

Advantages and disadvantages of a merger organization

The Case of the Netherlands

Mr. W.Louwman

Former chief registrar in the Netherlands

Former President of the European Land Registry Association

Cadastre and Land Register in the Netherlands

History:

1811: Land Register introduced by Napoleon.

1832: Cadastre implemented for property taxes separated from Land Register. Cadastre governed by administrative law

Cadastre: refers occasionally to file numbers of deeds in Land Registers

Land Register: occasionally recording of deeds with Cadastral parcel numbers

1929: shared name list of Cadastre and Land Register

Referring to file numbers deeds and cadastral parcels becomes mandatory

Legal differences maintained:

Land Register governed by civil law: focus on legal certainty

Cadastre governed by administrative law (allows less cumbersome processes).

Implementing of Cadastre: fit for **juridical** purpose

Purpose rapid collecting of property taxes.

Possessors registered as presumed owners/ taxable persons.

Physical boundaries surveyed as cadastral boundaries.

Taxes based on number of square meters and increased by multiplier for location.

Taxes assessments governed by administrative law.

Objections that parcel should be larger were **NOT** admissible (taxpayer has no interest in paying more taxes).

Objections for smaller parcel were admissible but arguments could be used by neighbor in civil law suit for declaration of ownership.

Result: no boundary disputes/few objections.

Purposes of the merge Cadastre and Land Registers

Prevent duplications:

- shared name list;
- no servitudes in Cadastre (are already in deed in Land Register).

Ease sorting out of deeds in Land Register (Cadastre had to refer to file numbers of deeds).

Ease sorting out of a number of Cadastral parcel (parcel number had to be mentioned in deed in Land Register).

No equal legal meaning Cadastre and Land Registers (consequence of conveyance system)

Dutch system of conveyance

Causal deeds system with third party protection

Notary public functions as clearing house.

Notary:

- scrutinizes last deed on authority/ competence of seller + servitudes and other obligations;
- relies on insurance for damage caused by errors in previous deeds.

Causal system:

void sequel contract > no acquisition of title.

Third party protection :

- in case of resale: a buyer in good faith may rely on in Land Register recorded deed of acquiring by the seller.
- only for Land Register not for Cadastre

Clearing house, notary:

- receives purchase money from buyer and his mortgagor;
- verifies receipt of deed by registrar;
- verifies on conflicting legal facts (double sale/mortgage/seizures);
- transfers purchase money to seller and his mortgagor (on the day after submission of the deed).

Reflects Dutch merchant spirit: quick receipt of purchase money.

Dutch system involving boundaries

Civil law: position boundary decided by intention buyer and seller as described in deed of transfer

Usually intention is based on physical boundary (hedge, fence, middle of ditch).

System is based on legislation involving adverse possession.

Adverse possessor acquires title when possibility to stop adverse possession has expired (20 years).

Acquiring by prescription takes place without recording in Land Register.

Consequences:

- civil law boundaries can shift without registration;
- civil law boundary can differ from a cadastral boundary;
- limited legal meaning cadastral boundary allows cheap surveying.

Legislation reflects Dutch history /culture

Dutch people prefer to compromise for the benefit of more important purposes. Are used to cooperate to protect against the water. This “polder model” is reflected in civil law.

Below sea level



1992 : New Civil Code

Proposal to change from deeds to title system (juridical merge of Cadastre and Land Registers).

Proposal rejected.

Main objections:

- Cadastre is not reliable/complete;
- delay of transfer of purchase money.

Proposal for gradual re-surveying of boundaries (should be fixed with decisive civil law meaning).

Proposal rejected.

Main objections:

- cumbersome procedures to protect fundamental human (property) rights;
- increase of boundary disputes.

Alternative system for re-registration Cadastre :

Recording in Land Register of Notarial deed of re-registration Cadastre;

Delayed legal result, acquiring title after 10 years.

2013: Empirical research on change of system for acquiring after adverse possession

Conclusion

It is not necessary to have a perfect system of land registration. The benefits do not outweigh the costs in the Netherlands.

Bottleneck of merger: financial vulnerability.

No proportional allocation of costs.

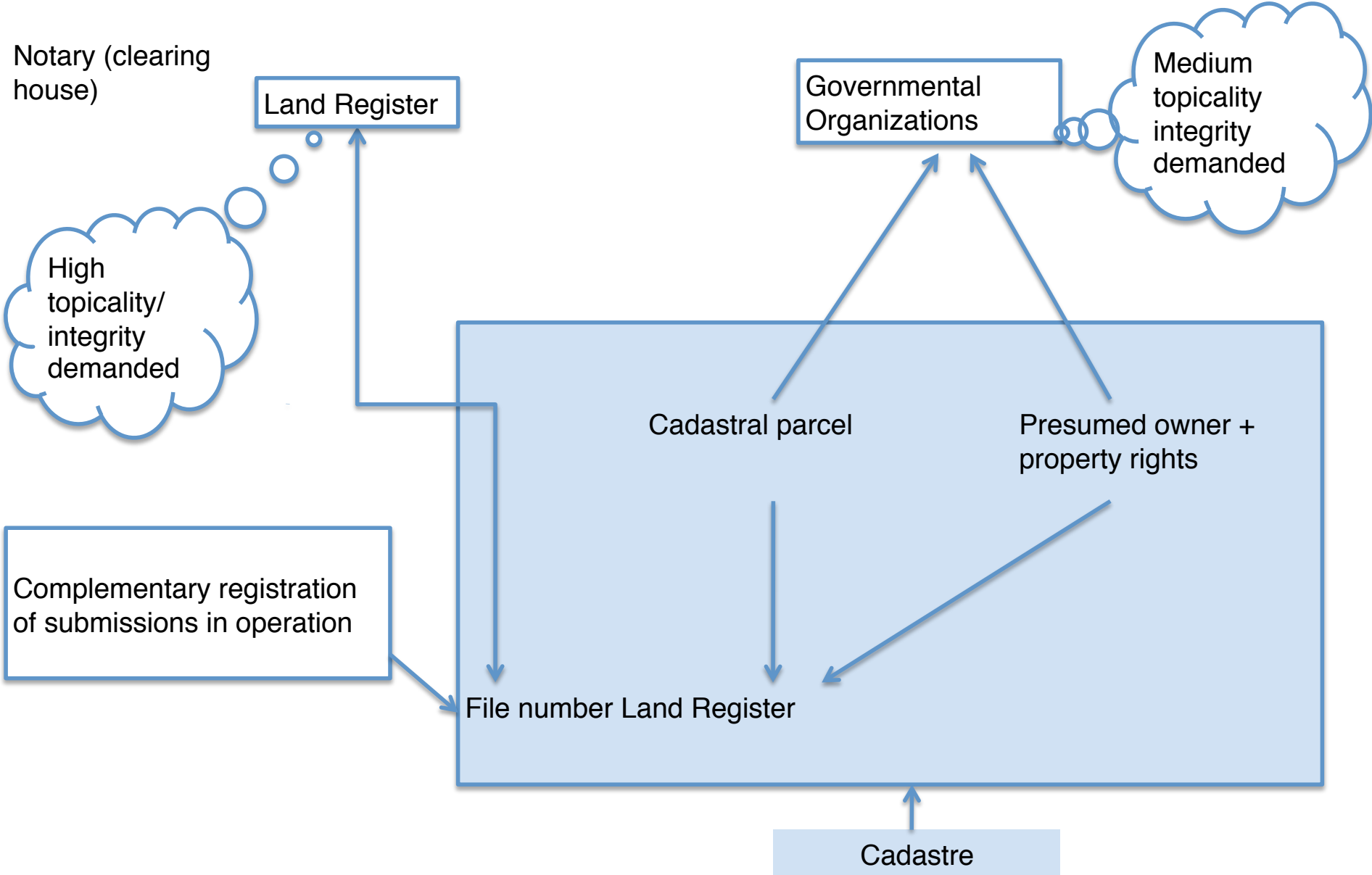
In case of proportional allocation should only recording in Land Register /updating Cadastre registration be profitable

Loss making activities :

- surveying;
- land consolidation;
- topographic mapping;
- international consultancy;
- assist diggers to avoid cables and pipelines.

Made Institution vulnerable when housing market collapsed.

Bottleneck of merger: Cadastre servant of two masters with different demands



Recent developments

Involving surveying

Self service subdivision cadastre parcel:

- owner draws boundary on digital map;
- computer Cadastre calculates Coordinates;
- computer Cadastre assigns new cadastral parcel number;
- verification afterwards by private surveying company.

Involving conveyance.

Previous scrutinizing text of deeds.

Computerized comparing of submitted deed with previous approved text.

Computerized processing and updating registration.

Pleas for occasional adding of mirror statements to Cadastre (makes Institution liable for non mirrored presumptions on third party protection by Land Register)

Will the current merger disappear ?

Increased self service and cost effective outsourcing will reduce (surveying by) Cadastre

Computerized processing of previously approved deeds will improve topicality and make complementary registration of submissions in operation superfluous.

Third party protection of Land Register extended to presumptions of Cadastre.

At the horizon appears a Land Register with a department for outsourcing of surveying