on who may register a document as long as it is signed by the property owner. Certain documents require the signature of a spouse under matrimonial law. In practice most documents relating to the purchase and sale of real property are produced by state-certified real estate agents or legal professionals and most mortgage documents are produced by financial institutions. To be eligible for registration signatures on deeds of sale and mortgage that are not issued by a public body must be witnessed by a notary public, lawyer, state-certified real estate agent or two other witnesses. In practice notaries public are rarely used in Iceland.

Rights are only registered in the Legal Registration Section of the LR. However the other sections of the LR contain information that is registered in the public interest.

The Legal Registration Section falls under the Minister of Justice and contains information regarding the legal owners of a property and the proportion of their ownership along with mortgages, encumbrances etc.

Legal registration also records both direct and indirect sources of title to property. Direct sources of title include property transfers while indirect sources include: easements, leases, mortgages and rights of seizure, purchase and pre-emption. Documents can also contain various easements and declarations which should be described in detail. These can include rights of access and various rights of use. Statutory encumbrances, such as those intended to protect the environment, are not usually registered on individual properties but rather appear on the estate plans maintained by the municipalities. An exception to this rule is building plot leases which usually contain requirements for the plot owner (most often the municipality) to install water, electricity, telephone and sewerage connections. Building plot leases are nearly always registered.

⁸ Þorgeir Örlygsson. *Þinglýsingar – Mistök í þinglýsingum – Réttarreglur*, Reykjavík 1993, pg. 17.

4 THE LAND REGISTER

4.1 Overview

Iceland has a central public register, the information it contains is both entered and used by central and local government. The aim for the LR was to unify several existing property registers held by various different government organisations and harmonise the information held in them. The guiding principle was to provide a register with multiple uses to satisfy the requirements of the public, business and government. Registration is carried out by FMR as well as Iceland's 79 municipalities and 26 district magistrates.

4.2 Content of the Land Register

The LR consists of information on the land, rights and structures that are associated with a real property. As well as administering the LR FMR collects information and determines property tax and fire insurance values. The property tax valuation is based on market price and used to determine local and central government property charges. Fire insurance valuation is based on the construction cost of a property.

The main sections of the LR are as follows:

The **Property Information Section** holds the basic information about a property, such as address, register unit identifier, location and boundaries. This information cannot be amended without the agreement of all three registration authorities: the municipality, the district magistrate and the Land Registry of Iceland.

The **Building Information Section** includes information about the type of building, its size, building material, year of construction, use etc. This information originates from the municipality and is input into the land register by them.

In the **Valuation Information Section** is found a detailed description of the building for example flooring material, fittings as well as information on the quality and condition of the property. This section also holds property tax and fire insurance valuation information.

The **Legal Registration Information Section** contains information on the legal owner of a property and other right holders, as well as mortgages and other encumbrances. The district magistrate enters information into this section of the land register.

4.3 Centralisation of Information in the Land Register

As has been previously mentioned the idea for the LR was mentioned in law in 1976 but it did not become a reality until January 1st 2001. Its stated aims were:

- to stop multiple registration of property by uniting the main property registers.
- to standardise the process for creating a new property in the register

- to link the LR and the house register held, by the National Register
- to take the first step in registering land boundaries in electronic form

In 2001 only three district magistrates were using computer systems for legal registration, the remainder were still using legal registration books, many of which were handwritten. Transferring this information into electronic format was a considerable undertaking which is only now in its final stages. This work has been made more difficult by a surprisingly large number of discrepancies between information held in these books and that held by FMR. Prior to starting the project it was estimated that the rate of discrepancy would be 10%, in reality it was between 15 and 33% depending on the area of the country in question. Resolving these discrepancies often requires extensive cooperative investigation by the district magistrates, municipalities, FMR and owners.

5 ROLE OF THE REGISTRATION AUTHORITIES

5.1 Municipalities

The municipalities fall under the Ministry for Transports from January 1st 2008. The building inspector of each municipality is responsible for supplying FMR with information on estates and building plots as well as all buildings in their district. The inspector has a direct link to the LR and inputs the aforementioned information during the pre-registration process.

The building inspector is responsible for the accuracy of this information. In the case of errors the general law on restitution of damages applies.

5.2 The Land Registry of Iceland

FMR falls under the Ministry of Finance. The agency owns and manages the LR, overseeing the technical and legal development of the system and training and supporting the other registration authorities in its use.

FMR must ensure that the information is as current as possible and to this end it can stipulate the form, content and timing of the pre-registration information supplied by the building inspector.

If FMR is made aware of inaccuracies in the LR it has the authority to request that the information be reviewed in conjunction with the municipality.

5.3 District Magistrates

District magistrates fall under the Ministry of Justice and all have a legal education. They oversee public administration within their own district; including divorce, property seizure and resale, police and customs matters and legal registration of property.

Until 1992 district magistrates were also district judges and legal registration was a a court matter. Since then legal registration has been a matter of public administration, meaning that non-judicial complaint procedures are possible before resorting to the courts system.

Legal registration proceeds on the basis of a document that is submitted to the magistrate's office in the district where the property is located. If the document relates to the creation of a new property it will have been pre-registered by the building inspector. The registrar compares the pre-registered information with that on the document and completes the registration formally. At this stage the new property is formally created in the LR.

There is no legal requirement that documents for registration be produced by a legal professional however, although it is not unknown for individuals to prepare their own sales deeds and documents, in practice it is lawyers and state-certified real estate agents who generally do this. Mortgages are usually produced by financial institutions. Documents for registration must be submitted in duplicate. One copy must be on authorised document paper and will be retained by the District Magistrate. The second copy will be stamped on completion of legal registration and returned to the right-holder.

A document is entered into the "daylist" on the day it is submitted for registration. This is the date from which the document has priority regardless of when registration is actually completed. In most cases legal registration takes only two days but the Magistrate has up to 14 days to take a decision as to whether a document is admissible for registration.

6 DEVELOPMENT OF THE LAND REGISTER

6.1 Events in Chronological Order

January 1st 2001	LR established
2001	18 district magistrates use LRs legal registration section
2002	22 district magistrates use LRs legal registration section
2003	Preparation for transfer of documents from the old legal registration system
2004	25 district magistrates use LRs legal registration section Electronic mortgage overviews available nationally
July 1st 2004	Estates Law (nr. 81/2004) takes effect. This establishes that the Farms and Estates Registers are now part of LR.
2005	Aerial photography of registered properties based on coordinates begins.
January 1st 2006	Fire insurance system integrated into LR for the use of insurance companies.
2006	Pilot project initiated to allow FMR access to the electronic building plans held by two of the larger municipalities. Amendment to the law on Municipal Finance (nr. 4/1995). Property tax assessment now to take place in the LR. Technical preparation begins.
May 2006	District magistrates begin scanning legally registered documents.

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Integrating Generations

FIG Working Week 2008

Stockholm, Sweden 14-19 June 2008

November 2007	Iceland signs up to the EULIS project.
January 1st 2007	LR property tax assessment system launched. Each municipality receives an access-controlled application covering all properties in their district. The municipality uses this to enter tax assessment amounts, subsidies and discounts, calculate the assessment, draw up schedules and produce various reports.
March 2007	Legal registration of motor vehicles in the LR begins and is linked with the Motor Vehicle Register.
May 2007	A new system introduced to the LR for the use of all ministries that covers all state-owned land.
2007-2008	FMR acquires all coordinates for buildings in Iceland and continues to publish aerial photographs of buildings. Around 98% of houses are covered.
April 2008	Legal registration of ships in the LR begins and is linked with the Ships Register.
September 2008	Legal registration of non-fixed assets begins in the same system. Legal registration of aeroplanes in the LR will begin and will be linked to the Aeroplane Register.
2008	Iceland will connect to EULIS.

In April 2008 the total number of real properties in Iceland is about 180,000. Around 6% of real property, most of which is publically owned, has never been legally registered as this is not a legal requirement. Information on these properties appears in other parts of the LR. 96% of all legally registered properties are registered electronically, with only 4% still remaining in paper form.

6.2 Conceptual Model of the Land Register

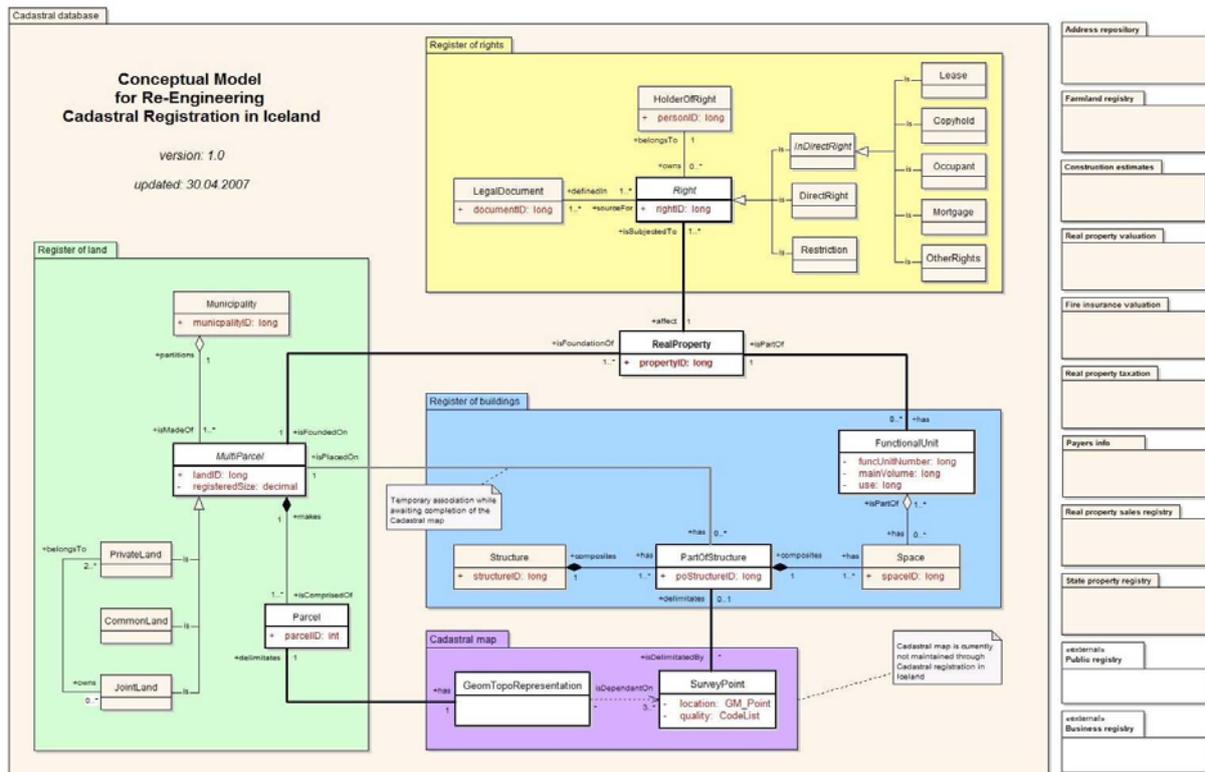


Figure 1: Conceptual Model of LR, 2007

This model was produced in 2007 and built on the idea that the basic registration attributes of each property consist of information on the land itself, the rights to which it is subject and any structures that are attached to the land. There are many peripheral registers that are derived from this base register which contain various additional information according to their nature and function. Examples of peripheral registers are the sales register, which contains property sale prices, the property valuation register, the fire insurance valuation register, the property tax assessment register etc. The LR is connected to the National Register and the Companies Register and receives automatic updates from them on a regular basis.

6.3 The Situation Today

Two of the four original aims of the LR mentioned above have been achieved. Firstly, all registration authorities now register information directly in LR. Secondly, an agreed registration process is now in place meaning that each of the 500 individuals who work for the various registration authorities understands their role in the process as well as the role of the other authorities.

6.4 Strengths of the Land Register

Registration processes are clear and users have the knowledge and skills necessary to carry out their work in the system. There is good cooperation and regular consultation between the registration authorities which FMR is responsible for managing.

The information in the LR is trusted and if mistakes do arise payment of damages can be sought from the state.

Both cadastral and legal registration information are more easily accessible.

The system is secure and has been certified under BS 7799-2. System stability is also excellent with 99.8% availability during business hours in 2007.

6.5 Weaknesses of the Land Register

Although information on property boundaries is key to property registration, Iceland is one of the few European countries who do not publish this information in plan form. A new department was recently formed within FMR to integrate a mapping system into the LR.

6% of property in Iceland remains unregistered. As previously mentioned most of this land is publically owned and FMR is working with the municipalities and central government to remedy the situation.

7 USE OF REGISTERED INFORMATION

7.1 Distribution of Information

The LR is a public register and is generally open to all. Access to certain information is restricted in accordance with data protection legislation.⁹ For example information on all properties owned by a certain individual would be classified as personal information and access to it restricted to professionals who can demonstrate a legitimate need.

The LR has a wide userbase which includes: municipalities, banks, insurance companies, real estate agents, legal professionals, investment companies, The National Register, tax authorities and other government agencies.

Information from the LR is available in various forms. Firstly in paper certificates and print-outs. A lot of information is also provided over the phone. Basic information is also provided free of charge at FMRs website; www.fmr.is. There are also two fee-based services; the first has no access restrictions and provides all information on a property except details of mortgages, transfers and other legal documents, the second provides a full picture of the

⁹ The Law on The Protection of Privacy as regards the Processing of Personal Data, nr. 77/2000.

current legal and financial status of the property and is only accessible by property professionals.

Furthermore FMR sells information directly and through intermediaries in the form of XML schema delivered through web-services. These web-services are built on Microsoft's WS-standard as well as the intermediary's electronic certificate, which is provided by a recognised certification body.

Finally FMR provides one-off bespoke reports from the LR. There is an ever growing demand from banks and investment firms for property sales value reports and other information about the property market in general.

8 DEVELOPMENTS

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There is currently a bill being discussed by parliament that will amend the Law on the Registration and Valuation of Real Property. Some of the changes suggested in this bill are that:

- the process for registering a new property be simplified
- registration fees be abolished for the registration of new properties
- all revenue generated by sale of information be retained by FMR and not paid to Treasury
- there be a more clear requirement for property information to be published on a map-base

Preparations for a joint project between FMR, the Ministry of Justice and the Ministry of Finance to implement electronic mortgage registration are well underway.

A project to introduce a national address register is planned and it has been agreed that FMR will carry out the project and manage the resulting register as an integral part of the LR.

There is also work underway to connect the LR and the National Register more closely so that individuals can register their legal domicile in a specific flat in a house, rather than just the house as a whole as is currently the case.

Work on the LR will never be finished, the use of its information is constantly increasing and to support continuing prosperity in the country we have to meet the new demands of the users while ensuring the reliability of the information we provide and the efficiency of the registration process for new information.

BIOGRAPHICAL NOTES

Margrét Hauksdóttir graduated as a lawyer from the University of Iceland in 1989. Upon graduation she commenced employment at the Ministry of Justice and worked there until 1990. Since 1989 she has been a member of various governmental committees dealing with legal issues. During 1992 – 1993 she was employed as a trainee at the EFTA Secretariat in Geneva. Between 1994 – 1997 she lectured on family law at the University of Iceland. In 2000 she moved to the Land Registry of Iceland and in 2003 became its Vice Director General. She was a member of the project team responsible for establishing the centralized Land Registry Database. Currently she is the chairman of a number of project teams who are responsible for the reformation of cadastral practices at the registry. She is also a member of a governmental workgroup which is composing a new bill on cadastre. She has been member of the Bureau of the UN/ECE WPLA since 2005.

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