



## Real Estate Advertising of Rights, Acts and Legal Facts in Romania

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**Abstract:** In the specialized legal literature, other important principles have been evoked or are derived from those already shown, among which we mention the principle of the specialty that must indicate the person of the owner, the individualization of the property and the right to which it refers. In a globalized society as we find it today, where economic interests tend to extend beyond the borders of one state or even from one continent to another, after going through a global pandemic that has modified and prequalified the primary needs of the individual as a subject of In fact, opening new doors to possibilities not perceived until recently in many respects, with consequences and implications for real estate markets, freedom of movement, remote work, we find that the purpose of real estate advertising systems, as is the integrated system of cadaster and the land register in Romania, is the one that forms a unitary system, of technical, economic and legal evidence, of national importance, of all real estates on the entire territory of the country, to determine the technical, economic and legal information regarding real estate, to ensure the publicity of real estate rights, personal rights, legal acts and facts, as well as a any other legal relations, through the land book. Also, to provide data to public institutions of the state, necessary for the tax system and the real estate market, but also to contribute to ensuring the security of real estate transactions.

**Keywords:** legal means; the interests of the holders; the legal framework in the matter of advertising; the goods of the persons; legal acts

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## **1. Notion. General Considerations Regarding Advertising**

From the very beginning of the civil code, which came into force by Law no. 287/2009 and Law no. 71/2011 implementing, through articles 18-24, the legislator established the legal framework in the matter of advertising, fixing the object of advertising and the methods of realization, the conditions, the effects, as well as the sanctions.

The notion of publicity, in the light of the Romanian civil code, means the cumulation of legal means by which the material and legal situation of rights is regulated and publicly highlighted, in order to protect the interests of their holders, as well as those of third parties. Thus, for a clearer understanding of advertising systems, as well as the purpose they pursue, we can say that advertising systems are at the service of all subjects of civil law, with the ability to use and exercise as defined by (Boroi, 2012).

The notion of advertising has two meanings from the perspective of legal analysis. Broadly speaking, advertising refers to those ways in which certain acts or legal operations are brought to the public's attention or performed in public places with or without public participation, but in order to be known and to assume their effects. For example, the laws and other normative acts are published in the Official Gazette of Romania, the administrative acts are published in the local press, they are displayed at certain established places; some acts are concluded in public places to ensure the access and intervention of those interested, for example: auctions, transactions; where certain legal operations are transcribed or recorded in public registers (trade register, port register where ships are registered, land books, etc.).

In the narrow sense of real estate advertising, it designates all the legal means provided by law, which highlights the material and legal situation of real estate in public in order to give full protection to the static and dynamic security of the civil circuit, regarding real estate.

## **2. Advertising Media**

Advertising is done separately, depending on the nature of the good and the rights, being carried out according to these criteria by several means. We can talk about real estate advertising made through the "land book" (New Civil Code, 2011) or about furniture advertising made through the Electronic Archive of Real Movable

Guarantees. Another means of advertising is the Trade Register. In fact, advertising is carried out by any means or form provided by law, through any public register that provides advertising.

These public registers contain entries regarding the rights, acts and facts regarding the condition and capacity of the persons, in connection with their property, as well as any other legal relations subject to publicity, provided by law. Advertising is carried out in the cases expressly provided by law, the holder of rights, acts or deeds having the possibility to perform advertising operations only within the legal limits.

Each advertising register operates on the basis of a special law, so real estate advertising is regulated by Law no. 7/1996, National Notarial Registers by Law no. 36/1995, Trade Register by Law no. 26/1990 the enumeration is not strictly restrictive, the legislator thus giving a special importance to publicity.

Advertising is precisely the efficient legal means by which the act is registered in public registers provided by law, by fully fulfilling the requirements. However, they are autonomous, with distinct purposes, they do not overlap and they do not exclude each other (Nicolae, 2000). Advertising is necessary for certain legal acts to be known regarding the legal relations they establish. For example: the sale-purchase contract for a real estate concluded in authentic form is fully valid, but to ensure its opposability and to certify that in reality the buyer is the current owner, that contract must be subject to legal advertising.

### **3. Real Estate Advertising**

The notion of real estate advertising means the totality of the legal means provided by law which regulates and publicly highlights the material and legal situation of real estate, in order to protect the interests of holders of real estate rights. In this case, the term real rights holder is not used accidentally and we appreciate that it should not be confused with the term tabular owner, the protected interest not being of the tabular owner but of the third party. The right holder becomes the tabular owner by entering his right in the advertising register, in this case, in the land book.

Real estate advertising based on the evidence system of the integrated system of cadastre and land book has as object the registration in the land book of legal acts and facts regarding real estate in the same administrative territory and is made by the offices of cadastre and real estate advertising for real estate located within their

area of activity. As legal transactions involving the transfer of ownership of real estate or the establishment of real property rights (usufruct, use, easement, dwelling, land, etc.) require legal certainty, there has been a need to create various real estate advertising systems, with the main purpose of making known to interested third parties the changes that have occurred in the legal regime of these goods.

The role of real estate advertising depends on the advertising system adopted by the respective legislation. Thus, in some systems they have a limited role in making the rights acquired between the parties opposable to all, as is the case with legislation based on the principle of consensualism inspired by Napoleon's French Civil Code. The rights are acquired at the date of completion of the translating or constitutive act of real rights, but are consolidated only as an effect of the transcription in the public registers. In other systems the role of registration is to produce translational or constitutive effects of real rights, both between the parties and towards third parties, the convention is only creating obligations. The system was adopted by Austrian and German-inspired legislation.

Regarding the legal situation in Romania, we find a combination of the two advertising systems that have their explanation in the different history of the country's provinces. We find the principle of consensualism in the provisions of art. 553 paragraph 2 of the Civil Code "Vacant inheritances are ascertained by succession holiday certificates and enter the private domain of the commune, city or municipality, as the case may be, without registration in the land book..." corroborated with the provisions of art. 557 para. 1 and 4 "(1) the right of property may be acquired, under the conditions of the law, by convention, legal or testamentary inheritance, accession, usufruct, as an effect of possession in good faith in the case of movable property and fruits, by occupation, tradition, as well as by court decision, when it is a transfer of ownership by itself. 1674 "Except in the cases provided by law or if the will of the parties does not show otherwise, the property is transferred by right to the buyer at the time of concluding the contract, even if the property has not been delivered or the price has not been paid yet", in the sale of real estate the relocation of the property being carried out in accordance with the provisions of the land book, the provisions of art. 1676 of the Civil Code being applicable.

It should also be noted that the rule established by the land book is that the real rights over the real estate included in the land book are acquired, both between the parties and against third parties, only by registering them in the land book, the

exception being given by art. 887 Code Civil law which provides that real rights are acquired without registration in the land book if they come from inheritance, natural accession, forced sale, expropriation for public utility, as well as other cases provided by law, in these cases the holder of the rights thus acquired will not be able to dispose of the rights thus acquired through the land book (respectively by making a successive transfer or the establishment of real estate guarantees or dismemberments of the property right), only after the registration of his right.

Next, we find examples that support the constitutive effects of the land book, through the provisions of art. 14 paragraph 8 of Law no. 7/1996 “The constitutive effect of rights regarding a building that has been the object of systematic registration operates from the date of the first subsequent registration based on constitutive or translating legal acts of real rights concluded after the ex officio opening of the land books, for the entire administrative-territorial unit. ,,

In Romanian civil law, the principle of relativity of the effects of legal acts, according to which a legal act has full effects only between the parties and their successors in title. All other persons, who did not participate in the conclusion of these legal acts, have the quality of third parties, and the agreement of the parties is required as a legal reality. For this, in real estate, advertising systems have been organized, which make their legal situation known and thus become opposable erga omnes.

Romania has known several types of real estate advertising systems, among which we mention:

- The advertising system of the registers of transcripts and inscriptions, regulated by the Civil Code and the Code of Civil Procedure, applicable in the Old Kingdom (Muntenia, Moldova, Oltenia and Dobrogea).
- The land book system, regulated by Decree-Law no. 115/1938 and Law no. 241/1947 (Transylvania, Banat and Bucovina).
- The intermediate system of land advertising books, regulated by Law no. 242/1947, applicable in several communes in Ilfov County and in Bucharest.
- The intermediate system of land records, regulated by Law no. 163/1946, applicable in some localities in Transylvania for the replacement of land books destroyed, stolen or lost during the war

- The integrated system of cadaster and land book, regulated by law. no. 7/1996 of the cadaster and of the real estate publicity, updated, with the subsequent modifications and completions (which is in force at this moment).

#### **4. Principles of the Integrated System of Cadaster and Land Book**

##### **Notion**

The cadaster and the land book form a unitary and obligatory system of technical, economic and legal evidence, of national importance, of all the buildings on the entire territory of the country. The purpose of this system is to determine the technical, economic and legal information relating to real estate, to ensure the publicity of real estate rights, personal rights, legal acts and facts, as well as any other legal relations, through the land book, to provide data to institutions necessary to ensure the security of real estate transactions and the facilitation of mortgage lending.

In this integrated symbiotic system, the cadastre identifies measures, describes and registers real estate in cadastral documents and their representation on maps and cadastral plans, and the land book includes the description of real estate and entries regarding real estate rights, personal rights, deeds, facts or legal relations relating to real estate.

The basic entities of this system are the real estate and the owner. Through the building, within the meaning of Law no. 7/1996 means the land, with or without constructions, on the territory of an administrative-territorial unit, belonging to one or more owners, which is identified by a unique cadastral number, and within the meaning of the civil code, at art. 876, the building is defined as one or more adjacent plots of land, regardless of the category of use, with or without constructions, belonging to the same owner, located on the territory of an administrative-territorial unit and which are identified by a unique cadastral number.

Through this integrated system of cadastre and land book, the identification, description and registration in the cadastral documents of the buildings by their nature, their measurement and representation on maps and cadastral plans, as well as the storage of data on computer media. Owners, other legal owners and owners of real estate and owners are identified and registered. It also provides the necessary data to the system of taxes and duties for the correct establishment of the

tax obligations of taxpayers, requested by the competent institutions, while real estate advertising, which ensures the enforceability of real estate rights, personal rights, legal acts and deeds, as well as and any publicity-related legal reports relating to real estate.

### **The Principle of Full Publicity of Real Rights and Opposability of Entries in the Land Register**

According to the law, real estate rights must be registered in the land register in order to become opposable to third parties or for their holders to be able to dispose of them. The property right and the other real rights over a real estate will be registered in the land book based on the deed by which they were constituted or were validly transmitted. The registration in the land book is provided only for the respective rights to become opposable to third parties, so that the land book system is a real and complete system of real estate advertising because the record is kept on real estate and not on people and also ensures full publicity of transmissions and rights real estate. With the exceptions already shown, all these operations are subject to registration in the land register as well as highlighting all changes or modifications that occur through attachment, detachment, dismemberment of plots, etc.

The principle of full publicity of land books is that rule which subjects to the entry in the land book all translational or constitutive legal acts and facts of ownership and other real estate rights, material operations, as well as personal rights, facts or other legal relations in relation to real estate -a certain land book.

As an exception, real estate rights are opposable to third parties, as we have shown above, without registration in the land register in the following cases: acquisition by succession, accession, forced sale and usufruct. However, in order for the holder of a real right acquired in these cases to be able to dispose of the right (to conclude deeds of transmission or encumbrance of the right), he must first enter it in the land book. Under the same conditions, the real rights acquired by the state and by any person, by the effect of the law, by expropriation or by court decisions, are opposable to third parties.

**The Principle of Relativity of Entries in the Land Register**

According to this principle enshrined in Article 893 of the Civil Code, entries in the land book can be made, in principle, only with the consent of the holder. Therefore, the registration of a right in the land register can be done only against the one who, at the registration of the application, was the holder of the right on which the registration is to be made, or against the one who, before being registered, encumbered his right. , if both entries are made at the same time.

If several persons have successively assigned to each other the real right over a building, and the registrations have not been made, the last owner will be able to request the registration of successive acquisitions together with his right, but having the obligation to prove with original documents the series of legal acts on which the registrations are based.

**The Principle of the Translational or Constitutive Effect of Real Rights**

It is the principle according to which the real rights regarding the real estate can be constituted modified or extinguished only by registering them in the land book. This means that the registration gives rise to, modifies or extinguishes real rights and makes them opposable to third parties. Real rights over real estate will be established or relocated only after they have been registered in the land register. Real rights will be extinguished only if their deregistration has been registered in the land register with the consent and against the holder.

In the system of cadastre and land book, any legal operation that tends to the translation or establishment of real estate rights consists of 3 successive legal operations: a) an obligatory act - *ius ad rem* - (sale-purchase contract, donation , exchange, etc.) which gives rise to the obligation to transmit or constitute the real right which forms the object of its contents; b) from a real act - *ius in rem* - of the elaboration of the formalities and of the delivery of the good by which the party that has assumed an obligation consents by the given document that that right to be tabulated in the land book; c) the effective registration of the real right, which is born at the moment of the official registration of the application at the office of cadastre and competent land book. The mere existence of the convention is placed in the obligatory realm and does not operate by itself the transfer or constitution of the real right. The obligatory relationship resulting from the conclusion of the agreement is a right of claim, being opposable only to the debtor who remains



bound by the obligation assumed by the agreement, that of handing over the property and the necessary registrations for tabulation.

The moment of relocation or the establishment of the real right is unique - the actual registration - and characterizes this principle. This makes the concordance between the tabular condition and the legal situation of the building in question.

There are several exceptions to this principle: in the case of real rights acquired by succession, accession, forced sale, expropriation for reasons of public utility, when the acquisition takes place independently of registration, as shown above. They are also called extra-tabular rights, ie real rights that are acquired without registration in the land register.

### **The Principle of Legality**

Following the replacement of the land registry judge in the old regulations, with the land registry registrar in the current legislation, the principle presupposes that before ordering the conclusion by registration, the land registry registrar has the right and obligation to verify the legality of the title or deed and the application, submitted for use as a basis for registration in the land register.

The principle of legality consists of two aspects: formal legality and material legality, ie the verification of whether the document on the basis of which the registration is requested meets the formal requirements required by law for their validity and is apt to be transcribed. According to art. 30 para. 2 of Law no. 7/1996, the registrar will reject the application for registration of the legal act whose absolute nullity is expressly provided by law or for non-fulfillment of some special conditions provided by the regulations in force.

### **The Principle of Availability**

Entries in the land register are made at the request of interested parties, except in cases where the law provides for ex officio registration (for example: cases of correction of material errors). Thus, the application for registration will be sent to the territorial office in the constituency in which the building is located, and the registration of a right or the cancellation of a task can be requested personally or by the attorney general or by any of the holders of the same right. The application for receipt and / or registration, once registered, can no longer be modified or supplemented with new applications.

### **The Principle of Priority**

According to the provisions of art. 889 of the Civil Code, the entries in the land book produce effects towards third parties from the date of registration of the registration applications. The order in which applications are registered determines or determines the rank of the application (*qui prior tempore potior jure*). Thus, the first to apply for registration is also the first holder of the registered right, even if his title has a later date. If several applications for registration of real rights have been submitted at once to the territorial office, they will provisionally receive the same rank, and the court will decide on the rank of each. If several applications have been submitted at once for the purpose of listing several mortgage rights on the same property, they will receive the same rank. In case of conflict, if two or more persons have been entitled to acquire, by documents concluded with the same author, rights over the same mutually exclusive property, the one who registered his first right will be considered the holder of the tabular right, regardless the date of the title under which the registration was made.

The principle of probative force of real rights entries

The principle is enshrined in Law no. 7/1996 (updated), as follows:

- the content of the land book, apart from the legal restrictions and exceptions, is considered exactly only for the benefit of that person who, by virtue of a legal act with legal title, acquired in good faith a real right registered in the land book. For the purposes of the law, the acquirer is in good faith if, at the date of registration of the application for registration of his right, no action has been noted challenging the contents of the land book or if the title of the transmitter and the contents of the land book this and the real legal situation.
- if a real right has been registered in the land book, under the conditions of this law, for the benefit of a person, it is presumed that the right exists in his favor, if it was acquired or constituted in good faith, as long as it is not proven otherwise - legal presumption relative;
- if a right has been deleted from the land register, it is presumed that that right does not exist.

In its materiality, land book advertising entails both a positive and a negative effect. The positive effect means that what the land book contains is considered exactly for the benefit of the person who acquired the property. The negative effect

means in principle that no real right can exist and cannot be opposed as long as it has not been entered in the land register.

From both effects resides the absolute proving power of the land book entries, showing that the one who acquired in good faith, a real right based on the land book is sheltered from any cause of eviction. The scope of application of the principle of probative force of registration is limited by law both in terms of the legal operations that have been carried out and the persons in whose favor it acts, intertwining with the principle of relativity. The principle operates only in the case of those tabular rights constituted by legal acts that are actually registered in the land book.

### **Conclusions**

The importance of real estate advertising is well known, and the land book system is widespread in Europe. Over time, various international congresses, symposia or conferences have led to the enrichment and improvement of land registry systems in the Member States of the European Union. Thus, since 2010 the foundations of a European association have been laid with the main purpose of supporting the development and understanding of the role of cadastral and land registry systems from a legal point of view, as well as from an economic point of view, called ELRA (European Land Registry Association). ), officially representing 31 land book systems, from 25 European countries including Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Greece, Ireland, Italy, Lithuania, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Spain and Sweden.

The natural evolution of the debates that have taken place has also established the need for an advertising register at European level that is about to be born.

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