



SECTION B

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VIENNA WORKING SESSION



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REGISTER PART ESTONIA

Building register data can be also seen from the Land Register

User: Tiia Viira **Institution:** Registre ja infosüsteemide keskus **Date:** 01/12/2010 14:13:16

Land Registry Department	Pärnu Maakohtu kinnistusosakond
Land registry division	Järva
Registered immovable number	2763036
Former registered immovable number	
Name of the registered immovable	Viinavabriku
Apartment no	
Validity mark	Elektroniline registriosa omab õiguslikku tähendust: 02.11.2009
Digital file	The land registry file may contain paper documents
Application	Reference to the submitted application (seal) notices that registration process is incomplected and some entries may not have been done yet. 01.12.2010 on registreeritud kinnistamisavaldus nr 8021201001 — A reference to the registered application (seal)

Title of register part

I division					
COMPOSITION OF IMMOVABLE					
Entry No.	Cadastral code	Specific purpose and location	Area	Opening, changes to the composition, merger and division entries	Validity
1	13402:002:0250	Tootmismaa 100%, Järvamaa, Ambla vald, Jõgisoo küla, Viinavabriku.	10936 m2	Registriosa avamisel 25.09.2009 asjaõiguslepingu alusel sisse kantud 2.11.2009. Kohtunikuabi Tiia Viira	valid

When clicking the cadastral code geportal of Estonian Land Board opens

II division					
OWNER					
Entry No.	Owner	Legal basis of the entry	Validity		
1	Anna Maasikas (isikukood 11223344556)	25.09.2009 asjaõiguslepingu alusel sisse kantud 2.11.2009. Kohtunikuabi Tiia Viira	deleted		
2	Mari Maasikas (isikukood 11333344545)	28.12.2009 asjaõiguslepingu alusel sisse kantud 13.01.2010. Kohtunikuabi Tiia Viira	valid		

III division					
ENCUMBRANCES AND RESTRICTIONS					
Entry No.	Restricted real rights encumbering the immovable (except mortgages) and notations; restrictions on the right of disposal	Notations concerning restrictions, changes and deletion of the entries	Validity		
1	Isiklik kasutusõigus tähtajaga 10 aastat Eesti Pank kasuks. 11.11.2010 asjaõiguslepingu alusel sisse kantud 1.12.2010. Kohtunikuabi Tiia Viira		valid		

IV division					
MORTGAGES					
Entry No.	Mortgages	Sum of the mortgage	Notations concerning mortgages, changes and deletion of the entries	Validity	
-	Hüpoteek summas 400 000,00 krooni Pank (registrikood 789456) kasuks. Kinnistu igakordne omanik on kohustatud alluma kohesele sundtäitmisele hüpoteegiga taaatud nõude rahuldamiseks. 28.12.2009 asjaõiguslepingu alusel sisse kantud 13.01.2010.	400 000,00 EEK		va ¹	



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SECTION B

I PAPERS FOR DISCUSSION.

Problems/ proposal for rules

II SEMANTICS

The basic place holders



SECTION B.

PAPERS FOR DISCUSSION

- 1 The intersection between A and B
- 2 The content of section B
- 3 How to present the trust
- 4 Plural proprietorship
- 5 The intersection between B and C
- 6 Restrictions
- 7 Matrimonial Property regime (REM)
- 8 Conditions



1º The intersection between section A and section B.

- **Special properties:** The object (= the immovable property) and the right are mixed, since the object could be the right itself.
- E.g. Superficies right/ Public concession/ profit a prendre in gross
 - A public concession is for a limited time of thirty years,
 - the right to build five stores..
- **the immovable is described by the property right**





PROPOSED RULE I

Section A describes the object of the right, Section B defines the right.

The object affected by the property right is an immovable asset either by nature or by a legal fiction. In this last case, some reference in section A to the right posed in section B must be done to link them, since the object is created, described a limited by the right.



2º The basic content of section B: **Proprietorship/holdership**

Section B must give information of:

+ the proprietor (the holder of the right), the entitlement, and restrictions.

+ it also is the section to place the **property right** that links A(the immovable) with B (the person).



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Section A

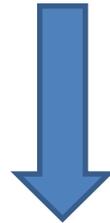


The property

Section B



The person



The property right



- Which property right?
- Ownership is the most frequent but not the only property right placed in section B:
Possession, Public Concession, leasehold, etc..
- **“The right that has opened the new folio according to each national registration law.”**



- **PROPOSED RULE II**
- *The property right placed in B must be the main right of the folio, the right that had enabled the creation of the new file, the core right of the folio around which the rest of legal situations and limited property rights regarding the immovable described in A are gathered.*
- *A specific box to define this property right must be envisaged.*
- *We could name the box **The (folio/register) main right/ the title**, and it will indicate the nature of the property right.*



3º How to present the trust.

The relationship between trustor, trustee and beneficiary remains hidden in the land register, unless specific restrictions are imposed to the trustee and those are published by the register.

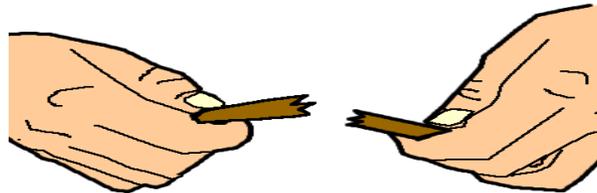
PROPOSED RULE III

Trust should not be an specific category of main registered right, on the contrary it should only be reflected in the templatate by means of a restriction placed within section B.



4º The intersection between B and C: the limited property rights.

(The dismemberment of the main register right)





When from *the main registered right* of section B a new property right is created:

- **The new property right creates a new folio**, this right will be separated from the previous folio and will open a new one linked to it. This happens usually when:
 - .the new property right is suitable for opening new folio according to law, and
 - The new right falls over an specific portion of the immovable asset.
- The new property right is registered in the same folio, and so is the alteration produced in the main property right. **The new property right**, derived from the main registered right will be considered a limited property right and will be reflected in **Section C**.
- In some systems both rights(the new right and “whatever is left of the main right”) are considered of the same category, **both rights are reflected in section B** as sub categories of the original main registered right (the sum of both would eventually complete the main registered right. E.g. Both usufruct and mere ownership appear in Spain’s section B))



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RULE PROPOSED IV

A hierarchical rule must be agreed on this point.

Any new property right derived from the main registered right which is not suitable for the creation a new folio should always be considered as a secondary right, and according to this hierarchical criterion, should be posed in section C as a iure in re aliena, while the “main property right”,(whatever it has turned to be once deprived of the new right), must remain in section B.



5^o PLURAL PROPRIETORSHIP



- Joint Ownership
- Community with shares
- Joint tenants
- Common tenants
- Commonhold
- Community of heirs
- Spouses
- Partners
- Neighbourghs
- Etc..

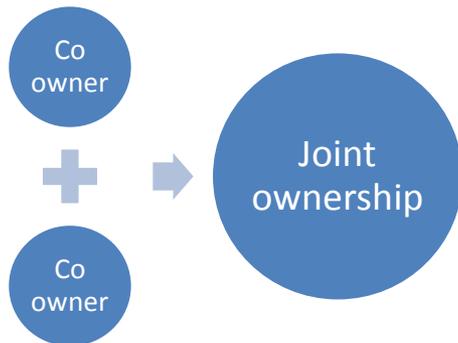


- Basic criterion to classify the communities,
 - Community where the common right is split into equal or unequal same-nature shares between the different holders
 - Community with no kind of shares on the common right.
- We assume that this classification is not enough to embrace the different communities reflected in the EU land registries

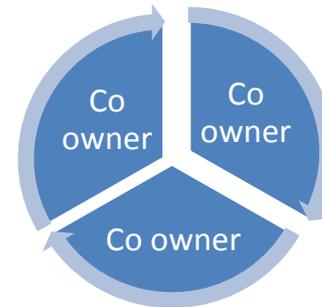


Plural Proprietorship/co ownership

Joint ownership



Community with shares



Other type of community



- ***PROPOSED RULE V***
- *Specific box should be created in the proprietorship area of Section B to express the type of community under which the several proprietors/holders hold the right.*
- *More over, although this template can not cope with a comprehensive list of communities, a basic subdivision could be made between communities with shares, communities with no shares and other type of communities*



6º Restrictions.



Restriction is any piece of registered information, usually reflected by a provisional entry in the land book, that limits or prevents from writing a new entry deriving from a legal act performed by the registered owner.



Restrictions in the main registered right produced by a limited property right

- will be considered an autonomous property right, a secondary/limited property right rather than a restriction on the primary/main right, so they will be placed in C section as a proper limited property right (*iure in re aliena*)

Restrictions in the powers of the owner imposed irrespectively of his /her personal qualities or circumstances but imposed to the person because of his/her relation with the object (the immovable asset),

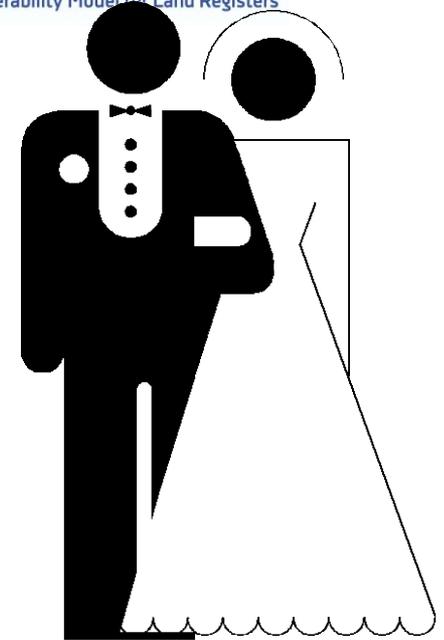
- since they are attached directly to the object due to its special nature, will also be placed in section C as a general rule. However, in some circumstances they could be also considered a quality of the asset and so they could be placed in section A.



- **PROPOSED RULE VI**
- *Restrictions in the power of disposition of the owner derived from his/her personal capacity (minority, legal incapacity derived from insanity, guardianship...) or legal capacity (bankruptcy, trust, spouse's consent,...), imposed by a judicial order, by the legal act of acquisition or in general by law or statute irrespectively of the object, will be considered the specific subject matter of section B, and will be published near the name of the owner to make clear that there are limitations in his/hers disposition power.*



7º Where to place the matrimonial property regime?



- 1.-Both spouses perform the acquisition act
- 2.-Only one spouse performs the acquisition act:
 - a) REM confers the other spouse a title on the right
 - b) REM demands spouse's consent to perform the right
 - c) REM doesn't affect/ limit the rights of each spouse



PROPOSED RULE VII

Both spouses have participated in the acquisition of the right

The two are entitled to the right. **It is a typical community case with two holders of the right in section B proprietorship**

Only one spouse have participated in the right's acquisition act:

+ REM establishes a community between spouses: the other spouse acquires a property right (not only a credit or an interest) and is entitled to the asset. **The name of the spouse and REM should be place in proprietorship subsection.**

+ The other spouse is not owner of the immovable asset, but his/her consent is demanded to perform any legal act. **REM should be reflected as a restriction in the powers of the owner and name of spouse must be reflected in the restriction subsection as restriction by disposition of law or by matrimonial contract**

+The matrimonial property regime does not affect the title and the powers of the acquirent spouse: **Nothing will be reflected in the template**



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8^o Conditions

- Do we need an specific placeholder for Conditions?
- Could them be placed:
 - restrictions?
 - Temporal ownership?



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These set of rules were proposed by the speaker to the coordinator in order to bring a proposal to the meeting. As they are just proposals, they are likely needed of refinement.

Discussion is open for debate.

Feedback from the members will be very much appreciated.

Thank you very much.

Gabriel Alonso

secretariat@elra.eu



ELRD TEMPLATE

SEMANTIC SECTION B THE BASIC PLACEHOLDERS

IMOLA'S WORK STREAM ONE
3rd WORKING SESSION
Vienna 12 March 2015



Structure of “B” (example)

- **Primary or main right (mostly “ownership”)**
- **Proprietorship**
 - Natural person
 - Set of legal data (name, ID, etc)
 - Legal person
 - Set of legal data (name, ID, etc)
 - Community
 1. Co-ownership (shares)
 2. Joint ownership (no shares)
 3. Other different communities
- **Entitlement**
 1. Act or contract of acquisition
 2. Deed of acquisition
- **Price**
- **Restrictions**
 - Restrictions
 - Conditions antecedent or subsequent
 - Deadlines (temporary property)



MAIN REGISTERED RIGHT/ MAIN FOLIO RIGHT/TITLE (NATURE OF THE RIGHT/ CLASS OF TITLE)

- Describes the property right on the object (immovable asset) placed in section A which " had opened" the "real folio".
- A real folio is an individual file, with its own number, opened to an specific immovable asset, where all affecting property rights are registered in continuity and chronological order.



- **PROPRIETORSHIP: HOLDER OF THE MAIN REGISTERED RIGHT/ OWNER**

- The holder is the person entitled to the right and usually empowered to act it.
- Holder is either a natural person or a legal entity who, alone or together with others, is entitled to act the property right describe in B on the object described in A.



ENTITLEMENT

Describes the grounds of Proprietorship:

A) SUSTANTIVE ENTITLEMENT= LEGAL GROUND

to designate not the right vested to the person but the legal act, decision or disposition that empowers him/her to the right, that is the legal ground for the acquisition of ownership or other property right.

B) FORMAL ENTITLEMENT= DOCUMENT/INSTRUMENT

the formal document/ instrument used to perform the transmission, and presented to the register as evidence for registration of the right in the land books.



- **PRICE/VALUE**

When the acquisition of the right derives from an act for valuable consideration the price is the sum of money paid by the purchaser to the seller.

If it is acquired by means of a gift or succession from previous owner, it will be the value of the right declared in the transfer document .

The transfer document is the document used to modify the registry and which directly backs the entry.



- **RESTRICTIONS**

Restrictions that affect directly the holder of the right and limit his/hers powers of disposition, which derive from his/her personal capacity (minority, legal incapacity derived from insanity, guardianship...), legal capacity (bankruptcy, punishment of disqualification...) or restrictions derived from a legal relationship like an specific stipulation posed in the acquisition title or a trust



- **CONDITION**

- A condition is a future or uncertain event, or on a past event of which the interested parties are unaware, placed in the acquisition title of the owner whose performance produces the effect of :

- suspend the acquisition of the property right:
Precedent/Suspensive
- produces the termination or loss of the right:
Subsequent/Resolutive



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Comments, contributions, objections are very welcome to improve the proposal

Thank you very much

Gabriel Alonso Landeta
secretariat@elra.eu