

Standardization of Real Property Rights and Restrictions – a Fool’s Task?

Jesper Mayntz PAASCH, Sweden

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SUMMARY

The different existing definitions of real property rights and restrictions make an understanding of this part of the cadastral domain difficult. Such lack of understanding is a major barrier to effective information interchange and standardisation. A terminological and legal approach focusing on the classification of real property rights and restrictions in a legal cadastre model centred on the right of ownership might be a way to gain a better understanding and be a step towards an improved standardisation of the domain.

This paper is intended to serve as an introduction to a recently published hypothesis stating that it is possible to create a general model describing formal real property rights and restrictions. The model is a step towards a standardized approach towards the cadastral domain in general and the modeling of real property rights and restrictions and placing them in an ontological framework.

INTRODUCTION

The standardization of the cadastral domain is essential for the development of a spatial data infrastructure. The topic has been the subject of several workshops and seminars throughout the world in recent years.

It is the authors opinion that the discussions until recently have been of rather technical nature focusing on standardization of the technical and spatial aspects encountered with cross boarder transfer of real property ownership and the geometrical descriptions of land. Thus, the standardisation efforts have primarily been orientated towards the technical storage environments of registers and other (software) solutions.

The discussions have only to a minor aspect focused on the legal aspects, which in fact are the basis for the existence of the cadastral domain, including real property rights and restrictions. However, the importance of an approach focussing on the terminological and legal aspects of the cadastral domain has, to some extent, been addressed by an increased number of authors in recent years, e.g. by Kaufmann and Steudler (1998), Lemmen et. al. (2005) and Paasch (2005).

This presentation focus on the terminological and legal aspects of standardisation of real property rights and restrictions and has its roots in a presentation made at the FIG/COST workshop in Bamberg, Germany, in December 2004 (Paasch 2004) and a recently published article presenting a hypothesis to classify real property rights and restrictions (Paasch 2005).

Documenting the legal situation is of major importance when establishing a cadastre. One of the statements presented in the FIG Cadastre 2014 vision for a future cadastral system claims that a future cadastre will contain a complete documentation of public and private rights and restrictions for land owners and land users (Kaufmann and Steudler 1998). In order to achieve this rather ambitious task it is necessary to define what is meant by private rights and restrictions and classify them according to a terminological framework.

Rights and restrictions are probably well defined within their own legal system, which has been sufficient for internal use within ones own national borders. However, this in no longer sufficient if we want to achieve a cost-effective cross border transfer of real property information. To be able to exchange information between nations we must aim at a standardized approach towards the description and classification of the multitude of existing different rights and restrictions. Otherwise, it will not be possible to interchange information in an efficient way in cross-border transactions. Therefore, an understanding of the nature of real property rights and restrictions is vital for any standardization effort.

It is important to stress that this paper only deals with formal real property rights and restrictions, which only is a part of the cadastral domain. Furthermore, informal rights and restrictions are, however important they may be for land management, not included in this paper.

1. TERMINOLOGY

The basis for any understanding is the use of an accepted terminology and any progress in standardization is based on the achievement of understanding and agreement.

Do we have such a mutual understanding and agreement of real property rights and restrictions? The answer is no. We have not yet gained such an understanding because of the fact that the domain is the result of the cultural and historical heritage, resulting in a patchwork of different rights and restrictions.

In order to achieve such understanding, we have to describe and classify there numerous rights and restrictions in the same, structured super-national manner, independent of what cultural heritage or legal tradition which is the basis for their existence.

A thorough understanding of the words we use are of vital importance for the success of our enterprises, especially when communication with others which others. It is a demanding task within our own professional and cultural environment, but even becomes more challenging when interacting with others outside our own mental and cultural boundaries which might not share our way of describing things.

Every domain with the need of interchanging specific domain related information might encounter the problem of not being sufficiently covered by the use of normal common language. This has led to the development of a domain related specific terminology with its specific vocabulary, terms and synonyms. Understanding requires a defined and accepted terminology; otherwise we will not be able to understand correctly what is meant. In other words: To achieve success, any description must be understandable by all parties involved.

We do not describe what is around us, but what we actually see, which only is an interpretation of the real world, based on our personal and subjective perception. We therefore all have our own personal view (*concept*) of the *objects* in the real world, based in the unique combinations of characteristics. The concepts exist only in our mind and we use specific *terms* to describe and define the interpretation of the objects around us. The definition should be as clear as possible and exactly define what we mean.

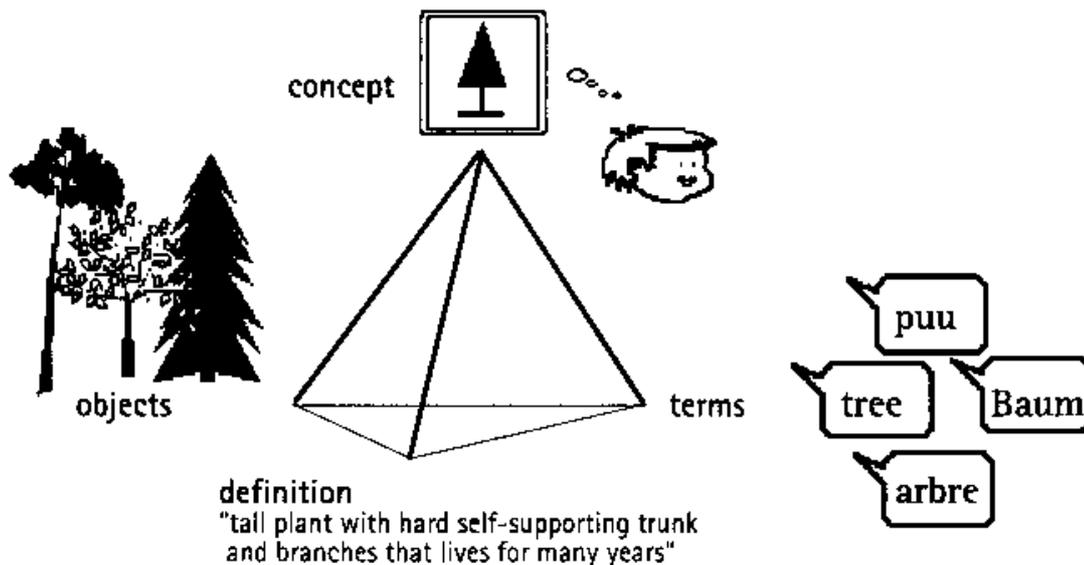


Figure 1. Relations among objects, concept, definition and terms. Suonuuti (1997).

There are several glossaries of terms describing the cadastral domain, e.g. (UNECE 2004). However, there is not developed a domain specific language for the classification of real property rights and restrictions. A more detailed approach is therefore needed to gain deeper knowledge of the structures of rights and restrictions.

2. CLASSIFICATION OF REAL PROPERTY RIGHTS AND RESTRICTIONS

The terminological principles can be applied on real property rights and restrictions in order to model them into groups, based on their characteristics (Paasch 2005).

The model is based on a hypothesis that there are specific characteristics which allows a classification without regard to any legal, historical or cultural circumstances which have given rise to the different real property rights and restrictions.

The core of the model is based on the principle of ownership to land, where a (legal or non-legal) person is executing the right of ownership which restricts the use of land for others.



Figure 2. The relation between *Person*, *Ownership right* and *Land*. (Based on Paasch 2005).

It might seem strange that land can theoretically exist without any ownership right executed by a person, illustrated by the 0..1 relationship between *Ownership right* and *Land* in figure 2. This is because land can be indirectly owned through ownership executed by a real

property. It is in some national legislations possible for real property to own land, e.g. in Sweden.

The multitude of different rights and restrictions in existence are due to the cultural and historical development of the society in question. They are traditionally expressed through – and often registered as- physical objects on the ground, e.g. the right to use a specific well for water supply or a private road for transport.

However, they are not traditionally physical objects, but delimitations in a (legal or non-legal) persons ownership right to real property (land), since they normally hinders us from doing everything we want with our real property.

Regardless of cultural and historical background, ownership can be restricted in a series of ways by national or international legislation, i.e. you might not be able to use your property as you like. However, a right or regulation can also be an asset, e.g. if a regulation allows certain facilities to be constructed on some properties, but not on the neighbouring properties.

These limitations (and assets) are executed by different rights and restrictions according to national and other legislation. They are the result of specific needs and exist in a multitude of different forms. However, it has been shown (Paasch 2005) that they can be organised and classified as belonging to one of five major groups describing rights; *Common right*, *Real property right*, *Personal right*, *Latent right* or *Lien* and two major groups describing restrictions; *Public advantage* or *Public regulation*.

2.1 Common Right

A common right is a right executed on a real property by two or more other real properties. The property in question is commonly owned by the other properties. The common right belongs to the real property and when the property is sold, the common right follows the property as it belongs to it, not to the seller of the property. A common right does not describe the situation where several people own a piece of land together, but only refers to real property owning other real property.

2.2 Real Property Right

A real property right is a right where a real property has the right to use another real property, e.g. an easement, which is a right enjoyed by one real property (the dominant tenement) over that of another (the servient tenement) for instance the right of access or for the passage of water or electricity

2.3 Personal Right

A personal right is a right executed by a person, in contrast to the above mentioned real property right. A person has the right to limit or expand the ownership right of real property, e.g. for rent or lease or has the right to use the fruits of the land. A personal right can be given to a person on a time-limit basis, for the person's lifetime or forever.

2.4 Latent Right

A latent right is a right which is not yet executed, e.g. in an expropriation situation where the government has given permission for expropriation, but the expropriating party has not fulfilled the procedure by seeking a court decision for taking possession. Another example is a pre-emption right for a neighbour's property.

2.5 Lien

Lien is equal to security for payment. Lien is an economical/financial right, which can be executed on real property and thereby regulates the ownership. An example is mortgage, which is a financial security granted by an owner of a real property to a person, normally a bank or another financial institution, to enforce, e.g. the sale of the property if the mortgagee does not fulfil the specified financial obligations. A lien might be seen as a latent right, but is in this general legal model described as a separate class.

A security for payment might not in a daily sense be seen a restriction to ownership. Nevertheless, the right regulates the use-right of the property since you might not be able to sell it or use it for specific purposes without conferring with the holder of the right, e.g. a bank or another financial institution.

2.6 Public Advantage

A public advantage is a possible asset to ownership a positive result of legally imposed burdens. A property might be benefited by one or more public advantages. A regulation might e.g. be altered or taken away on one property, e.g. by granting a dispensation, benefiting the property when compared with the original regulation which is still regulating the neighbouring areas.

2.7 Public Regulation

A public regulation is a restriction which is legally imposed by the public, e.g. a municipality, on one or more specific properties, e.g. a planning regulation of what colour to use when painting building in a specific town or area. However, general rules in legislation regulating the ownership right of all existing real properties, are meaningless to cover in this model.

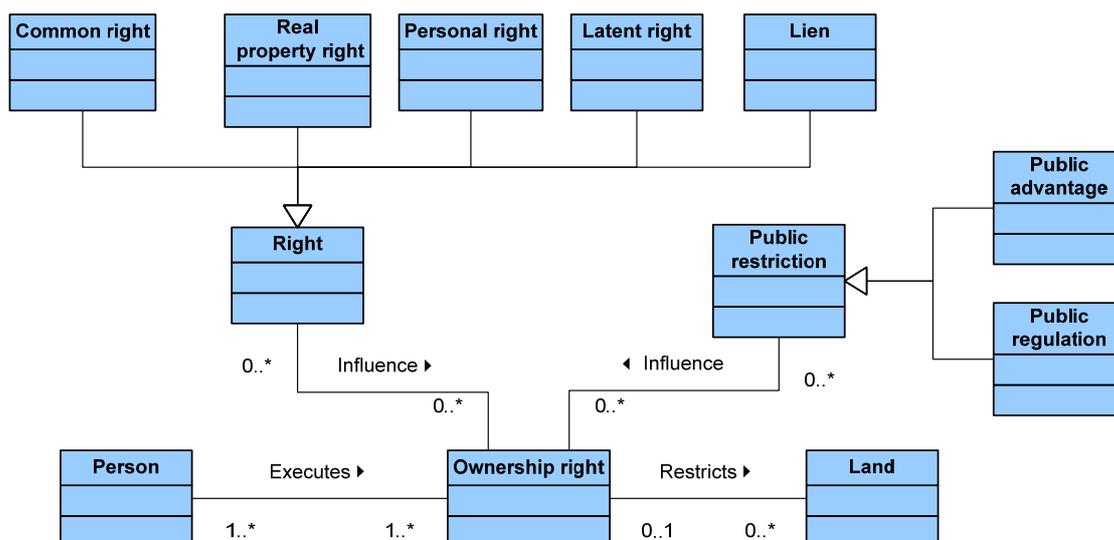


Figure 3. Classification of real property rights and restrictions. Based on Paasch (2005).

It might be impossible to standardize real property rights and restrictions since they are the result of a long cultural and historical process. However, it is possible to standardize a limited number of categories in which existing rights and restrictions can be placed. They can thereby be made subject for comparison and thus furthering a more cost effective cross border transfer of real property information. Much will therefore be achieved if we can agree on a semantic framework which can contain all formal rights and restrictions belonging to different legal systems and traditions.

3. CONCLUSIONS

A comparative research focussing on the theoretical aspects and characteristics of real property rights and restrictions is a way to look at the nature and origin of things and to explain to what extent standardization could be applied to the cadastral domain.

The model presented in this paper is a general model which focuses on the different aspects and relations of real property rights and restrictions with ownership right as a central right. The model can also be seen as a complement to the Core Cadastral Domain Model (Lemmen et. al. 2005), which does not go into much detail regarding the description of real property rights and restrictions.

Furthermore, the model presented in this paper and in Paasch (2005) needs to be tested on real property legislations belonging to different legal systems and traditions and to be adjusted if necessary.

It is not important what we call our different rights and restrictions in our respective, national legislations. If we can construct a common international, standardized semantic framework based on their characteristics much will be achieved.

The aim of this paper has been to briefly illustrate an attempt to create such a framework, showing that it is not a fool's task to apply a standardized approach to real property rights and restrictions.

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BIOGRAPHICAL NOTES

Mr. Jesper M. Paasch is a Danish chartered surveyor. He has a M.Sc. in Surveying, land management and cadastral science, and a MTM (Master of Technology Management) in Geoinformatics from Aalborg University in Denmark. He is employed at Lantmäteriet (National Land Survey) in Sweden and is also involved in standardisation at the Swedish Standards Institute and in research regarding the standardization of the cadastral domain at the Royal Institute of Technology in Stockholm, Sweden. The research is sponsored by the Lantmäteriet.

CONTACTS

Jesper M. Paasch

Lantmäteriet (National Land Survey)

SE-801 82 Gävle

SWEDEN

+46 26 63 30 01

+46 26 63 31 86, fax

Email: jesper.paasch@lm.se

Web site: www.lantmateriet.se

and

Royal Institute of Technology (KTH)

Department of Real Estate Planning and Land Law

Stockholm, Sweden