

# **3 x 3D Property Ownership and Use – Registration of apartments and premises in Finland**

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**Key words:** 3D Cadastre, Apartment, Condominium, Apartment House Company (Ltd), Mutual Real Estate Company.

## **ABSTRACT**

Ownership of real property is not vertically restricted (clearly) in Finland, i.e. the ownership is based on the situation on the surface level. The ownership may not, however, include any minerals or mineral rights, and underground land use may also be restricted by the municipal building regulations. Overground land use generally calls for a building permit and is often restricted by planning in the urban areas.

Underground and overground premises may be brought for the use of a third party by establishing a usufruct restricting the right to use the property. However, in many countries it is possible to establish three-dimensional real properties and also get a market for 3D properties. Especially for grouped houses there is often a special real property type with a community atmosphere, i.e. registration of properties in strata (or sectional or condominium or apartment). (3D Cadastres 2001)

In Finland the 3D land use in buildings is arranged rather far through a third way with the limited company system (owning through shares). There is specific legislation for apartment house companies, which is also applies to mutual real estate companies. In an apartment house company the ownership of a shareholder entitles to the possession of certain premises or apartment stated in the articles of the company. The share certificates may be pledged as security like the shares of an ordinary limited company. The ownership is regarded as personal property.

This article will clarify the Finnish system including the registration, report some experience, and discuss the future of these questions, e.g. when considering the establishment of a 3D cadastral system.

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## **1. REAL PROPERTY IN FINLAND**

The Finnish territory is divided into real properties and other register units. A real property is a unit of ownership, which shall be registered in the cadastre as real property (Real Property Formation Act 2 §). A real property unit is an item of ownership, use, conveyance and pledge. A real property may be owned by private persons or legal persons, i.e. by companies and other entities, or by the state and municipalities. Buildings belonging to the same owner as the land they are located on are a part of the real property. If the buildings have a different owner as the land, e.g. based on leasehold, the ownership of the buildings is regarded as personal property. A real property unit may also include various rights of usufruct. It may consist of several separate parcels of land or water. (Viitanen et al. 1997)

The proprietary rights are entered two-dimensionally in the cadastre and the land register. The mortgages may concern just the real properties. The perpetual easements and other usufructs are entered in the cadastre under the encumbered and, if possible, also the justifiable real estate. Temporary restrictions (rights) of usufructs based on an agreement are entered in the land register (Land Code).

## **2. 3D USE OF BUILT-UP PROPERTIES**

In the economic activity the regulations for real properties have not been very flexible or favourable, and that is why the property business, especially in the population centres, has largely been based on property securitisation in Finland. The real property is treated in the form of a company.

This means that the 3D land use in buildings is rather far arranged through the limited company system. There is specific legislation for apartment house companies, which is also applied to mutual real estate companies. In an apartment house company and in a mutual real estate company the ownership of a shareholder entitles to the possession of certain premises or apartment occupied by the company and stated in the articles of the company (Act on Apartment House Companies<sup>1</sup>). The form of owning through shares is used both in commercial and residential properties. There may be one or several buildings in one and the same real estate company.

Most often the company owns both the building and the land. Especially in the bigger cities it is also possible that the company owns the building besides having a long-term lease agreement (usually for 30-50 years) with the landowner, which is usually the city. For the land lease agreement there is a public registration system.

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<sup>1</sup>The act has 96 articles.

Direct owned property and also a land lease agreement together with the building can be mortgaged and the shares can be pledged. It is normal that a real estate company is financed by a bank and the shareholders pay the loan costs for the company. Typically some part of the building costs has been financed between the real estate company and the bank and the rest is paid by the shareholders directly.

The share certificates, i.e. practically the premises and apartments, have an active market and they are quite liquid. We can even say that the apartments in the apartment house companies make the most liquid share of the real estate market in Finland.

For the residential use there are also different kinds of part-ownership and rights of occupancy. These forms, especially the rights of occupancy, are supported by the authorities and thus there also may be some limitations to transfer these rights. These are not treated in this article.

### **3. APARTMENT HOUSE COMPANIES**

The apartment house companies are limited companies and the purpose of them is to own the ground and the building on it. The possession of the land may also be based on leasehold. Apartment house companies are a very typical solution in the residential sector in Finland. Apartment house companies have been founded for single-family house(s) to blocks of flats or even bigger entities. When owning through shares the shareholder only owns the shares in fact, not the real property, the building or the dwelling, which are owned by the apartment house company.

According to the law and statutes the shareholder has the right to possess the apartment and has the duty to take care of the interior. The apartment house company is obliged to take care of the rest including the construction of the building and the site.

The company may have shares entitling to various different premises like apartments, office and business premises, storage spaces or garages. However, in an apartment house company more than a half of the shares shall be for apartments. The spaces and the areas not possessed through shares are in the possession of the company.

#### **3.1 Management of an apartment house company**

The management of the company and the maintenance of buildings, yard and spaces possessed by the company are the responsibility of the shareholders through the company board. The company regularly also has a manager. Normally the companies show no profit but the shareholders pay maintenance charge for the company only to cover the costs. Although this payment is not equal to the market rent value, there will be no tax problems for the shareholder in a mutual company, even though the shareholder uses the premises him/herself (Kasso 2001). The holder of an apartment or premises is entitled to rent the apartment or the premises and in that way he can also make profit (and be obligated to pay taxes).

Service charge is collected to cover the costs, e.g. for heating, rent of the site (if not owned by the company), electricity (for common areas), water, garbage disposal, insurance, management and maintenance paid by the company. Normally the charging unit is the area of the apartment or premises.<sup>2</sup> The electricity and maybe also the water used in an apartment are paid directly by the shareholder to the producer of electricity or water.

The most important decisions, e.g. on renovations, renewing, mortgage debts and the amount of service charge are made by the meeting of the shareholders. They also accept annual accounts and release the board members from liability. The decisions are normally made by the majority but for some decisions a majority of 2/3 or even the approval of all shareholders is needed. This means that certain decision, like decisions on renovations, which will increase the basic quality of buildings or living may be difficult to make. The decisions may be appealed to the local court.

In certain cases the company is entitled to use coercive means against a shareholder. For example if a shareholder is not paying the service charge, mismanages the apartment, uses the apartment against its purpose or does not follow the rules in the company the company has the right to take the apartment into its possession. In that case the company rents the apartment and after collecting its own charges pays the rest of the rent to the shareholder.

### **3.2 New buildings**

When owning through shares, in the new buildings, it is normal that a part of the costs is divided into the purchase price and the bank loan for the apartment house company (company loan). In this case the buyer pays the price to the seller (normally a developer) and assumes his part of the company loan. The loan may be paid at once or during a longer period. Usually the company loan is 20-30 % of the total price of the shares in a newly built-up real estate, but it may be also bigger.

In the past few years most of the bigger constructing companies in Finland have produced a model for residential use where the apartment house company loan is even 70-80 % of the total price. In this kind of financing the buyer needs less money to get an apartment. Because the rate of a personal loan for an apartment may be partly deducted in taxation, it is often more useful for a private person to take a loan of his own - or to use his own money - and to pay both the purchasing price and the company loan. (Kasso 2001)

Regardless of the amount of the company loan the shareholder has all the rights in the company. The company loan must always be considered, when selling the shares until the company loan is paid. The shareholder normally has the right to pay his/her share of the company loan.

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<sup>2</sup> The average amount of monthly service charge in 2002 will be about €2.2 – 2.5 per sq.m. when the average monthly rent of apartments in Helsinki will be about €8 – 17 per sq.m.

### **3.3 Purchase of shares**

The purchase of the shares of an apartment house company is legally a purchase of a movable property. No notary is thus needed in the transaction and also unwritten agreements may be legally binding. In general all transactions should be made in writing. The object of the purchase is always the shares, not the premises, the apartment, or other part of the building, which the shares may be connected with.

The only restriction to buy shares may be written in the articles of the company. In some cases there may be a clause of redemption, where the previous shareholders may reclaim the shares being sold outside the company from the buyer.

It is important to notice that in an apartment house company the shareholder may not transfer only some of the shares for an apartment but the shares connected with one apartment shall only be transferred together. Of course a fraction (e. g. 1/3) of the shares can be transferred.

The buyer is only able to transfer the ownership of the shares, not the ownership of a building or an apartment. However, in fact the seller transfers the right to possess the premises in the apartment house company to the buyer.

When buying apartments (in other words the shares of an apartment house company) there is a special legislation for the purchase agreement, called the Purchase of Dwellings Act. The act includes special rules for new apartments and the marketing and purchase of apartments under the construction period and special rules for the purchase of used (old) apartments. When marketing and selling new apartments, i.e. apartments which have not been used before, the promoter of the apartment house company or the seller of the shares must follow the rules in the legislation, e.g. sufficient assurance must be deposited, to ensure the building to be completed (minimum 5 % of the construction price), for the responsibility of the fault during the first year (minimum 2 % of the sales prices) and finally the responsibility for the ten years guarantee. The deed of a purchase of a new apartment must be done in writing and there is a legally binding form for the deed.

When buying shares in connection with a used dwelling, there are special rules in the Purchase of Dwellings Act for the responsibilities, duties and rights for both the seller and the buyer. When the seller is a trader and the buyer is a consumer, the legal rights of the buyer may not be limited in the purchase agreement.

Especially the older apartment house companies or other mutual real estate companies may have a clause of redemption in their articles, which means the right of the previous shareholders to reclaim the shares being sold outside the company from the buyer.

### **3.4 Duties and responsibilities in and after the purchase**

In general the seller has duties to the buyer, both in a commercial and in residential use. All the information the seller gives to the buyer must be true and sufficient and all the

information, which may have an influence on the decision of the buyer, must be given. In spite of this the buyer is also obliged to investigate the premises carefully and the buyer cannot afterwards claim for such things the buyer should have noticed before the decision.

The problems occurring after the purchase may be e.g. the expense of the apartment or other premises, the condition or the faults of the building. If the premises are not in the condition that the buyer had expected and the seller has told, the buyer may get back the payment equal to the fault, or in more serious cases, the buyer may have the right to cancel the agreement.

The liabilities of the seller may be limited in the purchase agreement but the limitations must be determined, when the buyer is a consumer. For a private person as the seller the term guarantee is two years from the purchase.

A new shareholder is entitled to occupy an apartment when the company has been informed about the new shareholder. He may use his rights in the company after the conveyance has been recorded in the share register of the company.

### **3.5 Pledge**

Shares can be pledged as any movable property. The pledges are not registered in any official register. Through the transaction of the shares to the creditor the creditor gets the lien for the shares. There is no tax like stamp duty for pledges or loans either. Usually the banks will grant a credit against the share certificate of an apartment house company worth some 70 % of the apartment value.

### **3.6 Registration**

After the purchase the buyer is due to register his ownership in the company. The register is kept by the manager of the apartment house company. In addition the buyer shall pay the transfer tax (1.6 % of the purchase price). If a real estate agent (broker) is involved the transfer tax shall be paid within the purchase and in other cases within two (2) months from the purchase. The original purchase agreement is required.

The information in the register of apartments in the apartment house company is available to everybody. The apartments and the shareholders are not registered in the cadastre or land register (but the real property owned by the apartment house company is registered).

## **4. REAL ESTATE COMPANIES**

There are two different types of real estate companies in addition to apartment house companies in Finland, mutual and usual real estate companies.

### **4.1 Mutual real estate company**

It may be stated in the articles of the company that certain shares constitute the shareholder the right to possess a certain part, premises or floor of the building (like in an apartment house

company). This kind of real estate company is called a mutual company. For example in the mutual companies the tenancy of premises is between the tenant and the shareholder, when the premises are connected with the shares, not between the company and tenant. However, if there are premises, commercial or residential, which are not combined with shares the tenancy is between the company and the tenant and the incomes from the tenancy go to the company. It is quite normal that a mutual real estate company also has its "own" premises as it is positive for the real estate company's economy to get rent incomes and the payments collected from the shareholders will be lower.

In the mutual companies the shareholders pay maintenance charges to the company like in an apartment house company, and the companies normally make no profit. If the company has no premises, which are not connected with shares, the company mostly will not get any other incomes but the payments from the shareholders.

The mutual real estate companies may decide in their articles whether they follow the act for apartment house companies or not.

#### **4.2 Usual real estate company**

In the usual real estate companies the shares and building have no connection. For these limited companies there is no special legislation besides the general law for limited companies. In the usual companies the shareholders normally pay no maintenance charges for the company, because the company will have rent incomes to make profit and pay dividend for the shareholders. This means that the tenancy is between the tenant and the real estate company. The shareholder who is using the premises himself should pay the market rent for the company. Otherwise a tax problem will arise.

#### **4.3 Purchase of shares**

When buying commercial premises (i.e. the shares of a mutual real estate company) there is no special legislation for the purchase agreement, but the general act for sales of a movable property. In general the seller and the buyer may agree on the terms of the transaction quite freely. It is the same thing when buying shares of a usual real estate company.

### **5. CONCLUSIONS**

It can be said that the 3D land use and market in built up properties is functioning very well in Finland. The system is cheap to the society when the citizens are taking care of their dwelling themselves. There is no obligation for the society to register the apartments but the owners take care of this by themselves and there is no need to establish many kinds of servitudes in the built-up areas because the companies takes care of such responsibilities by themselves. The only bigger problems pertain perhaps to the information system. The apartments and premises in the real estate companies are not clearly registered in public but in the company's share register. Public information on apartments and premises is therefore limited (not centrally available) compared with the information on the "normal" real properties. This could be solved by registering the apartments and premises also in the

cadastre and land register. However, as there seems to be no problems in the present systems it is unsure if there is any sense in changing the system.

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## BIOGRAPHICAL NOTES

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