

Amending act No. 162/1995 on the real estate cadastre and the entries of ownership and other rights to the real estates (the cadastre act) effective from 1. 09. 2009

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Submitted article deals with the latest amendment of the Cadastre Act No. 162/1995 Coll. by Act No. 304/2009 Z.z.. The introduced amendment effective since 1.9.2009 brings a range of enactments in the area of the Cadastre which shall increase legal and factual security for parties involved in the real estate transfers as well as the elimination of frauds. The novelty of this amendment is a computerization of the whole cadastral proceeding as well as the acceleration of the entry for property rights into the Cadastre, what will obviously result in simplifying and shortening of the whole process.

Key words: cadastral act, real estate cadastre, ownerships, deposit, record, note.

Introduction

The cadastre of real estates (hereinafter referred to as „the cadastre“) is the geometrical determination, registration and description of real estates. The cadastre contains the data on the rights to the real estates, namely on the ownership right, lien, easement rights, the right of pre-emption if it should have the effect of lien, as well as the data on the rights arising from the administration of the state property, or the property of municipality, or the administration of assets of higher territorial units, on the tenancy rights to land if they last or have lasted at least 5 years (hereinafter referred to as „the right to the real estates“). (Act No. 304/2009).

The Real Estate Cadastre in the Slovak Republic is currently modified by the Act of the National Council of the Slovak Republic *No. 162/1995 on the real estate cadastre and the entries of ownership and other property rights to the real estates (Cadastral Act)*, as amended. The last amendment of this Act is Act no. *304/2009*, effective since 1.09.2009.

Cadastral Act

Cadastral Act has undergone several legislative changes:

- the first amendment of the Cadastral Act adopted by The National Council of the Slovak Republic No. **222/1996 about the organization of the local public administration** as amended, stated that local authorities of public administration are the cadastre district departments and cadastre regional departments. The Act came into force on 24 July 1996. However, this change of the organizational structure did not increase the efficiency of public administration performance in the area of cadastre nor improved the situation in financing these state activities. On the contrary, this has proved inefficient since the methodical part of the management was separated from the economic and personnel,
- the second amendment of the Cadastral Act No. **255/2001** came into force on 1. 1. 2002, enacted local authorities of the public administration to be excluded from the general system of public administration and thus the Cadastre offices and Cadastre Registries were established. The Act constituted 8 Cadastre offices and 79 Cadastre Registries. Central public administration authority in the area of cadastre is Geodesy Cartography and Cadastre Authority of the Slovak Republic (hereinafter referred as Cadastre). Directly managed are **Geodetic and Cartographic Institute in Bratislava, Research Institute of Geodesy and Cartography in Bratislava and Cadastre Offices**. Directly managed was also the **Cadastral Office in Žilina**. It specialized in the renewal of cadastral documentation, cadastre data review, creation and updating of the state derived maps and scan maps of major scales. On 1. 1. 2008 the Cadastre Office in Žilina was canceled by merging with Geodetic and Cartographic Institute in Bratislava by the decision of the President of the Geodesy, Cartography and Cadastre

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(Review and revised version 31. 5. 2010)

of the Slovak Republic from 12.11.2007 No. P-6833/2007. Local authorities of the public administration in the area of cadastre are **Cadastral Offices and Cadastral Registries**. Cadastral Office is established in the district headquarters and serves as an appeal body in cadastral proceedings. The new legislation entrusted decision making about the legal implementation of the origin and termination of the ownership or other property rights (decision on the permit of deposit rights) to Cadastre Registry,

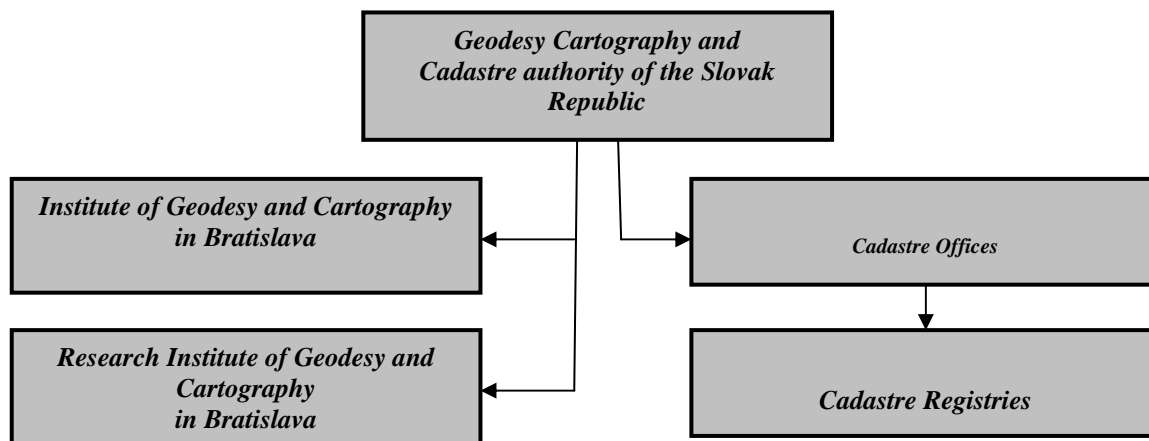


Fig. 1. Hierarchy structure of the Geodesy Cartography and Cadastre Office.

- further amendment of the Cadastre Act came into force on 15 April 2004 by Act No. **173/2004**. The aim of the amendment is the compliance of the Cadastre Act with the Act on Personal Data Protection. The principle of the public access is maintained, however the birth number of a person filed in the Cadastre is subject to protection,
- The Act No. **384/2008** from 15 October 2008 published in the Code of Law, part 143, modifies and supplements **Act No. 162/1995 on the Real Estate Cadastre and the Entries of Ownership and Other Rights to the Real Estates (The Cadastre Act)**. The amendment of the cadastre act brings the following modifications:
 - extends the range of cases when the proceedings for contribution proposal are discontinued in case the party was by interim measure prevented to dispose of the property,
 - in case the Court establishes invalidity of voluntary auction, Cadastre Register indicates the state of the property before the proceeding or before an auction. Such enactment is valid also when property rights were influenced by other legal modification and if the decision of the Court is binding for concerned parties,
 - the amendment of the **Cadastral Act No. 304/2009** came into force on 1st September 2009.

Amendment of the Cadastre Act No. 304/2009

One of the objectives of the amendment of the cadastre act is to simplify and accelerate the cadastral dealings. Cadastre Registry on the territory of which the real estate is situated is qualified for the cadastral dealings. Cadastral dealings shall include the entering of rights to real estates and the decision-making related to changes in boundaries of cadastral areas, examination of changes in cadastral data, correction of errors in the cadastral documentation as well as to the restoration of the cadastral documentation (Act No. 304/2009).

Entry of rights to the real estates can be executed in three ways:

1. entry of rights to the real estates by contribution– constitutive principle,
2. entry of rights by record – registration principle,
3. entry of rights by note –prenote principle.

If the entry of rights to the real estates by contribution is related to more real estates located in several cadastral districts then all involved Cadastre registries are obliged to act. The Cadastre registry which acts on the contribution proposal is immediately bound to notify concerned Cadastre Registry. The decision about permitting the contribution is marked out by the Cadastre Registry in the contract and one copy is sent to involved Cadastre Registry (par. 3, §22, Act No. 304/2009).

Entry of property rights to real estates by contribution

The legal effects of the contribution originate:

- a. on the date of the legally valid decision about permission,
- b. when transferring the state property on the date determined in the contribution proposal (Act No. 92/1991),
- c. on the transfer of an apartment and non-housing premises on the date of delivery of the contribution proposal.

General provisions of contribution proposal

The proposal for contribution shall be submitted in writing and shall include particularly the following:

- a. the name (business name) and the permanent address (the seat) of the participant in the dealing,
- b. the specification of the Cadastre Registry that is the addressee of the proposal,
- c. the specification of a kind of legal action on the basis of which the right to the real estate originates, changes or expires; if the subject of the contribution proposal consists of legal relations from more than one legal action, all of them shall be specified.

Annexes to the contribution proposal

Annex to the contribution proposal is the contract on the basis of which the right to the real estate shall be entered into the cadastre. The Amendment of the Cadastre Act also regulates the number of copies. Since September 1st 2009 the part of the contribution proposal are **two copies of the contract** on the basis of which the right to the real estate shall be entered into the cadastre. Before the amendment, it was necessary to attach the same number of copies as was the number of participants in the dealing including three extra copies.

Further attachments are as follows:

- a. public deed or other deed authenticating the right to the real estate, if this right to the real estate has not already been entered into the certificate of ownership,
- b. specification of parcels, if the ownership right to the real estate has not been entered into the certificate of ownership,
- c. survey sketch if the land is divided or merged in case of land easement,
- d. authorization contract, if the participant in the dealings is represented by an authorized representative; the signature of the authorizing person shall be verified as is specified under separate legal regulation part 3 of the Cadastre Act §42,
- e. notice of intended contribution proposal in a written form (par. 3, §30, Act No.304/2009).

Cadastre Registry will indicate the date, hour and the minute of delivery of the contribution proposal.

The main task of the amendment is to access the cadastral services electronically. Electronic services do not only provide the cadastral information but also enable filing of entry rights into the cadastre. Given the possibility of electronic filing of entry proposals there are new modifications of electronic filing including annexes. Such process enables a significant acceleration in the communication between Cadastre Register and the participants of the proceedings.

Electronic filing of contribution proposal

- a. particulars of the electronic filling are the same as in written form,
- b. when filing electronically one copy of the proposal and one copy of annexes is submitted,
- c. in case a verified signature is required with the written form, the electronic form requires verified electronic signature. All annexes in electronic filling must be submitted in electronic form and with the electronic signature. The dealings of the contribution permission are proposed.

Since 2.9.2009 under the provisions of § 22 ods.4, § 23, § 33 ods.3 and § 35 paragraph. Act No. 3. 304/2009 dated from 24.6.2009, amending and supplementing Act of the Slovak National Council. 323/1992 on notaries (Notary Rules) as amended and amending some acts, the cadastral dealings may be: Since 2.9.2009 under the provisions of § 22 ods.4, § 23, § 33 ods.3 and § 35 paragraph. Act No. 3. 304/2009 dated from 24.6.2009, amending and supplementing Act of the Slovak National Council. 323/1992 on notaries (Notary Rules) as amended and amending some acts, the cadastral dealings may be:

- a. carried out also electronically,
- b. filed by **notice of intended contribution proposal** in electronic version (fig. 3), which can be found on the website of Geography Cartography and Cadastre Authority of the Slovak Republic www.katasterportal.sk (fig. 2),



Fig. 2. The cadastral portal Geography Cartography and Cadastre Authority of the Slovak Republic (www.katasterportal.sk - available only in Slovak).

Fig. 3. Notification about an intended contribution (www.katasterportal.sk - available only in Slovak).

Details on the real estates, transferors, transferred shares, acquirers and their shares appear in electronic notification after entering a password and subsequently the preview of the complete form can be displayed (fig. 4) and (fig. 5).

The screenshot shows the 'Katastrálny portál' website interface. At the top, there is a navigation bar with links for 'Informácie o portáli', 'Novinky', 'Napíšte nám', 'Aktualizácia údajov', 'Najčastejšie otázky', and 'Pomocník'. Below this, a main heading reads 'Oznámenie o zamýšľanom návrhu na vklad - Nehnutel'nosti'. A series of tabs allows navigation between 'Všeobecné údaje', 'Nehnutel'nosti', 'Prevodcovia', 'Prevádzaný podiel', 'Nadobúdatelia', and 'Podiely nadobúdateľov'. The 'Nehnutel'nosti' tab is active, displaying a table with columns for 'Ozn.', 'Katastrálne územie', 'Nehnutel'nosť', and 'Údaje'. A 'Pridať výberom' button is highlighted with a red circle. Other buttons include 'Pridať zadaním', 'Náhľad', 'Export', 'Zrušiť', '<<Späť', and 'Ďalej>>'.

Fig. 4. General provisions of the notification about an intended contribution (www.katasterportal.sk - available only in Slovak).

The screenshot displays a generated notification form titled 'Správa katastra: Právny úkon: Nehnutel'nosti'. It contains several sections for data entry:

- Nehnutel'nosti**: A table with columns 'Katastrálne územie', 'Nehnutel'nosť', and 'Údaje'.
- Prevodcovia**: A section for 'Fyzické osoby' and 'Právnické osoby' with columns for 'Priezvisko', 'Meno', 'Navrhovateľ', 'Rodné priezvisko', 'Titul pred menom', 'Titul za menom', 'Rodné číslo', 'Dátum narodenia', 'Miesto trvalého bydliska', and 'Kontakt'.
- Nadobudatelia**: A section for 'Fyzické osoby' and 'Právnické osoby' with the same columns as above.
- Prevádzaný podiel**: A table with columns 'Prevodca', 'Spoluvlastnícky podiel', 'Prevádzaný podiel', and 'Nehnutel'nosť'.
- Podiely nadobúdateľov**: A table with columns 'Nehnutel'nosť', 'Podiel nadobúdateľa', and 'Nadobúdateľ'.

Fig. 5. Generated notification about intended contribution proposal (www.katasterportal.sk - available only in Slovak).

The notification about intended contribution proposal will be automatically sent to particular Cadastre Registry after entering the system with a generated password. If the participant of the dealings will not file the contribution proposal within **90 days**, the Cadastre will erase the notification about the intended contribution proposal from the register.

Entry of the rights

Cadastral Registry will examine the contract:

- whether the contract is valid,
- whether the action is done in a determined way,
- the title of the transferors to handle the real estate,
- whether the manifestation of the will is trustworthy,
- whether the contract freedom is not limited,
- whether it does not contradict the law,
- whether it is law-abiding and not detesting good manners.

For the record of the right to real estate in the cadastre is qualified a contract, public deed or other record:

- executed in writing in the state language, Czech language or in the certified translation of the contract,
- indicating parties of the rights to real estate; their name, surname, surname at the birth, the date of birth, personal identity number and legal residence, in case of a legal person their name, seat and identification number if it is assigned,
- indicating legal actions, its subjects, place and time of the legal action,
- indicating the real estates after the cadastral districts, after the parcel numbers of the lots recorded in the set of descriptive information, after the residential and non-residential premises,
- indicating entry of the shares of the joint owners less than the whole.

The contract shall include the signature of the transferors, the signature of the obligatory by the first option, signature from the obligatory in case of the occurrence of onus or signature of the entitled if the onus on the contract expires, signatures of joint owners concerning the dissolution and settlement.

This does not apply to state bodies or if the contract is carried out by notary deed or is authorized by an attorney. In this case, the notary or an attorney verifies the identity of the participant and particular Cadastral Registry evaluates whether the contract is in accordance with the cadastral documentation or fulfills procedural requirements of the contribution permission.

Decision about permitting the contribution

Decision about permitting the contribution shall include the following:

- a. designation of the Cadastral Registry which permits the contribution,
- b. number of the contribution,
- c. designation of the participants of the proceeding,
- d. designation of the proceeding as well as the designation of the real estate which the proceeding refers to,
- e. the date when the Cadastral Registry decided about the contribution,
- f. Name, surname and signature of the person who permitted the contribution,
- g. the imprint of a round stamp of the Cadastral Registry.

The decision about the contribution permission comes into force on the day of its indication. The copy of the decision about the contribution /or the rejection/ shall be delivered to all participants in the dealings within **15 days** since the day of its indication. The decision permitting the contribution **cannot be abjured, retried or examined outside of the appeal proceeding**. The entitled ones can lay an appeal against this decision. Appeal is submitted at the district cadastral registry which has issued the decision, within **30 days** of its delivery date. If the Cadastral Registry does not comply with the appeal all through the extent, the appeal is decided by the Court of Justice.

Contribution proposal proceedings can be discontinued or suspended. Reasons for discontinuation and suspension of proceedings are specified in The Cadastral Act § 31a, § 31b. Cadastral Registry decides about the contribution proposal within **30 days** since its delivery. It is also possible to apply for a speed-up proceeding on the proposal for entry after the payment of administrative charge within **15 days** since the Cadastral Registry will issue a decision. In cases of a contract drawn by a notary or an attorney, the Cadastral Registry will issue the decision of the contribution permission within **20 days** since the delivery of the request. The amendment of the Cadastral Act also regulates § 33 of the Cadastral Act, which deals with the competence to decide on the contribution proposal.

The Qualification for Deciding about the Contribution Proposal

Cadastral office employees who decide about contribution proposals must have a university degree and special qualification accomplished by an exam before the commission which shall verify their competence. Members of the Examining Board and other details of the qualification exams are enacted in the Cadastral Act § 33.

Administrative charges

Administrative charges are collected in correspondence with the special rule (Act No. 145/1995 on administrative charges):

- a. proposal for entry of the rights – 66 €,
- b. proposal submitted electronically – 33 €,
- c. speed-up proceeding on the proposal of entry of the date when the proposal for entry was delivered - 265 €,
- d. speed-up proceeding submitted electronically – 130 €,

notice of intended entry - an administration charge reduced by 15 €.

Entry of property rights to real estates by record

Real estates registered by record are:

- the rights to the real estates, which originated, changed or expired after the Acts, the decision of a state authority, the knock down of a bidder on a public sale, after the tenure, the rights to the real estates proved by the notary, the rights to the real estates following from the lease, from the contracts about transferring the administration of the state property or from other facts testifying that the administration of the municipality property or the administration of a higher territorial unit property was handed over, are entered into the cadastre by a way of record, namely on the basis of the public deeds and other deeds.(§34, par. Act No. 304/2009),
- in case the Court establishes invalidity of voluntary auction, Cadastre Register indicates the state of the property before the proceeding or before an auction. Such enactment is valid also when property rights were influenced by other legal modification and if the decision of the Court is binding for parties concerned,
- execution of records shall not be subject to general regulations on administrative proceedings.

Cadastre Registry performs the record without a proposal, eventually after the proposal of the owner or other entitled person.

The record proposal shall be submitted in a written form and shall include:

- a. the name (business name) and the permanent address (the seat) of the plaintiff,
- b. the indication of Cadastre Registry to which the proposal is addressed,
- c. the public deed or other deed which proves the right to the real estate,
- d. the indication of annexes.

Before delivery of the public deed or other deed for entry by record, the Amendment to Cadastre Act (Act No. 304/2009) enables to file notification electronically. Electronic form is published on the website of Geodesy Cartography and Cadastre Authority of the Slovak Republic. Notice is sent electronically to particular Cadastre Registry. Cadastre Registry assesses submitted deed whether it contains some irregularities in writing or calculation and whether it contains all the information required under the Cadastre Act. In case of eligibility of the document for the entry by record, the Cadastre will execute the record. Cadastre Registry will notify concerned parties within **15 days since the entry of rights into the Cadastre**. If the ownership right to the real estate is recorded on the ownership list and for the execution of the record is submitted additional public record or other record that is not based on the cadastral data, the cadastral registry shall not make a record and shall return the document to the party whose title to the real estate is given in the document, or to the person who submitted it. Cadastre Registry will appeal to parties involved to come to an agreement or to file a proposal to the court of justice.

Entry rights to property by note

Note indicates that the owner is restricted from disposing of the property or it informs of the property and property rights. § 39 of the Cadastral Act specifies in which cases the Cadastre Registry may enter such note and how such note may be cancelled.

Deadlines for the execution of the entry

Cadastre Registry executes entries of property rights according §41 of the Cadastral Act:

- a. at the date when decision on contribution became effective or the following day at the latest,
- b. in case of register by record it is 60 days since the delivery of a public deed or other deed eligible for the record,
- c. at the day of delivery of the public deed or other deed for the record by note, the following working day at the latest,
- d. in case of an auction (Act No.527/2002.) of an apartment, house or other estate, the Cadastre Registry indicates the state of an auction **at least within three months since the delivery of auction proceedings and in case the court establishes invalidity of an auction.**

The amendment of the Cadastre Act apart from the electronization of the Cadastre Office is also extended in the area of cadastral inspection which is a part of Geodesy Cartography and Cadastre Authority of the Slovak Republic and it performs the state supervision of the standard of cadastral administration. The cadastral inspection concerns the persons and the legal bodies who perform the geodetic and cartographic activities if the results of their work are put into the cadastre or if within their activities they use the cadastral data (ods. 2, par. 13 Act No. 304/2009). The cadastral inspection on behalf of the Office is performed by the cadastral inspectors. The Range of Activities of the Cadastral Inspection are specified in §14 of the Cadastre Act.

The amendment of the Cadastre Act enacts the liability to notify. Geodesy Cartography and Cadastre Authority of the Slovak Republic, Cadastre Offices and Cadastre Registries are obliged to notify the public authority in the event of violation of law. The Act extends the circle of people entitled to inspect the collection of documents (par. 5, §68 Cadastre Act) of the Cadastre administration. The Act regulates the issuing of cadastral documentation in form of a public deed.

Conclusion

Amendment of Cadastre Act No. 162/1995 is one of the latest legislative changes in the department of Geodesy, Cartography and Cadastre of the Slovak Republic.

Act No. 304/2009 in the Cadastre enacts the following:

- a. cadastral proceedings can be conducted electronically, electronization affects the entire cadastre proceedings,
- b. first step of the electronization is the implementation of the electronic filing of entry proposals in electronic form which contains information about the change of rights to real estates based on the legal proceedings. This step will significantly accelerate the process of cadastral proceeding and it will also eliminate the potential error in entry of data in the ownership list,
- c. cadastral Inspection ensures the supervision over the cadastral proceeding,
- d. modifies territorial jurisdiction of the cadastre administration if the entry proposal involves more Cadastre Registries,
- e. Act constitutes liability to notify in order to secure rectification of illegal cases ,
- f. expands the circle of persons entitled to inspect the collection of documents ,
- g. modifies the issuance of extracts from a set of surveying and descriptive information of the cadastral administration by means of a public deed.

Particular modifications in the amendment of the Cadastre Act advert to the fact that cadastral proceedings can be simplified and accelerated. In order to simplify the filing of the entry proposal and its annexes together with the possibility of electronic filing, the provision for the entry of proposals have been modified. Entry proposal must be annexed by the contract (an agreement, a statement of the depositor about the entry of real estates into the ownership of the legal entity).

There has been also a change in the number of submitted copies of the contract. Following the amendment, two copies of a contract are sufficient. Other annexes are submitted according to the type of the legal proceeding or according to authorized participants of the proceeding.

Cadastral Act Amendment also modifies deadlines for the entry of property rights into the Cadastre. So far, the period of 30-day and a shortened 15-day period were effective. The amendment enacts a new 20-day period. Designation of the entry permit into the cadastre by the stamp imprint has been replaced by decision about the permission of entry. The Cadastre Registry shall send such decision within 15 days and thus enable the participants to fulfill their liability to notify the Tax Office in terms of the property tax.

Cadastral Act amendment is effective since 1 September 2009. The application of the act will in the course of time show the impact of the changes for the cadastre area as well as for the public of the Slovak Republic.

*Tento článok bol vytvorený realizáciou projektu **Centrum excelentného výskumu získavania a spracovania zemských zdrojov**, na základe podpory operačného programu **Výskum a vývoj financovaného z Európskeho fondu regionálneho rozvoja**.*

References:

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- [3] Act no. 527/2002 on voluntary auctions and by Act of the Slovak National Council 323/1992 on notaries and notarial activity (Notary rules) as amended.
- [4] The Act No. 145/1995 on Administrative Charges as amended.
- [5] The Act No. 222/1996 on the organization of local government.
- [6] The Act No. 255/2001 amending and supplementing Act of the National Council of Slovak Republic No. 162/1995 on Real Estate Cadastre and the Entries of Ownership and Other Rights to the Real Estates (The Cadastre Act).
- [7] The Act No. 173/2004 amending and supplementing Act of the National Council of Slovak Republic No. 162/1995. on Real Estate Cadastre and the Entries of Ownership and Other Rights to the Real Estates (The Cadastre Act) (Cadastral Act) as amended.
- [8] The Act No. 384/2008 amending Act no. 99/1963 on Civil Regulations as amended and amending certain laws.
- [9] The Act No. 92/1991 on the Conditions of the Transfer of State Property to Another Entities as amended.
- [10] The Act No. 323/1992 on the Notaries /Notary rules/ as amended.