

THE ELRA BOARD STATEMENT ON THE REORGANISATION AND RESTRUCTURING OF LAND REGISTRIES.

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Background

Every member state organises its land registration and land administration functions in a different way. The differences reflect each states' history and their legal traditions.

To understand why land registration is organised in a particular way you need to know:

- Whether the Registry is operating a title (positive) or a deeds (negative) system or some hybrid of the two.
- Whether there is a cadastre and, if there is, how the land register and the cadastre relate.
- Whether the register is computerised and the extent to which registration processes are automated. (Greater automation allows greater centralisation).
- The relationship between the registrars and the judiciary. (Is registration viewed as a legal function? Or is it an administrative function that is subject to judicial oversight?).
- Whether state functions are centralised or organised on a federal or regional basis.

We are aware of a number of initiatives that could affect how land registries are organised and how the service is delivered. These reflect:

- A desire on the part of governments to reduce costs and administrative burdens by combining parts of government.
- In particular, a desire to combine land registries and cadastres or, at the least, to get them working more closely together.
- A desire on the part of governments to create "base registers", to allow datasets to be combined and to provide "one-stop shops".
- The desire on the part of some governments to move from deeds systems to title systems.

In England and Wales the government has now consulted twice on proposals to move land registry operations into the private sector. This is something that has already happened in parts of Canada (Ontario, Manitoba and Saskatchewan). At the time of writing this article, a decision from UK ministers is still awaited.

The ELRA Board were asked whether we had a view on the various proposals being considered across Europe. We decided that, although it would be wrong for us to

comment on individual proposals, it was appropriate to set out some principles that we think should be followed when such proposals are being formulated.

General Observations

The Statement contains 4 “general observations”.

The first of these relates to the land registrars. The ELRA Board believes that, when governments are drawing up proposals to reorganise their land registry, they should involve the land registrars at an early stage.

Land Registration is a complex business. The land registrars are the experts and are well placed to point out any pitfalls and to suggest workable solutions. Officials are more likely to succeed if they work with the experts.

The second observation relates to consultation. Land Registration is different from most other government functions in that the Registry’s primary function is not to regulate the relationship between private landowners and the state, it is to regulate the relationship between one private landowner and others. Therefore any proposed reorganisation of the registry has the potential to affect the interests and rights of many different parties including lenders, citizens and their professional advisers. We therefore believe it is good practice to consult those parties before any proposals are finalised and to take their views into account.

The third observation relates to conflicts of interest. Land Registries create legal interests and relationships and decisions made by registrars affect the rights of citizens. This is true for both title and deeds systems. Some jurisdictions characterise the decisions made by registrars as “judicial” whilst others characterise them as “quasi-judicial” or “administrative”. But in all cases citizens need to be assured that those decisions are being made free from bias and in accordance with the law. And if they are aggrieved by a decision made by a registrar they need to have recourse to the courts. The legal tradition of the state within which the registry is operating will determine how this is achieved.

The fourth observation relates to proposals to move from a deeds to a cadastral system. There is a natural desire to move from a system where title boundaries are defined by reference to title deeds prepared by the parties to a system where such boundaries are defined by reference to a detailed, topographic map. However there is a risk that, in carrying out such a reform, owners lose title to land that was recorded in the registry. Any such proposal therefore needs to be mindful of the provisions of the European Convention on Human Rights which provides for “the right to the peaceful possession of one’s possessions” (the so-called, Right to Property).

The Statement

The ELRA Board hope that the Statement will help registrars and policy makers when proposals to reorganise or restructure land registries are being considered. Here is the text of the Statement:

***Reorganisation and Restructuring of Land Registries:
a statement by the European Land Registry Association***

Statement by the Board of the European Land Registry Association (ELRA) concerning the reorganisation and restructuring of land registries:

ELRA represents 31 official land registry organisations from 22 member states of the European Union. The Association's primary purpose is to support the development and understanding of the role of land registration in real property and capital markets in Europe.

The ELRA Board is aware of proposals in a number of member states to reorganise and restructure land registries. Of course it is not for the ELRA Board to comment on the merits of any particular proposal. However, based on our experience, we would make the following general observations,

1. In every country, the Land Registrars are the experts in their field. We therefore believe that their views should be invited at an early stage in the process.
2. It is good practice that interested parties, including landowners, lenders, notaries and registrars, be consulted before proposals are finalised.
3. Any proposed reorganisation or restructuring should be mindful of the fact that, in order to give legal certainty and maintain the confidence of the market, land registries must perform, and be seen to perform, their functions independently. There must be no actual or perceived political or commercial influence or conflicts of interest.
4. Any proposal to move from a deeds system to a title or cadastral system must ensure the continuity of landowners' existing property rights.