

# IV IMOLA WS 1 Seminar

## SEMANTICS SECTION C

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## SEMANTICS IN THE FIELD OF LAND REGISTRATION

**GLOSSARY** is made of **definitions of the specific property rights** and other concrete legal concepts, according to each national legislation.

**SEMANTICS** are **generic concepts** developed from **common features** of the different legal institutions, which are used as **placeholders** to organize the information of the different national systems in a common framework.

Semantic allows to work with the different concepts defined in the glossary creating relations between them.



## **SEMANTICS IN THE FIELD OF LAW**

We currently assist to an european action promoted by EU to enhance the access and understanding of national legislation.

<http://eur-lex.europa.eu/legal-content/ES/TXT/?uri=uriserv:OJ.C .2015.097.01.0002.01.SPA>

N-LEX PORTAL [http://eur-lex.europa.eu/n-lex/index\\_en.htm](http://eur-lex.europa.eu/n-lex/index_en.htm)

## **SEMANTIC PROJECs CURRENTLY ONGOING IN EU**

EUROVOC <http://eurovoc.europa.eu/drupal/?q=es/navigation&cl=en>

ECLAS [http://ec.europa.eu/libraries/index\\_en.htm](http://ec.europa.eu/libraries/index_en.htm)

LEGIVOC <http://legivoc.org/Information>



## IMOLA AND SEMANTICS CONCEPTS IN THE FIELD OF LAND REGISTRATION

Starting from **broad categories** (generic place holders), the project must explore whether it is possible to develop further and more detailed concepts within each category. ( A tree scheme)

These semantic concepts will be devoted to qualify the information placed in the template by means of **labels**. Each piece of information will be labeled by these placeholders with reference to **different aspects** of its nature ( **Content, registration effects, creation's source ...**)

In a future project, ( IMOLA II), by going in deep with this action, semantic concepts should be used to develop a **hierarchical and comparative relations** between land registry institutions in Europe.



## IMOLA AND SECTION C's SEMANTIC

A dynamic approach to section C placeholders, by considering different aspects

- 1º The **content** and nature of the information.
- 2º the registration **effects** and the type of entry.
- 3º the **origin** of the legal information.
- 4º (...)



## **IMOLA AND SEMANTIC I**

### **1º The content and nature of the information in C section.**

- Limited property rights
- Registrable personal rights
- Restrictions:
  - Judicial
  - Private
  - public
- Mortgages
- Other burdens



## LIMITED PROPERTY RIGHTS ( iura in re aliena) ( secondary rights).

A limited property right is a **real right**, other than the most comprehensive right a person have with regard to a property.

A limited property right burdens **someone else's property**.

A limited property right derives from the absolute property right and it confers to his/her holder **only a specific part of the powers granted to the owner**.

Iura in re aliena are always placed in the C section of the most comprehensive right's real folio, except when they are able to create an autonomous folio( registry title) in which case they would be placed in B.

Iura in re aliena are enter in the land book by registration (a main entry)



## **LIMITED PROPERTY RIGHTS ( iura in re aliena) ( secondary rights).**

**Rights of use**, ( personal servitudes) such as the right to only use ( right of use) or to use and enjoy)(usufruct) someone else's property. Enjoy means to acquire all the fruits/incomes produced by the asset.

-**Security rights**, the right secure a loan or other type of obligation ( mortgage),

- **First refusal rights**, pre emption right, right of first refusal to purchase land in the event the grantor of the right should decide to sell ( Oxford dictionary of law),

- **Real Servitudes** are burdens on the property that impose its owner either restrictions over his/hers powers which could be positive imposing a certain behaviour or negative tolerate certain acts.

- **Management rights**. Rights affecting administration of property deriving from a trust , a contract, a gift, a will or other legal relationship

**Other type of limited property rights:** Charges, enphiteusis, superficies, apartment right, time sharing....





## RESTRICTION

*1.-Consist on a **limitation** on the content of the registered property right or on a total or partial limitation in proprietor's powers.*

*2. The limitation remains affecting the property irrespectively who the owner is , so they will pass to the successive proprietor of the right.*

*2. Restriction can be establish or not in favor of a certain beneficiary but they never create a property right (iura in re aliena) on the restricted property.*

*4.Restriction, is also an measure ordered by the court within and enforcement procedure that attaches the property and its value to the fulfilment of a ( monetary) obligation, which might derive in a forced sell of the property*

*4.-Can derive from a judicial order, from a legal disposition, or from a private decision (in those cases permitted by the law)*



## **RESTRICTION Judicial Charges**

1. involving attachment or seizure of a property due to a court proceeding in what is pursued the fulfilment of debts or obligations (*notices of seizure, notices of attachment*);
2. for purposes of claims about ownership of rights *in rem* about properties (*notices of claims or dispute*);
3. for purposes of freezing ownership or banning the disposal of the property (*notices of prohibition of disposal*);
4. warning about the foreclosure or enforcement procedures affecting the property (*notices of foreclosure or notice of enforcement*);
5. indicating the confiscation or forfeiture of the property (*notices of forfeiture or confiscation*);
6. warning about aspects of the proceedings of insolvency or bankruptcy (*notices of insolvency*).



## RESTRICTION

### **B) Restrictions created by private agreement/decision/ civil law**

Derived from agreement between the interested parties or from a sole act imposed by the landlord over his/her property, within the legal/ statutory limits.

Examples of private restrictions:

- *A neighbourhood prescription forbidding to erect a wall,*
- *restrictions in the power of disposition imposed by the donor to the donee over the gifted asset.*

### **C)Public restrictions**

Statutory restrictions, or Restrictions created by Public law which affect or constrain directly the land,

- *planning restrictions, environmental limitations...*

They normally are off the Registry, since law confers them erga omnes effect without land registry publicity. However sometimes are registered., in which case, they could be placed either in A) section or in C) section? Proposal: Section A



## 2° MORTGAGE/ SECURITY RIGHT/ STANDARD SECURITY

Mortgage is a **security property right** granted by the owner of the property (mortgagor) to secure the fulfillment of an obligation (usually monetary) to the creditor (mortgagee), by giving him/her in case the debtor fails, the right to sell the property and get paid with the price. (exception: german proprietor's mortgage)

The security is a right against the world, so it confers the mortgagee a **privilege** on the asset's value, over any other creditor or situation (even in some cases over debtor's bankruptcy).

Regularly the mortgage is casual, it is **connected to the obligation** so it follows its life. But in some legal systems mortgage is **abstract** and it remains irrespectively the obligation's life, so it can be use to secure a different obligation.

In most jurisdictions the registration of mortgage has **constitutive effect**, so mortgage only exists when it is registered, and it is usually ranked by the registration.



## 4° OTHER BURDENS AND PRIVILEGES

All different encumbrances and privileges that are **not included in the previous three categories**. (Administrative burdens and specifically tax burdens are to be placed under this category.)

These burdens are rights or interest that falls on properties binding them to any type of liability. It does not ban or restrict passing title but diminishes its value.

We will also include other kind of burdens/privileges which are referred to legal situations which are off the register.

The register **gives notice** of a certain legal situation/ privilege that may overcome and affect registered rights due to non registered (and usually not needed of registration) interests which may prevail over registration.



## IMOLA AND SEMANTIC SECTION C II

### 2º The registration effects and the type of entry.

- + Registration Entry (full registration entry)
- + Restriction entry.
- + Priority preservation entries.
- + Awariness remarks.



## 2<sup>o</sup> the land registry effects: type of entry.

**Land registration** is a legal system which consists on lodging in the land book property rights, charges, restrictions, encumbrances, and other interests on a immovable property according to law prescriptions, and whose purpose is to publish, with binding effects and the State guarantee, the legal situation of a certain immovable property

**Entry.** Every ítem of information registered in the books of the land registry containing a description of a property right and its main features, to the extend defined by law, including the name of the person entitled to it. An entry could also contain other pieces of legal information according to the system of land registration established by the law. There are different types of entries depending on the nature of legal information they publish. Usually they differ in content, duration and legal effects.

(IMOLA GLOSSARY)



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+ **Registration Entry**

It is the **main entry**, devoted to reflect property rights, and charges

A kind of entry that produces **full effects** of the LR system.

It is legally assumed to be **valid, exact and complete** as to the information contained

It is said to be **firm and absolute** so that it remain into force until it is cancelled or discharged.

**First Registration Entry**, is treated in a different manner than subsequent registration entries. Often the different rests in the registration **effects**





**Restriction entries.** ( caveat, notice, restriction)

1.They are entries that publish a restriction which is not suitable for registration since **it s not a limited property rights.** ( a easement is not a restriction, is a limited property right).

2. Entry that publish a restriction that **limits the content of the property right, or limits powers of disposition, or attaches the value of immovable asset to the fulfilment of an obligation,** mostly monetary debt, within an enforcement procedure.

3. Registration effects: this entry **might impede/limit/condition future registration** while the entry is in force, until

- A notice is given
- A consent is issued by a person entitled to the protected interest or by a governmental authority
- An Order is issued by the Court.



**+ Priority preservation entries.**

Preserve the effectiveness of a future property right or a judicial decision deriving from the event published by the entry, in the case it happens, they don't produce the effects of the registration entry.

They differ of registration entries by their content, since they can not publish a property right.

They differ from restriction entry in the registration effects since they don't block registry, although any subsequent entry will be affected by the envisaged event, once it deploys its effects .

They can derive from: - Private decision. (Option right, promise of purchase ,...) -Judicial decision. Land pending actions, prenotice of mortgage ( Greece)...



+ Awareness remarks.

- 1-. Entries that give notice of certain legal information which is **not suitable for a registration or a restriction entry**. This information might derive : - from law, or from a private interest not suitable for registration.
2. They differ from registration entry because they don't produce the effects derived from registration, often its content are legal situations which are off the registry.
3. They differ from restriction entries because they don't create in the land book a direct limitation of the registered rights ( although that limitation may exist outside the registry). They don't impede or limit or condition any future entry.
4. They differ from priority preservation entries because they don't grant any kind of priority, the event they publish will need a further specific entry to produce effects in the registry, including priority.
4. From the registry effects these awareness remarks only give notice .Sometimes they produce a **limited negative effect**: to prevent a good faith acquisition of a subsequent owner.



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## **SEMANTICS SECTION C III**

**3º the origin/ the source of the registered information.**

Private/ Judicial/ Administrative/ Statutory( legal)



## SEMANTICS SECTION C III

**-Private.** The right, charge, restriction derives from a private agreement between the interested parties or by the sole decision of the proprietor of the absolute right.

**Judicial.** The entry is caused by a Court's decision or from any other order coming from an official who acts under the orders or supervision of the Court, with regard to acts, orders, rules or decisions adopted within a judicial procedure, including protective and provisional measures.

**Administrative.** The information entered in the registry derives from a Public Sector Authority or Body (Institution) of the State government, Regional or Local authorities.

**Statutory( legal).** The information derives directly from law, understanding law in broad terms as any disposition contained in a Law (disposition coming from the legislative power, Act), a Regulation (a disposition issued by the Government, Statutory) and any other legal dispositions enacted by Public Powers



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## **SEMANTICS SECTION C**

### **EXAMPLES**

#### **Usufruct**

**Limited property right**

**Right of use**

**Registration entry**

**Private constitution**

#### **Pending land action**

**restriction**

**priority preservation entry**

**Judicial constitution**



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**THANK YOU**

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