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THE EVOLUTION OF THE CHILEAN LAND REGISTRY SYSTEM: FROM THE 19TH CENTURY TO THE IMPLEMENTATION OF NEW TECHNOLOGIES

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Abstract

Land Registry in Chile is governed by statutes dating back to the 19th century. The Civil Code of 1855 called for the creation of regulations on a system of property records and, on June 24, 1857 with the enactment of the Regulations on the Land Registry that mandate was brought to fruition. And yet, both the Code and the Regulations were representative of an era far different from modern times. An opportunity for an upgrade arose in 1943 in the context of new regulations on Notaries and Land Registrars enacted along with the Organic Court Code that year. Unfortunately, however, the existing shortcomings were not corrected at the time. As a result, there is no doubt that current regulations require an overhaul to bring them up to modern standards.

Key Words: land registration, new technologies, interoperability.

I. Preliminary Considerations

Land Registry in Chile is governed by statutes dating back to the 19th century. The Civil Code of 1855 called for the creation of regulations on a system of property records and, on June 24, 1857 with the enactment of the Regulations on the Land Registry that mandate was brought to fruition. And yet, both the Code and the Regulations were representative of an era far different from modern times. An opportunity for an upgrade arose in 1943 in the context of new regulations on Notaries and Land Registrars enacted along with the Organic Court Code that year. Unfortunately, however, the existing shortcomings were not corrected at the time. As a result, there is no doubt that current regulations require an overhaul to bring them up to modern standards.

The age of these regulations notwithstanding, the system has remained stable and performed effectively in terms of its mandated tasks: preserving the history of real estate; accounting for transfers and permutations; and serving as a means of acquiring ownership and constituting other *in rem* rights.

However, changes in the economic system, the emergence of a fast-paced market and new technologies in services have raised questions about the work of registries. The demands come primarily in the realm of faster processing times; error-free certainty in real estate records; and, the



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ability to perform a complete property analysis. This has been achieved through a fundamental change in the way the registry is kept, moving from a system of records based on the identity of the owner¹ to one based on the property itself.²

Given this panorama, it is not surprising that among the benefits invoked for establishing an insurance-based system in Chile are greater efficacy in contracting and more streamlined transfer and taxation procedures. Nonetheless, it is also true that while these systems do not require much information *a priori*, they are obligated to resort to insurance to provide the user with certainty in the protection of their rights.

Chile's system, on the contrary, is a matter of public order: the legislature has entrusted external officers of the court with bringing coherence and unity to the system of acquisition, transfer and encumbrance of property, thus avoiding lengthy and costly litigation for users and inefficiencies in the system of *in rem* rights for creditors.

Likewise, unlike title insurance, in the national registry system, the constant recording of transactions involving real property allows for an in-depth and rigorous analysis of the property's current status without the need for additional title search contracts or concerns about the potential for liability lawsuits in the event of negligence, as such issues are covered in the law itself. As a result, the system allows users to pay once³, at a rate capped by law. Moreover, under certain circumstances and cases of hardship, the process is free of charge.

II. The Need to Modernize the Chilean System

Despite the benefits of the existing system, Chile's approach to land registry does require an update that goes beyond the reinterpretations that have made it possible to adapt the country's centuries-old regulations to current reality.

¹ The regulations in the Civil Code and on Land Registrars' Records call for a system based on the identity of the right-holder in several of their provisions.

² As noted by PEÑAILILLO (2009), p. 246, 289-291.

³ A view also adopted by the economic analysis of law. DE ANGULO RODRÍGUEZ, CAMACHO DE LOS RÍOS, CASTILLA, *Garantías de los derechos reales mediante el sistema de registro y el sistema de seguro. Estudio comparativo del sistema de Registro de la Propiedad español y del sistema norteamericano de seguro de títulos.*



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The major drawbacks to the system are the sluggish processing times and lengthy investigations in researching transactions involving a property over the course of many years. This poses a significant delay in contracting. But the unofficial, unstructured incorporation of technologies has also been called into question even though it has effectively sped up procedures, reduced the need for extensive travel and reduced costs overall.

1. Advanced electronic signature on copies and certifications

The first step in improving this situation lay in granting full validity to documents issued by notaries, registrars and archivists under an advanced electronic signature. In fact, Law 19,799 of 2002 represented a substantive step forward in the production of documentation by conferring legal effect to documents created or signed in digital form.

Once this technology was legislatively assimilated as a way of facilitating and providing greater security in a number of administrative procedures, the Supreme Court, by means of Regulatory Guidance dated October 13, 2006, established the conditions under which the ancillary officers of the courts were to implement the use of e-documents and electronic signatures.

Subsequently, the Real Estate Registrars of Santiago and San Fernando proposed the formal use of these technologies in the registries. In response, the high court issued further Guidance on September 17, 2008 that instructed all such officers to upgrade their signature processes. Thus, a week later, on September 25, the Santiago Registrar, which already had the technological advances in place to fulfill this mandate, began to widely issue copies of registrations and certificates using advanced electronic signatures.

Thanks to this initiative, registration and verification processes were expedited, thus reducing processing and delivery times. In addition, the use of electronic signatures has reduced the flow of people required to visit the registry in person, making in-person transactions more expedient as well. In Santiago alone, the Real Estate Registrar now issues over 90% of its documents online and receives nearly 18,000 daily visits from 140 countries on its website.



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Technology can also contribute to greater accuracy in information, avoiding possible fraud or errors stemming from a lack of data corroboration with other entities. For this to work effectively, all actors involved in the property acquisition and ownership chain must interact and cross-reference the information available to them within their purview. To provide quick, secure coordination between notaries, registrars, archivists, the Internal Revenue Service, Office of the National Treasury, Municipalities, Vital Records Office and with private institutions as banks and construction companies among others⁴ an online platform is required.

2. Digitization of the Commercial Registry and the Commercial Folio in Santiago

On January 4, 2010, the Santiago Real Estate Registrar concentrated its modernization process at the Commercial Registry. Since the certifications and copies were already issued with advanced electronic signatures, progress was made in the digitalization of the historical records, that is, those recorded in the past and, in parallel, the new inscriptions that were being requested began to be generated electronically. This process reduced the time required to add commercial companies to the records from 3 or 4 working days to approximately half an hour.

The installation of a genuine electronic process in this Registry enabled a major breakthrough: the creation of a commercial folio, i.e., from the immatriculation of a company, a complete register begins to be formed containing the current and historical information of that entity, eliminating consultation obstacles and facilitating visibility. As of January 3, 2011, this form of corporate registration has been available in Santiago.

3. Digitization of the Santiago Land Registry

Once the advanced electronic signature was mainstreamed into the instruments whose legal formalities do not require the Registrar's holographic signature, a complete transactional portal was introduced in 2010. Users access the website to request and receive documents in a fully digital mode, including direct payment buttons. This means that users no longer need to provide proof of payment of fees via deposit or wire transfers.

⁴ This includes a proposal to create a real estate cadaster containing all details pertaining to the property, including blueprints and georeferencing information. FLORES, PEÑA (2014).



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Once this form of processing had been proven feasible, that it reduced costs for citizens, facilitated the work of officials working with the same physical input and had sufficient security measures in place, the process of digitizing historical records began with a view toward minimizing public access to the books in which registrations are recorded and providing them with the electronic image of the title queried.

On January 2, 2014, the first warehouse in which the books were stored was closed in order to begin the progressive modernization of the property registry. To carry out this process, the necessary technology had to be available: the annotations that were added to the old entries had to be issued in digital form, monitors were installed to allow the public to access the registry on site, the processes for the remote delivery of images of old entries were simplified and the new entries were generated in digital rather than manual format. This process culminated with the closing and prohibition of access of the public and officials of the last storage facility on May 4, 2015.

At present, 100% of the property records recorded in the last 5 years and 80% of those effected in the last 10 years at the Santiago Property Registrar are in digital format. Those figures continue to rise as processes are automated and image generation is requested by users.

4. Electronic Processing at the Santiago Land Registry⁵

After firmly establishing the use of advanced electronic signatures, the registration and issuance of digital documents and the possibility of remote access by users, a new fully-electronic system for processing deeds and registrations was implemented. It began with the banks which sent their deeds in digital format, to be received, processed and delivered to users in a completely electronic format by the Land Registry. This technology has also served to process all types of documentation in this format. Any physical deeds received are also digitized.

The impact on the real estate market cannot be understated: a substantial portion has benefited from the use of new technologies, including the 66.5% of registration procedures that commence online at the Santiago Land Registrar's Office.

Nonetheless, the process has not overlooked the sector of the citizenry that is not as digitally adept and continues to prefer face-to-face processing. The self-help modules at the Registrar's Office

⁵ It is important to point out that some other Chilean land registries have assumed the new technologies and have advanced in their processes as well.



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were maintained and updated and new staff was hired and trained to respond to the needs of users requiring guidance on how to initiate or move forward with requests at the Land Registry. In addition, a telephone and Internet help-desk system was implemented, among other measures, to safeguard the interests of the different user groups that access the registry.

5. Registry Integration

The broad-spread availability of such digitized material made possible to create a single computer platform nationwide through which users could access the records of interest held by notaries and registrars. Under such a system, each office or registrar would continue to maintain its own repositories and indexes to ensure protection of the personal information contained in the documents and ensure due penalties for faulty administration thereof.

In this regard, in 2018, the Santiago Land Registrar made the technological programs used to generate its own modernization process available to all registrars nationwide, free of charge, in an effort to unify the standard of processing and public service.

Likewise, on June 26, 2018, the Santiago Land Registrar, in collaboration with the Chilean Corporation on Registry Law, launched a platform called “Digital Registrars” (*Conservadores Digitales*), which allows users to perform online operations and interact with other registration entities nationwide⁶. This platform and the training were made available to all notary and registry offices in the country free of charge, so that they could add the new technologies to their services in a coordinated, streamlined manner.

6. Security Measures

The technology described above has not only served to provide better service, optimize internal processes and reduce transfers and waiting times, but has also been an important tool in bolstering security for the work performed by the Santiago Registrar.

⁶ As of this writing, about fifty percent of the Land Registrars had joined.



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Beyond the security inherent to the electronic use of data, such as maintenance of servers, backups, installation of protection against hackers, viruses or any other type of computer anomalies, a complete audit and inspection system was implemented.

Thus, for the review of certain physical documentation, we now have calligraphic experts who verify the signatures of the clerk or officials involved in the production of inscribable titles.

It is also possible to set up a system of internal alerts that trigger audits in the event of suspected fraud affecting the registry or the market.

Alerts are also generated when information is requested by the courts, the Financial Analysis Unit, the Public Prosecutor's Office or other institutions investigating possible illicit movements of persons, real estate or companies.

III. Proposed Modifications

To bring Chile's system fully into the 21st century, while maintaining the advantages of the existing property record system, the following changes have been posited:

1. Updating notarial and property record-keeping procedures in a cogent, cohesive fashion to better serve users. For example, all notary offices and registrars need a website and to use advanced electronic signature technology. All documents should be issued in digital format, without prejudice to the use of hard copy backups as necessary, such as wills, public deeds and records held by the property registrars.
2. Given that the value of data is paramount in our era, an unassailable, combined record is required, in digital format —and hard copy upon request— of all the transactions involving a piece of real property, up to the maximum period set forth by the statute of limitations on acquisition. Such a record should contain all modifications to the property —liens, mortgages, prohibitions, interdictions, transfers, domain conveyances— and other salient data, such as digital copies of blueprints, tax appraisal identification numbers and the civil status the owner(s). Such a “sole record” system would be possible through the joint action and



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exchange of information among relevant players, including the national government, municipal authorities and the legal/court system.

3. The introduction of these technologies and the collection of available information on real property will contribute in the near future to a more ambitious objective: the interconnection of registers around the globe. This is especially valuable among those who perform similar functions in their respective systems, where such advances and coordination would make it possible to exchange relevant information between different countries. This aspiration –which is gradually coming to fruition through the IMOLA project of the European Land Registry Association (ELRA)– would facilitate international real estate transactions, standardize criteria and provide pertinent information on the specific features of each country's regulations, while respecting domestic law.

It is the interest of the Chilean registry to achieve not only an internally interconnection, but regionally, with other Latin American countries that share similar systems and a common language. And later, with Europe, as far as possible, integrating to the IMOLA project, with the aim of facilitating the real estate transactions in a globalized world.



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