

Property formation in the Nordic countries

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has been translated in English

Denmark

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INTRODUCTION

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1 Land rights in a perspective of change

1.1 Background

Land, by tradition, is to a great extent governed by special, separate legislation. A distinction is made between real and personal property, one reason for this being society's desire to underpin the real estate and credit market, and another being an endeavour to balance the interests of the usufructuary and the creditor against those of the property owner. At the same time, real estate being an object of taxation, the state has a special interest in controlling ownership and use in such a way that revenue potential will not be eviscerated. Rational management of land resources, furthermore, has social and economic dimensions, prompting public bodies to influence land use through the medium of land policy, planning and permit procedures.

Land has been individualised through division into property units, in such a way that title (ownership) and other legal relations can be attached to properties. However, it is less easy with real property than with personal property for title and acquisitions of rights to be manifested through occupation or de facto disposition, and this is one of the reasons for real property being registered. Registration gives publicity and legal protection to acquisitions of rights (ownership acquisition, rights granted and security for credits). Registration is made still more important by the great economic assets which real property represents.¹

In the ultimate analysis, land use mirrors the society in which we live, and must be amenable to change if individual land rights are not to stand in the way of social change. But the methods of change developed must not be framed in such a way as to eliminate the security of the rights already linked to real property. And so changes of ownership, grant of rights and property formation are regulated, not to say standardised. In this way clarity of rights is achieved in a changeable world. In addition, methods for recording particulars of changes are needed in order to keep registers constantly updated.

¹ SOU 1966:63, s. 16-17, 47. Larsson 1991.

The system, then, has to guarantee security (stability) but must also facilitate change (dynamism) in the management of property units. Fundamentally, a complicated system of rights has been built up to this end and is ultimately guaranteed by the state through legislation and government authorities.

1.2 Rights

Purely theoretically speaking, mankind must always have had a relation to land and water,² since everyone needs somewhere to live. If we have free access to the land and no regulations on its use, then we are free to use it and so is everyone else. Open access applies. If the asset has an economic value, there will be an obvious risk of its being over-exploited.³ Unrestricted sea fishing is a good example of this. Modern technology unaccompanied by restrictions on fishing rights can lead to over-fishing. More is extracted from the assets than can be re-created. In order to strike a balance between asset and extraction and prevent over-exploitation, the asset can be regulated, e.g. in terms of which parties are entitled to fish and how much they are permitted to take. The possibility of so doing hinges on political factors but also on the institutional system,⁴ i.e. the possibilities of introducing and enforcing restrictions. It should be noted that rights and obligations can be introduced independently of the existence of a right of ownership. The state, for example, does not claim to own the economic zones in the sea but their exploitation can be regulated nonetheless.

Title to land is a special kind of right. It is clear in countries theoretically presuming absolute right of ownership, i.e. the owner's right to use the land as he pleases, to exclude others from using it and to transfer it to a new owner.⁵ In practice, such absolute right of ownership hardly exists. Instead ownership is circumscribed in a variety of ways.⁶

The relation of ownership to persons and land is schematically described in figure RM-1, showing:

1. Who is entitled to do something, i.e. who is the subject (right-holder)?

² For present purposes, water, except where specifically referred to, is included in the concept of land.

³ Hardin 1968.

⁴ E.g. North 1990, Libecap 1989, Ostrom 1990, Eggertsson 1990, Demsetz 1967.

⁵ See Snare 1972.

⁶ Ownership actually entails obligations, a point clearly and neatly expressed in the German constitution as "property obliges" (Grundgesetz für die Bundesrepublik Deutschland, Art. 14).

2. In what area can the right be exercised, i.e. what is the object (geographic area of exercise)?
3. What may the right-holder do, i.e. how is the right regulated by statute law, the grant of permits etc.?⁷

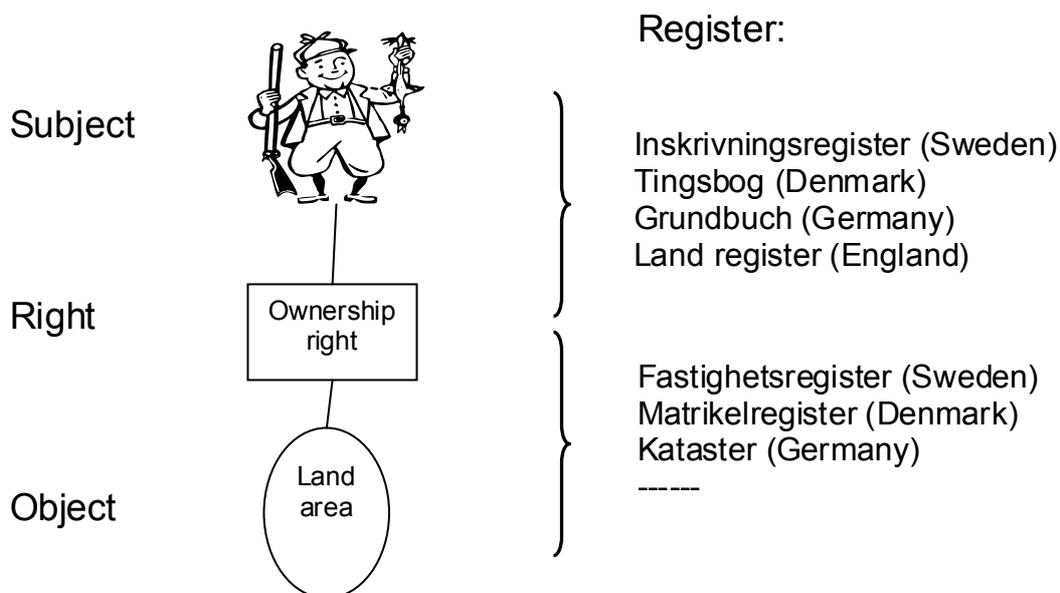


Figure RM-1 Examples of registration principles for subject, right and object

This figure describes a static relation, but in reality the three components – subject, right and object – must be changeable. Change of subject must be possible, the substance of the right must be amenable to revision and development, and the geographic structure of the object must also be changeable. This calls for what may be termed three types of function of change in order for the components of the system to be dynamic. They can be summed up as transfer (conveyance) of property, change in the substance of ownership (primarily in terms of permissible land use) and, finally, property formation. These functions of change are elucidated in figure RM-2.⁸

⁷ This method of describing links between subject, right and object is used in a variety of connections, cf. Zevenbergen 2002.

⁸ Mattsson 1997, Mattsson 2003.

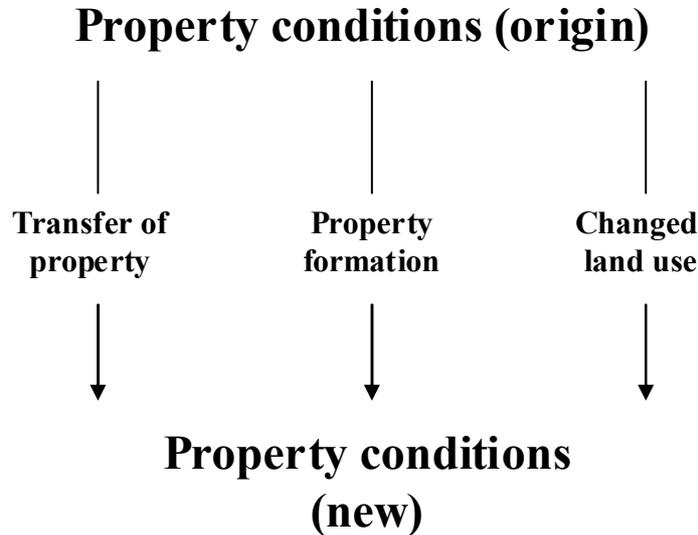


Figure RM-2 Necessary functions of change in real property law (figure based on Mattsson 1997 and 2003).

In its commonest form, change of ownership is achieved through purchase and sale, but other types of transfer are also conceivable, e.g. gift, exchange, pre-emption, compulsory purchase and expropriation. Changes of ownership (change of subject) can be wholly free but can also be regulated. For example, a permit may have to be obtained before a property can be taken over. Creation and re-formation are the commonest procedures for changing the configuration of a property.⁹ Changes of property subdivision (change of object) can also be free to a great or lesser extent, depending on legislation and land policy.

The content and alteration of ownership title must also be discussed. Its content can be altered by legislative change (e.g. the enactment of a general prohibition of a particular measure) or by an official regulation, which restricts the owner's right of disposal over a certain area (e.g. planning provisions targeting a certain property or properties). Restrictions are imposed on rights of ownership. Conversely, ownership

⁹ In Sweden, for example, a property can be created by parceling off a lot from an existing property unit and then forming a new property unit with a registration number of its own, with the original property unit retaining its register designation. A property unit in Sweden can be re-formed by transferring land from one property unit to another without any change in the property register designations (reallotment). In this case, then, the title in each property unit does not change; all that changes is the area within which ownership title is exercised.

title can be enlarged (e.g. through the repeal of a general prohibition or a planning provision). In our figure, a change in the substance of ownership is symbolised by a change in land use, although content/substance and land use are not wholly identical concepts.

The functions of change can be applied separately but may also need to be co-ordinated. Purchase of part of a property for building development in an area where building development is subject to the grant of a permit is one instance where the functions have to be co-ordinated in order to achieve the desired result. The purchaser is unlikely to be interested in effectuating just one of the functions of change. He will want all three to be fulfilled.

Thus the system of property rights can be analysed in terms of the three components subject, ownership and object, plus their three attendant functions of change.

But analysing the system in terms of these components and functions of change is not sufficient. The property owner can also restrict his use of the property in someone else's favour by granting them a certain right in it (e.g. another party may acquire right of way over the property). This form of rights restriction is really a division of the right of use in the property between different parties. Ownership can also be supplemented, e.g. by a right being granted to the property and charged to another (ownership of the property can, for example, be supplemented by a right of way across another property, i.e. the creation of a dominant easement).

The difference between public and private restrictions of rights is that in the first instance the restriction occurs without another right-holder obtaining a corresponding benefit. In the second instance the relationship between two right-holders is adjusted, with one of them relinquishing what the other obtains. This latter form of change between two parties can be based on a contract (e.g. covenant of easement) between the parties but can also be a peremptory private-law adjustment ordered by a public authority (e.g. expropriation for the formation of an easement in favour of one property at the expense of another). Combinations of contract and official decision, i.e. the need for voluntary contracts to be officially confirmed in order to be valid, are also common in the realm of property law. The two forms of change in the current ownership of the property are thus essentially different. In the one instance we have a relation between property and society (public-law regulation), while the other is between parties (a private-law relationship). We may add that public-law regulation normally overrides private-law relations.

In order, then, to study the stability and dynamics of the system of property law, we have to consider the regulations governing property units as such but also the stability and dynamics of the rights conferred in the real property.

1.3 Registration systems

Knowledge of the link between subject and right, i.e. ultimately, who owns what, can have an important bearing on transactions. A buyer, prospective lessee, credit-provider etc. must know that he is dealing with the owner. It is also important for a credit-provider to know that the person furnishing security on a property is the owner and the property is not over-mortgaged. The construction of a system for storing such information is especially vital in societies distinguished by more or less comprehensive anonymity between seller, purchaser, credit-provider etc. One way of publicizing property conditions is by registering the data or by consulting registers to find relevant archive entries. Looking at figure RM-1 (subject, right and object) the natural course seems to be for all data to be stored in one and the same register together with particulars of other right-holders, and moreover for the data to be handled by one single authority. Clear, reliable and accessible information is obtainable concerning property subdivision, rights, ownership and right-holders. For historical reasons, however, two registration principles have been developed in a number of countries where subject and right are entered in one type of register and property structure in another.

Simpson¹⁰ argues that the function of land registers is to facilitate conveyancing (i.e. private transactions) so that they can be accomplished securely, inexpensively and quickly. Primarily the registers reflect the link between subject and right, but they can also contain particulars of rights granted and mortgages to furnish security for a claim. The cadastre (property register) emanates from the need of the state of tax land. The object and its tax-paying potential were the interesting point. Rights granted, mortgages etc., on the other hand, are of no interest in this connection.

It should be noted, however, that the tax-related *cadastre* context has never caught on in the Nordic countries.¹¹ The Nordic countries, however, have elected to have two registers, namely a land register and a real property register. The land register is essentially concerned with the relation between owner (subject) and ownership, while the real property register covers the relation between ownership title and land (object).

¹⁰ Simpson 1976, p. 3.

¹¹ The connection between the Real Property Register and taxation issues in each country, historically and at the present time will not be gone into here.

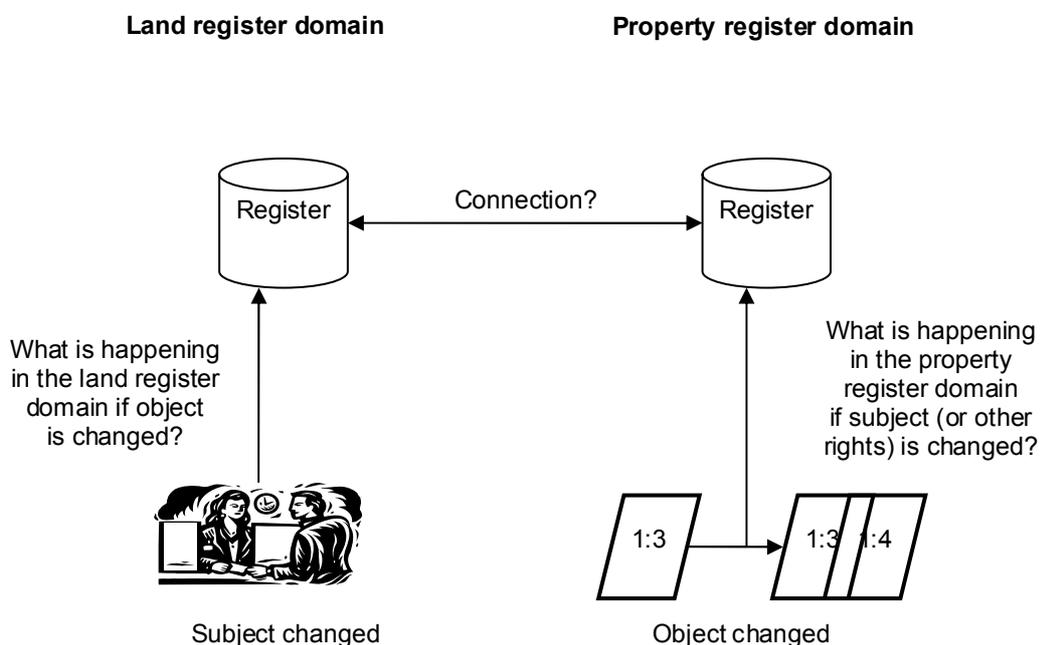


Figure RM-3 The title registration domain and the property formation domain. What happens to rights in one domain if there is a change of subject/object in the other?

If different registers are kept, a significant problem arises, namely that of co-ordinating the information in them so that they will mirror the same reality (figure RM-3). This is no easy problem to solve, because the content of each register is changing all the time and information must then be systematically shunted between different authorities and registers to prevent the information in the registers from getting out of date. One solution is to carefully regulate who is to do what and how decision-making processes are to be co-ordinated. One method of transfer is for information to be sent between decision-making and registration authorities, another for the owners concerned to be obliged themselves to convey the information between authorities. However this work is organised, standardisation of register content is necessary so that subject and object can be unambiguously linked together through a right, despite the existence of two separate registers. A Real Property Register designation, for example, can be the identifier and all information about right-holders as well as the land area of the property can then be stored under the identifier. Even more advanced systems can be built up by co-ordinating everything in a database where

the logic of the data processing is such that the connections between subject, right and object can enforce the linking together of information in the registers.¹²

When analysing the institutional systems one has to clarify the “addressees” of the law (who has been empowered to handle what under different laws). Who is responsible for purchase, application for the registration of purchase, the registration itself and who is responsible for property formation and the registration of property units? The same goes for the apportionment of responsibilities in connection with the creation of new rights. And who is responsible for monitoring the rights granted in the real property when there is a change of circumstances? How are all the activities co-ordinated, especially if an organisation has been built up which has two domains of responsibility, namely what can be termed the *land register domain* and the *property formation domain*?

Co-ordination can give rise to processes of varying complexity in order for certain rights to be secured when others are altered. A change in the object, e.g. the division of a property, means that both parts are included in ownership title but that the legal content of ownership can in practice differ from one part to another (for example, one lot may have building rights while the other does not). Characteristics granted as well as mortgages for a debt may also come to differ between the different objects, because the original encumbrances may come to be unequally charged to the new property parts.

1.4 Structure of the report

Right-holders, however, are mainly concerned, not with registers but with who has which rights in practice and how those rights are affected by changes to subject and object. But registration issues given a great deal of the activity concerned with changes in property law relations. Figure RM-3 shows that changes related to what we have called the land register domain affect the property formation domain and vice versa. If, then, the system of rights is to be analysed, both sides must be dealt with in a single context. The Nordic descriptions presented in this report therefore deal with the most important rights in each domain and also with the ways in which they are altered. On the other hand, the content of registers in each country is not dealt with, being presented in another report.¹³

¹² Before the two registers were co-ordinated in Sweden, there were a number of unclear points in the existing registers, which were separately updated by different authorities (SOU 1966:63). With the co-ordinated, data-based registers existing today, logic checks in computer programs can exclude points of uncertainty regarding the connection between subject, right and object. But the existing Real Property Register does not include an exhaustive account of rights.

¹³ Kort & Matrikelstyrelsen, 2006

This report, then, focuses on changes in the rights structures of land, and above all on changes of owner (subject) and property (object). The prime objects of study, accordingly, are transfer of property and change of property subdivision. Because transfers of land and mortgages to secure loans are of importance to a third party when changes occur in ownership and in property subdivision, these are also taken into account. Public-law regulation normally overrides private-law relations. Regulation of this kind governs the processes of change and is not normally a matter on which landowners and others can negotiate. Changes in the content of ownership title via public-law regulation will therefore only be included in the descriptions insofar as they influence changes to subject and object.

The report gives identically structured descriptions of the Nordic countries, the structure being as follows. First comes an overview of the real property concept, describing property transfer and property formation measures which can affect property units as well as rights and charges. Society's responsibility for the property market and for property formation is then dealt with, by highlighting the national authorities responsible but also the parties involved.

This is followed by a more detailed description of the transfer procedure associated with the purchase and sale of real property, mortgaging of real property and changes of property subdivision through subdivision, amalgamation and land transmission. These descriptions, which are supported by process descriptions, are based on previous sections. Property definition is also addressed in this connection. Finally a description is given of changes of rights pertaining to or charged to real property.

A concluding chapter makes a comparison between the different countries. The processes described earlier are uniformly structured to bring out different activities. It can be observed here and now that in principle all activities included in different processes (e.g. for purchase or subdivision) are the same in all the Nordic countries, though they are differently, sometimes very differently, organised chronologically. This, however, provides an opportunity for studying how different activities can best be combined and thus creating a form of pattern models for how the processes could be constructed in order to be rapid and straightforward. This is based on the idea that what is possible in one country ought to be worth considering in another. The pattern models created in the concluding chapter are therefore intended to provide openings for conceivable changes when a country begins to discuss the reorganisation of its processes in the field of property law.

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Denmark

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1 Introduction

“Ownership rights” means the rights in an object which give the owner of the rights authority to use the object in any way which is not restricted, either pursuant to private authority or according to legislation.¹

The owner of the object, in this context a real property, can himself *accept restrictions* on his rights in the property, for example by mortgaging the property, by transferring use of the property to another or by encumbering the use with some kind of easement etc. When such restrictions lapse the rights revert to their original scope.

In general, real property means a piece of land, a house with its associated plot, a farm with associated fields or a woodland property. A condominium is also real property. In many ways *legislation restricts* the rights of the owner to his real property.

The owner of real property can transfer the whole of the property to another. In many cases, transfer of the whole property, e.g. a house or a share in a property can take place without the permission of any authority. A number of formal requirements must, however, be met before the title deed can be registered. In other cases, a condition for registering the title deed is that there is a declaration that certain requirements have been or will be met, or that there is a permit to acquire the property under specific legislation. According to the Danish Land Register Act² the ownership rights and other rights in real property must be registered to be valid against other contracts on the property.

Finally, the owner of real property can transfer a physical part of his property to another person. However, the new owner can only have the title deed registered temporarily until the separation of the property by subdivision or by transfer of part of property has been registered in the Cadastre. This is how the real property is “formed”. The concept of property formation³ covers the legal or actual activities necessary to create a new real property or to change the boundaries between existing properties.

¹ Hagerups Illustrerede Konversations Leksikon, 4th edition, volume III, 1949, page 396.

² Cons. Act no. 158/2006 (TL), sec. 1.

³ Bo von Eyben m.fl.: Fast Ejendom, 2nd edition, 2003, page 18.

The regulations on this are in the Danish Subdivision Act,⁴ under which property formation can be by subdivision, transfer of part of property, amalgamation or rectification of boundaries.

In Denmark, activities regarding property formation, also known as cadastral activities, are divided between private licensed land surveyors and the cadastral authorities. For more than 200 years, these activities have been carried out in a “Public-Private Collaboration Model”. Outside the municipalities of Copenhagen and Frederiksberg, private surveyors perform cadastral work, which involves disposal of the plot as well as preparation and procurement of the documents necessary to register the changes in the Cadastre. The cadastral authorities ensure compliance with the provisions of the Subdivision Act and other legislation before the changes are registered in the Cadastre. In the municipalities of Copenhagen and Frederiksberg, the cadastral service is municipal and *Stadskonduktøren* and *Stadslandinspektøren*, respectively are responsible for the authority tasks in the cadastral work.

The regulations in the Land Register Act and the Subdivision Act have been carefully coordinated with each other.

Landed properties in Denmark are registered in the Cadastre.⁵ The individual plots are identified in the Cadastre with a cadastral identification comprising a cadastral number and a description of the cadastral district. The Cadastre also contains information on the size of the plot and possibly notes on the individual cadastral number. The location of the individual cadastral number and its scope appear on the cadastral map.

The current Cadastre was established in 1844 as the basis for collecting land taxes. Today the Cadastre is a property cadastre containing fundamental information about cadastral numbers which in themselves comprise a real property or a group of cadastral numbers which together comprise a real property. Registration of individual properties in the Cadastre is vital for the Land Register (*Tingbogen*) as well as public administration. Buildings and other fixed objects on the land belong to a real property, unless the building was erected by someone other than the owner of the land. Registered public roads are included in the Cadastre without a cadastral number, instead they are allocated a *litra*.

⁴ Act no. 494/2003 on subdivision and other registration in the Cadastre (UL).

⁵ The term Cadastre will be used as the term for the central Cadastre at the Danish National Survey and Cadastre (KMS) and the Cadastres at the municipalities of Copenhagen and Frederiksberg.

Information on who owns the real property as well as the mortgages and easements registered on the property can be found in the Land Register (*tingbogen*). The Land Register is based on information on the individual property in the Cadastre.

Only one year after the new Cadastre took effect, in 1845⁶ it was decided that properties in the Land Register (previously referred to as the registry of deeds and mortgages) - *Skøde- og Panteprotokollerne* - should be described: "as has been done in the new Cadastre". In 1927 the link between the Cadastre and the Land Register was further coordinated with regard to the requirement that the cadastral reference should be correctly stated on all Land Register documents, that the cadastral authorities should notify the Land Registry about all cadastral changes, and that in subdivision and registration of the first title deeds, the registered easements should be allocated, so that all easements are not just transferred from one parent property to the new property. At the same time, the state accepted responsibility for the accuracy of information in the Land Register.

Today, the cadastral information in the Land Register is still kept as a copy of the information in the Cadastre. The Land Registry is regularly notified about registration of cadastral changes so that the Land Register can be kept up to date. Corresponding reports are sent to the municipal council in order to update the common municipal property data system (*Det Fælleskommunale Ejendomsdatasystem* (the ESR)), which is also based on data from the Cadastre.

In addition to cadastral information, the ESR contains additional information about individual properties, including the name and address of the owner, for use in collection of taxes etc. Data on the owner is updated when real property is sold.

The property registers are digital and are all being reorganised because technological developments have made it possible to establish better interplay between the registers with less need for copied data.

In order to make public sector use of IT more widespread, a central IT council (*Statens IT-råd*) was set up in 2000. The following year saw establishment of a project on digital administration ("*Projekt Digital Forvaltning*"). The project was headed by *Den digitale Taskforce* and it initiated cross-cutting collaboration – "service communities" (*servicefællesskaber*) – which were to promote conversion to digital administration in central areas. An innovation committee has been set up under the service community for geodata (www.xyz-geodata.dk – website in Danish) to establish more cohesive

⁶ Regulation of 28 March 1845, section 3.

property registration to ensure data can be compared and used, no matter where it is sourced.

Part of this technological development, including the possibility to use digital signatures, meant that in 2003 a Land Register committee was established, and this was assigned the task of drawing up proposals to modernise land registration and make it more efficient. Amongst other things, the committee was to consider whether management of land registry could be organised more appropriately and to propose how “paperless” land registration could best be introduced. In June 2005 the Land Register committee issued interim report no. 1461/2005 and in February 2006 report no. 1471/2006 was issued containing draft proposals for amendments to the Land Register Act and various other acts. The committee recommended that land registration be organised in a “Public-Private Collaboration Model” within which the current process is centralised with the greatest possible involvement of private actors in the work, but in which land registration is retained as an authority function under the Court Administration (*Domstolsstyrelsen*). The committee also recommended the introduction of digital land registration. Several of the committee’s recommendations are mentioned below in connection with specific tasks.

Denmark is primarily agricultural land. Only a small proportion of the overall area is built up or used for urban purposes such as roads and green areas. Figure DK-1 compares how the land in Denmark is divided between different land uses.

Land use	Km ²	%
Cultivated fields, nurseries and fruit	26510	61
Forests and orchards, incl. agriculture	5010	12
Urban areas, residential and industrial	5350	12
Meadows, bogs, tidal areas and marshland	2460	6
Heaths, dunes and bogs	1980	5
Fences, ditches, field lanes and similar	1130	3
Lakes and watercourses	640	1
Total	43080	100

Figure DK-1: The area of Denmark according to Statistics Denmark, 2003, Table 5.

By far the majority of the area of Denmark is owned privately. The state owns about 20 per cent of Danish forest area and the municipalities own smaller areas of woodland connected to larger towns as well as areas for urban development.

2 The concept of property

2.1 Introduction

The concept of property has great social significance, both with regard to securing private legal interests in real property and with regard to public regulation and administration of real property. In recent years, when property data is registered and exchanged digitally, uniform identification of real property has also been pivotal in promoting digital administration.

The Cadastre

Landed property is registered in the Cadastre, which is based on the concept of *a cadastral property as defined in the Subdivision Act*.⁷ The cadastral register clearly shows whether a cadastral number is a cadastral property in itself, or whether it is part of a cadastral property containing several cadastral numbers (and which numbers). The scope of the individual cadastral number and thus of the individual cadastral property is shown on the cadastral map. Cadastral numbers under the same cadastral property can be spread over the cadastral district, and possibly in different cadastral districts and in different municipalities. A cadastral property can be recorded as an agricultural property.

In Denmark, the concept of property has developed over the past 70 years in line with changes in society and the need to regulate acquisition of real property. In the 1930s a nationwide agricultural "census" was taken of properties / cadastral numbers which met various requirements related to the size of the area (at least 1 ha.), land value, residential and farm buildings etc. Such properties were recorded as agricultural in the Cadastre and Land Register and they were subject to the regulations in the Agricultural Act (*landbrugsloven*) on subdivision and on operational requirements.

In 1963 the Agricultural Act (*landbrugsloven*) was extended by provisions that land operated and assessed together with an agricultural property belonged to the same cadastral property, unless permission to separate the land was granted after 1 September 1960. The background to this was Denmark's expected membership of the Common Market. There was a desire to link certain acquisition provisions to land designated for agricultural purposes in order to avoid remote ownership. Today by far the majority of the area owned privately in the open countryside is designated for agricultural purposes.

⁷UL, sec.2.

After 1963, the registration as agricultural property in the Cadastre and in the Land Register was occasionally updated in connection with boundary changes. In the early 1990s a systematic, nationwide extension of the agricultural registration was carried out in the Cadastre and the Land Register. After this, the Agricultural Act was amended so that after 1 August 1995⁸ registration in the Cadastre determines whether an area is designated as agricultural land.

According to the Subdivision Act, rights of use of an area may not be established for a period of more than 30 years, if the area is part of a cadastral property. However, this does not apply for areas of less than 5 m², which are to be used for radio masts etc.⁹

The rules in the Subdivision Act apply only for land areas. This means that if a property is subdivided into condominiums, the Subdivision Act does not prevent condominiums and other rooms from being sold, mortgaged or rented out for a longer period.

The Land Register

The Land Register Act uses the property concept of a Land Register property. According to the Land Register Act, in order for a document to be registered it must relate to a *Land Register property*.¹⁰ Registered rights in a real property attach to the whole property in the event of a forced sale, even if the registered rights only apply to part of the property geographically.

With regard to landed property, the concept of property in the Land Register Act is based on the concept in the Subdivision Act. When title, mortgages or long-term rights of use contracts are to be registered, the Land Registry must ensure compliance with the rules in the Subdivision Act that part of a cadastral property must not be sold, mortgaged or let out for a long term. Therefore, for landed properties "*a Land Register property*" is the same as the concept in the Subdivision Act of "*a cadastral property*."

Normally, the real property covers the land and any buildings erected on it. However, a building can comprise a separate real property, which under

⁸ Stat. Order no. 593/1995 on entry into force of sections 2(3) and (4), of the agricultural Act.

⁹ Stat. Order no. 107/1991 on the subdivision requirement.

¹⁰ TL section 10(1).

the Land Register Act is called *a building on rented land*¹¹. A building on rented ground means a building which belongs to someone other than the owner of the land on which it stands. Such a building is registered in the Land Register, and in accordance with the Land Register Act, the building is treated as an independent real property. This also applies for buildings erected offshore, such as wind turbines. Buildings on rented ground are especially prevalent in harbour areas in larger market towns. Mink farms and newer farm buildings on agricultural properties may also be erected on rented areas. Buildings on rented ground are not registered in the Cadastre.

A third type of Land Register property which is also not registered in the Cadastre is a *condominium*.¹² Since 1966 it has been possible to divide a building on real property into condominiums. This also applies for a building on rented ground, where the building itself comprises a real property. When the title deed of the first condominium in a building is registered in the Land Register, there must also be a list and maps of all the condominiums in the building.

2.2 Regulation of land use under public law

Land use in Denmark is regulated by a number of instruments (acts, statutory orders, regulations and binding plans). These stipulate provisions that have to be observed for subdivision, entry in the cadastre, transfer of part of property and amalgamation. There may also be provisions which the owner of the land should observe in connection with changes in land use as well as provisions under which the authorities can order the owner to maintain a specific condition or to farm the area in a specific way.

The review of legislation on area regulation below aims at illustrating the restrictions which apply for property formation, while the operational land-use restrictions under public law which apply for how the land owner operates his property are only mentioned in some cases.

The Planning Act¹³

The Planning Act divides Denmark into three zones: urban zones, summer cottage areas, and rural zones. This division became statute in the 1970 Urban and Rural Zone Act

¹¹ TL, sec. 19(1).

¹² Act no. 53/2006 on condominiums.

¹³ Act no. 883/2004 on planning (PL), amended by Act no. 571/2005.

and it was based on spatial plans at that time; urban planning regulations, urban development plans etc. The purpose of this division into zones was to safeguard rural zone areas against urban development and to ensure that urban development took place in urban zones in accordance with planning.

In rural zones, subdivision, new construction, or changes in use of existing buildings or undeveloped areas may only be carried out with the permission of the municipal council.¹⁴ However, the Act does stipulate a number of activities which are possible without permission. These include certain subdivisions allowed under the Agricultural Act, construction which is necessary commercially for the operation of the property, either for farming or forestry, or for commercial fishing.¹⁵

Division into zones was part of a more extensive planning legislation reform in the 1970s. The planning system is hierarchical and covers three types of planning: regional plans, municipal plans and local plans. The overall regional plans contain guidelines for the subordinate municipal plans, which in turn are the framework for local planning. Local plans are registered in the Land Register on the relevant property and the provisions of the local plans are binding for the landowner, while provisions in regional plans and municipal plans are binding for public authority administration.

Overall consolidated spatial planning is managed by the Minister for the Environment, who lays down rules for administration of the Planning Act and for the contents of planning.

The current planning system up to 1 January 2007

A regional plan is drawn up by the regional planning authority. The Greater Copenhagen Authority (HUR) is the regional planning authority for the Greater Copenhagen area, which covers three counties. On Bornholm, the Municipal Council of Bornholm is the regional planning authority. In the rest of Denmark the county council is the regional planning authority. The regional plan must contain a statement of the basis for the plan and guidelines for overall developments in the region, including urban development, location of large public institutions, polluting enterprises, roads, etc., as well as guidelines for safeguarding sector interests in connection with development in the open countryside.

¹⁴ PL, sec. 35(1)

¹⁵ PL, secs. 36-38

The municipal council draws up the *municipal plan*, which lays down an overall structure for the whole municipality and local planning frameworks for individual parts of the municipality. A municipal plan must not conflict with the regional plan.

Regional plans and municipal plans are revised every four years. During preparation of regional and municipal plans, the regional planning authority and the municipality, respectively must report on the revision of the plan with a view to provoking debate on the development, and a time limit of no less than eight weeks must be set so that the public can contribute their ideas and comments. Once the proposed plan has been drawn up, there must be a further time limit of no less than eight weeks for objections to the proposed plan. Only after this can the plans be adopted and published.

A *local plan* must be obtained before subdivisions or large building and construction work, including demolition, and in other situations where this is necessary in order to secure realisation of the municipal plan.¹⁶ A local plan must contain information about the objectives and legal effect of the plan, and the plan may include provisions on a large number of aspects.¹⁷ A proposal for a local plan, with its associated statements and reports, must be made public at no less than eight-weeks' notice in order to allow for submission of objections. The municipality must brief owners and users of property covered by a proposed local plan, or affected by the proposal, about the time limit for objections. This also applies for local associations etc.

The zone boundaries are changed regularly in line with developments as areas can be transferred from rural zones to urban zones or summer cottage areas by a local plan. Furthermore, some unexploited urban zones have been transferred back to the rural zone as a result of a decision by the municipal council.

The Planning Act has later been supplemented by special rules for

- coastal areas in Denmark in order to keep a 3-km belt free of buildings and construction which are not dependent on being close to the coast,¹⁸
- areas for retail shops,¹⁹ and
- large individual installations for which an environmental impact assessment must be performed (EIA obligation).²⁰

¹⁶ PL, sec. 13(2).

¹⁷ PL, sec. 15.

¹⁸ PL, secs. 5a and 5b, introduced in 1994.

¹⁹ PL, secs 5c – 5f and section 6b, introduced in 1997.

²⁰ PL, sec. 6c, introduced in 2000.

Changes in the planning system after 1 January 2007

The municipal structural reform²¹, which will be described in more detail in chapter 3, reduces the number of municipalities from 270 to 98, and instead of the 13 counties and HUR, the reform establishes five new regions whose primary responsibility is the health service. With the entry into force of the structural reform on 1 January 2007, the new municipalities take over most of the responsibilities of the regional planning authorities, and the guidelines in the regional plans will be incorporated into the municipal plans.

The future municipal plans will therefore contain goals and guidelines for developments in both towns and the open countryside, as well as the restrictions on land use which resulted from the municipalities' own decisions and decisions by regional and state authorities. Thus the municipal plan will become a collective document which can explain about the rules for land use in the municipality to the public, enterprises, and interest organisations.

The new regions must develop a new type of plan; the regional development plan. This will contain an overall vision for development of the region, and for the business area it must be based on the regional business development strategies prepared by growth fora.

The Protection of Nature Act²²

Subdivision, entry in the Cadastre, transfer of part of property or amalgamation must not be carried out if they set new boundaries or fences etc. within areas with preservation of the dunes or protected beaches. Access must not be provided to new properties by roadways which run over areas with preservation of the dunes. Neither must changes be made to the condition of these protected habitats or to natural lakes of more than 100 m² and protected watercourses or heaths, bogs, coastal meadows, salt marshes, freshwater meadows and biological dry grasslands of more than 2500 m².

Building etc. without permission is forbidden within lines running at a distance of

- 150 m from lakes with a water surface area of more than 3 ha or from watercourses registered with a protection line,
- 300 m from public forests or from private forests of more than 20 ha,
- 100 m from historical monuments protected by the Museum Act, and
- 300 m from a church, if the building is to be higher than 8.5 m.

²¹ Act no. 540/2005 on revision of municipal division and Statutory Order no. 656/2005.

²² Act no. 884/2004 on protection of nature (NL).

Building, planting of trees etc. and other changes are not permitted in protected areas, if they conflict with the listing provisions.

The Museum Act²³

Changes to stone and soil dykes are not permitted. In this context, dykes are linear mounds of soil or stone or similar materials which function as fences or which have, or have had, administrative or land-use significance. Dykes shown on the 1 : 25 000 maps published by the National Survey and Cadastre are amongst those protected by this provision. New boundaries may not be set and changes in the state of the historical monuments listed in the annex to the Amendment Act are not permitted.

The Forest Act²⁴

By far the majority of the Danish forest area is protected forest, which means that the areas are covered by the provisions of the Forest Act on operation and maintenance of forests. The protection can only be cancelled in exceptional circumstances. Protected areas are registered in the Cadastre and recorded in the Land Register. Registration is updated regularly in connection with cadastral case processing or following reports from the forest authorities after the Minister for the Environment has decided that an area is to be protected.

The Agricultural Act²⁵

Sixty-two percent of the area of Denmark has been designated as agricultural land, and this is registered in the Cadastre on the individual property as farming obligation. Much of the agricultural land with forests is also protected.

If a cadastral property is imposed with farming obligation, it is subject to the rules in the Agricultural Act on acquisition, including the provisions on duty of residence, as well as the rules on joint operation and tenant farming. The Agricultural Act also contains rules for cancelling farming obligation and for redistributing land between agricultural properties. The Act also contains requirements that an agricultural property must normally have a residential building in which the owner lives.

An agricultural property must be operated appropriately, taking into consideration the commercial, agricultural and exploitation possibilities; nature and the environment; and preservation of landscape values. Use for nature purposes is also considered as

²³ The Museum Act, Act no. 473/2001, amended by Act no. 454/2004.

²⁴ Act no. 453/2004 on forests (SKL), amended by Act no. 564/2005.

²⁵ Act no. 435/2004 on agricultural properties (LL).

appropriate operation. Areas with farming obligation must not be used for other purposes, unless the purpose is in accordance with provisions of the Planning Act or the Mineral Resources Act.

When the new Agricultural Act entered into force on 1 September 2004, a new Act on operation of agricultural land entered into force.²⁶ The main rule is that there is free choice of crops, but in certain situations the owner can be ordered to run the property in a specific way. For example there may be requirements to establish screen hedges to screen technical installations or that the land must be kept free of wild oat grass and, as far as possible, hogweed.

The Building Act²⁷

A permit under the Building Act is usually required to erect new buildings. The municipal council is the building authority. Provisions regulation building etc. are laid down in the 1998 Building Regulations for Small Houses; applicable for houses with one residential unit, including semi-detached and terraced houses, summer cottages, garages and similar small buildings. There are also the 1995 Building Regulations for all buildings not covered by the small houses regulations. With regard to operational buildings for agricultural production, the owner is only obliged to submit the plans of the building showing the location and design of the building.

If the area is subject to an agreed local plan, the provisions of the local plan on size of plot, location of buildings, scope and design etc. apply instead of the provisions of the Building Regulations.

The Public Roads Act²⁸

According to the Act, public roads are divided into trunk roads, main roads and municipal roads. Trunk roads are usually administered by the Danish Road Directorate, main roads by the county councils²⁹ and municipal roads by the municipal councils. In order to ensure an uninterrupted overview of the road, or road expansion or construction, the Road Board (*Vejbestyrelsen*) may stipulate the building line for relevant properties located along the public road, although this line is normally set in relation to the middle of the road. The mutual distance between building lines on both sides of the road may not exceed 100 m for trunk roads and 50 m for municipal roads. Decisions to order the building line are registered in the Land Register for the affected properties. With regard to areas located in front of the building line, new buildings

²⁶ Act no. 434 /2004 on operation of agricultural land (LDL).

²⁷ The Building Act no. 671/1999 (BL), amended by Act no. 233/2003.

²⁸ Act no. 671/1999 on public roads, amended by Act no. 583/2005.

²⁹ On 1 Jan. 2007 the new municipalities take over most of the main roads; the rest are transferred to the state.

may not be erected, including extensions or reconstruction of a building destroyed by fire, nor may significant conversions be undertaken. Similarly, sports grounds, petrol stations, or other installations of a permanent nature may not be built.

The Environmental Protection Act³⁰

This Act aims at protecting soil and groundwater, and it contains provisions requiring environmental approval before establishing particularly polluting enterprises (enterprises in a special list). The Act also contains various distance requirements from boundaries which must be observed when establishing livestock sheds, manure heaps, fur farms etc., as well as recommended distance requirements for filtration/percolation installations.

The Soil Pollution Act³¹

When the Soil Pollution Act entered into force on 1 January 2000, it was decided that polluted areas should be mapped at two knowledge levels. An area is mapped at *knowledge level 1* if there is actual knowledge about the activities on the area or on other areas which could have been a source of pollution on the area. An area is mapped at *knowledge level 2* if there is a documented basis for a high degree of certainty that there is soil pollution on the area of a nature and concentration that could be dangerous for people and the environment. Data on the area mapped must be registered in the Cadastre and this data is regularly updated. The limits of the polluted area are shown on the Cadastral map for areas mapped at knowledge level 2. Areas mapped at knowledge level 1 or 2 may not change use to residential, childcare institution, playground, recreational area, allotment gardens, summer cottage plot or institution without permission from the county. Information on the mapped area is also recorded in the Land Register.

The screen dump below from the web Cadastre shows registration in the Cadastre of soil pollution at knowledge level 2 on cadastral number 1d Ejstrup By, Skals. A click on the county's mapping number reveals the county's data which gave rise to the registration. In this example it is an old dump site.

³⁰ Act no. 753/2001 on protection of the environment (MBL), amended by Act no. 545/2005.

³¹ Act no. 370/1999 on contaminated soil, amended by Act no. 545/2005.

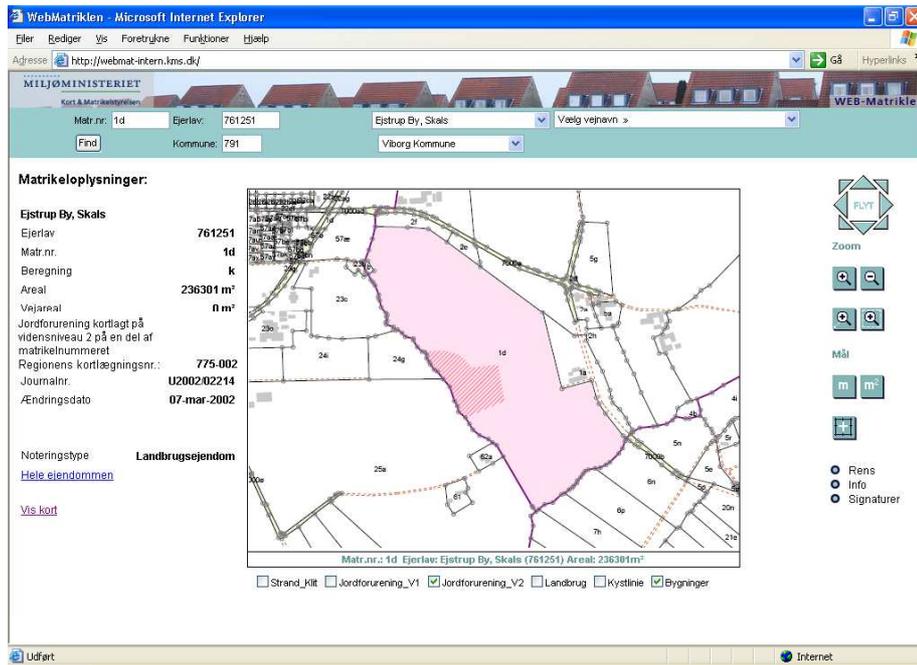


Figure DK-2: Screen dump from the web Cadastre showing registration of soil contamination at knowledge level 2.

Other information in the web Cadastre

The green band contains the *cadastral no. (matrikelnummer)*, *cadastral district code and name (ejerslavskode og –navn)* as well as the *municipality code and name (kommunekode og –navn)*. On the far left is cadastral information about the areas and notes as well as the most recent reference number (*journalnr.*) and date of change (*Ændringsdato*).

Clicking on one or more of the “themes” (*temaer*) shows farming obligated areas or areas subject to beach protection, preservation of the dunes or soil pollution.

A click on *show map (Vis kort)* reveals the cadastral map for the relevant cadastral number. Clicking on *whole property (Hele ejendommen)* reveals the cadastral numbers which together make up a cadastral property, and *show map for whole property (Vis kort for hele ejendommen)* shows the location of all the cadastral numbers which make up the property.

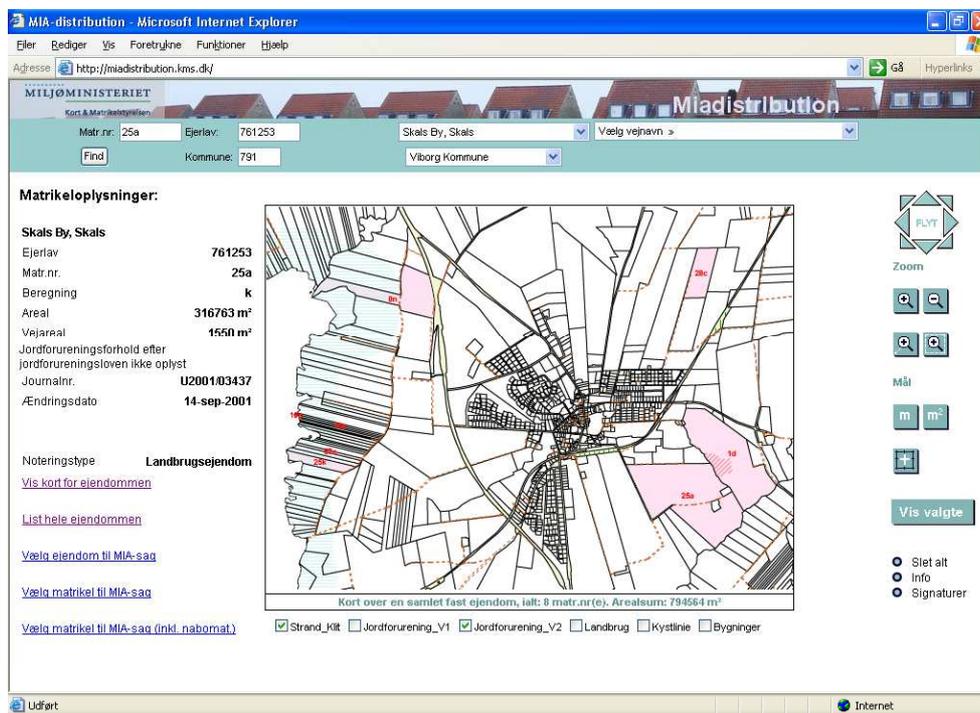


Figure DK-3: Screen dump from the web Cadastre showing a whole agricultural property and beach protection.

The property information in the Cadastre is available via the web Cadastre for users who have made an agreement with the National Survey and Cadastre.

Access to the web Cadastre can be via the cadastral district code (*ejerlav*) and cadastral number (*Matr. nr.*), or via the name of the municipality, then the name of the cadastral district from the options in the relevant municipality, and finally the cadastral number. In many cases it is also possible to use the address of the property to access the cadastral map and then obtain the cadastral number, or select a geographical entrance by clicking on the county, municipality, cadastral district and cadastral no.

2.3 The property

As mentioned in section 2.1, different acts use different concepts of property. This is because of the historical development and differences in the objectives of the different acts and the associated property registers. However, there is a clear and uniform hierarchical cohesion between the different concepts of property. The situation is best described using the table below.

Act	Property concept	Objective of the act	Statutory registration
Subdivision Act The Cadastre	Cadastral property (Landed properties) registered public roads	Basic registration of all landed properties with their areas, location and scope	Parties in a legal relationship must register under sections 14-17 and 21-22
Land Register Act Land Register	Land Register property <ul style="list-style-type: none"> • cadastral property • condominium • building on rented ground 	Registration can safeguard rights in real property against other agreements on the property and against legal proceedings, section 1.	Voluntary Some rights under other legislation must be registered
Valuation Act <ul style="list-style-type: none"> • Common municipal property system (ESR) • State valuation register (SVUR) 	Valuation property <ul style="list-style-type: none"> • one or more cadastral property • condominium • building on rented ground 	Setting of land and property value for real property for use in collection	Authority decision

Figure DK-4: Concepts of property.

2.3.1 Landed properties

Individual plots (areas) each have a cadastral identification made up of the cadastral number and the cadastral district reference. In addition to a name, the individual cadastral district is allocated a seven-digit cadastral district code. There are about 11,000 cadastral districts in Denmark, including market towns, and about 2.3 million cadastral numbers. The cadastral identification (cadastre key) for a plot (area) is therefore unique at national level and independent of municipal divisions. Example: Cadastral no. 23i Skals By, Skals (cadastre key: 23i-0761253).

There are only two types of property in the Cadastre: *cadastral properties*, with one or more cadastral numbers. and *cadastral properties*, which are allocated a litra, but converted to a 7000 number. E.g.: "m" on the map corresponds to: 7000m- 0761253. The latter type is a registered public road. However, there are a few private common roads with a litra.

Types of property	Number
Cadastral properties with cadastral numbers	1,901,183
Total cadastral numbers of "live"	2,314,774
Cadastre properties with litra (7000 numbers)	82,337

Figure DK-5: Types of property in the Cadastre, 18 May 2005

The cadastral properties are registered in the Cadastre with different main notifications. Different statutory requirements apply for properties with main notification codes A, B, L or M, and these must be observed when making changes to the properties or in a sale.

Cadastral properties	Number	Main notification code
Properties comprising one cadastral number without main notification	1,715,856	
Properties comprising several cadastral numbers without agricultural notification.	46,587	S
Workers' residences	2,942	A
Agricultural properties without buildings	6,782	B
Agricultural properties	128,366	L
Family properties (agricultural properties)	137	M
Common plots	513	F
Total	1,901,183	Cad. prop. UL sec 2

Figure DK-7: Number of properties in the Cadastre, 18 May 2005.

Properties with only one cadastral number

As can be seen from the figure above, by far the majority of cadastral properties only have one cadastral number. These are typically one-family houses or other properties used for urban purposes.

Cadastral properties with more cadastral numbers

When a *cadastral property* comprises several cadastral numbers, the property will be registered in the Cadastre as a cadastral property, unless the property is registered as a workers' residence, agricultural property, agricultural property without buildings, or a family property. There is a total of about 185,300 cadastral properties comprising two or more cadastral numbers.

Workers' residences

If a property is registered in the Cadastre and the Land Register as a workers' residence, the residence was erected with a government loan according to previous legislation and it can be subject to an interest of 2 per cent of the value of the land at the latest public valuation. According to the Workers' Rural Residence Act³² properties are subject to a number of restrictions with regard to a duty of residence for the owner, maintenance requirements, bans on subdivision and changes after

³² Act no. 344/1997 on workers' residences in rural areas, sections 18-22.

transfer of part of property etc. The owner can demand to have the registration deleted by repaying outstanding government loans in accordance with the rules in the Act. The owner can also demand cancellation of the ground rent by paying a cancellation sum, which is the cash value of the land after deduction of improvements. At mid 2000 there were about 5,000 properties registered as workers' residences, and by mid 2005 this figure had dropped to less than 3,000.

Agricultural properties

A cadastral property can be recorded in the Cadastre and Land Register as an agricultural property.³³ This means that the property is subject to the rules in the Agricultural Act on acquisition, operation and land conversion etc.

Agricultural property without buildings

According to the Agricultural Act, an agricultural property must have a residential building. However, the Act does allow for the possibility that buildings on an agricultural property, which is owned and operated legally together with another agricultural property with a residential building, in certain circumstances, can be separated or demolished.³⁴ Agricultural properties without a residential building are registered in the Cadastre as being without buildings. Agricultural properties without buildings may only be sold for operation together with an agricultural property with a residential building, and provided the buyer complies with the rules in the Agricultural Act on acquisition.

Family agricultural property

An agricultural property can also be registered in the Cadastre as a family property.³⁵ A family property can be sold to relatives without having to take into consideration the number of agricultural properties owned by the person in question. Registration as a family property must be deleted if the area of the property is increased after 1965.

Common plots

A common plot is an area which was originally owned by a limited group of landowners in a cadastral district. Shares in such common plots were registered in the Cadastre as belonging to the relevant owners' properties (cadastral number). If a share in a common plot belongs to a cadastral number, the share is a part of the cadastral property.³⁶ The Subdivision Act defines a common plot as a cadastral number owned jointly, for which at least one perfect share in the cadastral number is registered in the Cadastre as belonging to

³³ LL sec. 2.

³⁴ LL sec. 10.

³⁵ LL sec. 19.

³⁶ UL secs. 2 and 3.

a cadastral property. Over the years a number of the shares have been separated as free shares or they have been purchased by one or more of the shareholders in the relevant common plot. This means that some common plots have been converted to independent cadastral numbers with one or more owners and the number of common plots in Denmark has fallen. Since Common Farming was abolished in 1781, establishment of new common plots has been banned. For programming and registration reasons, many have suggested phasing out common plots as they now only cover a small group of 616 cadastral numbers, of which 364 are common plots of less than 1 ha.

”Areas for common use”

During cadastral registration in the early 19th century, certain harbour areas, military areas, churchyards and other areas which were not to be taxed were registered in the Cadastre without a cadastral number. The same applied for street areas, as well as gravel, sand and clay quarries which were used jointly by all the owners of land parcels in the cadastral district. Between 1984 and 1994 the National Survey and Cadastre (KMS) allocated cadastral numbers to these common areas and to railway areas so that the areas could be managed in the register in the same way as other cadastral properties. The ownership rights to these areas are often unclear. The subdivision reform of 1991 introduced provisions in section 46 of the Subdivision Act under which the ownership rights to such areas can be assigned to the municipality, unless someone else can prove he has ownership rights in the area. The Cadastre states that the area is “an area previously without cadastral number”.

Properties without cadastral numbers³⁷

Registered public roads are registered in the Cadastre without a cadastral number, as the road area is allocated a litra instead. In digital registration, however, a litra is converted to a 7000 number. For example “a” = 7000a. Registered public roads are not registered in the Land Register. Ownership rights in public road areas belong to the relevant road board. Often ownership is such that the state owns the motorways, the county owns main roads and the municipality owns municipal roads. According to the Public Road Act³⁸, the road authorities must ensure that public road areas are registered in the Cadastre. Property rights cannot be acquired through prescription in public road areas which are registered in the Cadastre.

Areas not registered in the Cadastre

There are still areas which have not been registered in the Cadastre. For example, harbour and port areas, some dammed in areas, as well as areas which have arisen naturally

³⁷ UL sec. 4.

³⁸ Act no. 671/1999 on public roads, part 8.

through changes in the shoreline. There will always be new land areas which arise naturally. In recent years some of the larger dammed in areas have been registered in the Cadastre. For example the fords at Vendsyssel, which cover several hundred hectares and several cadastral districts. These are typically areas belonging to the state. In the municipalities of Copenhagen and Frederiksberg, most of the public and private road areas are not registered in the Cadastre.

2.3.2 Other real properties

The term *a Land Register property* is used in both the Land Register Act and the Land Register itself, and as far as landed property is concerned, this term is identical with the term *a cadastral property* in the Subdivision Act, which is registered in the Cadastre. The individual landed properties in the Land Register are therefore uniquely defined with cadastral number and cadastral district, just as in the Cadastre. There are about 2.1 million Land Register properties in the Land Register, including condominiums and buildings on rented ground.

For routine use, access to the Land Register is organised on the basis of the fact that registration takes place in Denmark's 82 judicial districts. This means that, when looking something up in the electronic Land Register, it is important to know in which judicial district the property is located, and the abbreviation used for the cadastral district.

For example: in order to find the property with cadastral no. 6b Skals By, Skals, you need to know that the property is located in Viborg judicial district (no. 69) and that the abbreviation for the cadastral district reference is SKA. After this you can see the standard data on the property, and, as far as cadastral data is concerned, this is identical with the information in the Cadastre.

Buildings on rented ground

The Land Register Act contains a special regulation for buildings which belong to someone other than the owner of the land. These *buildings on rented ground* are treated as Land Register property.³⁹ The same applies for buildings erected on offshore marine territory such as wind turbines.

Condominiums

For Land Register purposes, a condominium is regarded as a Land Register property. The Condominium Act⁴⁰ defines a condominium as a condominium owned separately. Condominiums can only be established in properties which in their entirety are divided into condominiums. Each freehold property is regarded as an independent real property which can

³⁹ TL section 19(1).

⁴⁰ Cons Act no. 53/2006 on condominiums.

be sold and mortgaged independently of other condominiums in the property. The owner of a condominium, in conjunction with the other condominium owners in the property, has property rights in the land, common areas and fittings/accessories.

Division into condominiums is most common for buildings split into two or more condominiums, but it may also apply for terraces of houses or semi-detached houses. Residential condominiums must meet a number of quality requirements for new construction. Shops, offices, storage rooms and other rooms can be condominiums. Condominiums are not registered in the Cadastre and only the Land Register and the municipal property register (*ESR*) contain information on whether properties are divided into condominiums.

Division into condominiums is subsidiary to subdivision. Therefore division of a property into freehold properties can only take place if a licensed land surveyor certifies that subdivision is not possible. Parcelling out the land through subdivision is only possible in vertical sections.

Regulations on registering rights in and changes to condominiums in the Land Register are laid down in the Statutory Order on registration in the Land Register.⁴¹ Division of the whole property into condominiums must be registered no later than on registration of the first title deed of a condominium. The division will appear on an inventory of the condominiums, with their location and identification references, as well as area and allocation percentage for utility charges etc. The inventory will also have a map of each individual condominium with the number of the condominium, the cadastral identification of the cadastral property as well as the access address of the condominium.

When a document regarding a building on rented ground or a condominium is registered in the Land Register, the property is identified through the cadastral identification (cadastral number and cadastral district) for the plot as well as a number for the building on rented ground or the number for the individual condominium and the address of the condominium. There are no statutory regulations for identification of buildings on rented ground.

The reference for a condominium in the Land Register is therefore the cadastral identification, followed by the number of the condominium.

E.g.: Cadastral no. 415 Nørrevold Kvarter, condominium no. 7.

Owners of condominiums in the "parent property" must be members of the owners' association, which owns the land and the parts of the building which are not owned by an individual.

⁴¹ Stat. Order no. 1024/1993 on registration in the Land Register, secs. 26-28.

The activities of the owners' association are regulated through its articles of association, which are adopted by the owners' association and registered in the Land Register ahead of the mortgage debt in the individual condominiums. The owners' association is responsible for maintenance of the roof and other common parts of the building, installations etc., as well as for use and possible renting out of common areas for parking etc. The costs of maintenance of the roof etc. as well as costs related to the land, sewers, insurance, operation etc are paid by the owners' association and the individual owner pays a monthly amount calculated on the basis of an allocation percentage. The monthly amount is typically between DKK 1000 and 2000, depending on the size and condition of the condominium.

There are no three-dimensional limits in the concept of real property in Denmark.

2.4 Valuation properties

According to the Valuation Act⁴² ordinary valuation of real property in Denmark takes place every other year. Freehold residential properties are valued in odd years, and other properties in even years. However, a revaluation is carried out in the year after, if the property is significantly changed, for example through subdivision or conversion.

The property valuation is based on the concepts of property in the Subdivision Act and the Land Register Act. According to section 8 of the Valuation Act, areas which comprise a cadastral property have to be valued together. Furthermore, areas which belong to the same owner and comprise an agricultural operational unit have to be valued as one valuation property. However, agricultural properties which are operated together must be assessed individually.

Therefore, a valuation property can be made up of one or more cadastral properties. A share or a physical part of a cadastral property cannot be valued independently.

In the common municipal property data system, a valuation property is identified by a property number (ESR no.), in which the first three digits indicate the municipality of the property and the final digits are the number of the property within the municipality; e.g. 775 0012064 (an agricultural property in the municipality of Møldrup).

There are agreements with the municipalities that the licensed land surveyor in cadastral cases must give the number of the property for each of the new cadastral properties arising from subdivision or entry in the cadastre and for properties arising from amalgamation.⁴³ After this, information on the property numbers allocated must be stated

⁴² Act no. 740/2002 on valuation of real property in Denmark, sec. 1.

⁴³ Stat. Order no. 291/2005 on cadastral work, sect. 42(3), no. 4.

in the letter of approval of cadastral changes which is sent by the National Survey and Cadastre to the municipality and the Land Registry.

Condominiums are regarded as independent real properties when a notification that a property has been divided into condominiums is submitted for registration in the Land Register. E.g. 101 406750 (a condominium in the municipality of Copenhagen).

According to section 11 of the Valuation Act, buildings on rented ground, and the associated land must be valued separately and the property value must take account of the legal (possibly contractual) relationship between the parties.

2.5 Boundaries of landed properties

2.5.1 Marking of boundaries

In by far the majority of cases, the boundary of a property is physically visible and accords with the boundary registered in the Cadastre. New boundaries, established after 1950, have been fixed by measurement. Older boundaries may also have been fixed by measurement, for example boundaries to registered public roads in rural areas which are registered in the Cadastre, and boundaries in urban areas. In other cases, the Cadastre only contains information on the location of the boundary as it appears on the cadastral map.

If there is doubt about the location of a boundary, the legal boundary must be fixed by the licensed land surveyor. The boundary of a property may be changed through prescriptive acquisition. Therefore, when marking the boundary, the licensed land surveyor has to see whether the property boundary on site agrees with the information in the Cadastre. If there is a discrepancy or doubt about the location of the boundary, the surveyor must allow the parties to make a statement before marking the boundary. After this, the surveyor must decide whether the boundary can be fixed in accordance with the Cadastre or whether the matter has to be settled in accordance with the rules on rectification of boundaries, transfer of part of property or technical changes. The latter may apply if an error is ascertained in the cadastral information on the boundary. If the matter relates to an older boundary and the parties disagree on its location, it may be necessary for the party wanting to set the boundary to ask the surveyor to hold legal determination of boundary, see below. Once an existing boundary has been marked, the surveyor must notify the neighbouring owners about the marking.⁴⁴

⁴⁴ Stat. Order no. 291/2005 on cadastral work, sec. 4(3).

When new boundaries are established through subdivision or transfer of part of property, the new boundaries must be marked in the field using approved boundary markers and then measured relative to fixed points, houses or other fixed objects near the boundary so that the boundary can be reset if the boundary markers disappear. If the matter relates to a property which is to be built on or used for industrial or sports purposes etc., the existing boundary around the property must also be marked and measured and the size of the parcel must be calculated in accordance with the measurements.⁴⁵

Boundary markers and permanent markers linked to the measurement must not be moved, removed or damaged. Anyone violating these provisions can be liable to a fine under section 48 of the Subdivision Act.

Property boundaries up to the sea, a lake or watercourse are labile. Usually, a property's boundary towards the sea will be the highest daily high-tide line. Lakes and natural watercourses usually belong to the owner of the bank in accordance with the principle of proximity. If the lake is registered in the Cadastre and owned separately, the registered boundary of the lake will form the boundary to neighbouring properties, and a change in this boundary will take place according to the ordinary rules for changes in property boundaries.

2.5.2 Legal determination of boundaries

Anyone with a legal interest in ascertaining the correct location of a property boundary can ask a licensed land surveyor to hold a legal determination of boundary. The person requesting a legal determination of boundary is liable for payment of the costs. The municipal fences tribunal may, however, order the counterparty to contribute to the costs.

Legal determination of boundary⁴⁶ is prepared by the licensed land surveyor, who, with at least 14 days' notice, will summons all of the relevant property owners to a local inquiry meeting. No later than on the date of the summons, the surveyor must inform the parties that they can demand that municipal fences tribunal or other relevant persons with local knowledge about the boundary, e.g. previous owners, take part in the inquiry.

At the commencement of the legal determination of boundary, the surveyor must brief the parties about the rules for legal determination of boundary, about how the costs are calculated, the possibility that these will be split, and the possibility that the state will pay a party's costs.

⁴⁵ Stat. Order no. 291/2005 on cadastral work, sec. 3 and secs. 27-29.

⁴⁶ Stat. Order no. 82/2006 on boundary enquiries and guidelines no. 495/2003.

The State County Prefect⁴⁷ may decide that the costs incurred by an owner in legal determination of boundary will be paid wholly or partly by the state, if

- 1) it is deemed reasonable to hold the legal determination of boundary or the case has been imposed on the applicant without reasonable grounds, and
- 2) the applicant cannot pay the costs without significant hardship.

Decisions by the state county can be appealed to the National Survey and Cadastre.

When the surveyor finds that the boundary issue has been satisfactorily clarified at the local inquiry meeting, the surveyor must try to get the parties to agree on the location of the boundary. If agreement is reached, the surveyor will set the boundary, and this will be binding on parties once they have approved it in writing.

If the parties do not reach agreement, on the basis of the information available, the surveyor will set a preliminary boundary and draw up a statement on the legal determination of boundary. This statement must contain certain information, including information about the surveyor's investigations, the claims by the parties, the surveyor's reasoning for his decision, and a description of the marking of boundary.

As soon as possible after this, the surveyor must send the statement on the boundary, with a map annex and an account of the costs of the legal determination of boundary to the parties. The licensed land surveyor must also inform the parties that the boundary set is binding for the owners of the properties affected, if none of them bring the case before the district court within eight weeks, with a claim that the boundary lies in a different position.

If the matter is brought before the court, the court will also decide on the division of the costs of the legal determination of boundary on the basis of the relevant claims. If the matter is not brought before the court, the issue of who should pay the costs may be brought before the municipal fences tribunal to decide.

Therefore, in a legal determination of boundary the licensed land surveyor will make a sort of decision in the first instance. About 50 cases of legal determination of boundary are held each year, and only about five of these are brought before the courts.

The costs to the state of applications to pay the costs of legal determinations of boundary are between DKK 100,000 and 250,000 per year.

⁴⁷ After 1.1.2007 decisions are by the local state administration.

2.6 Buildings and other items belonging to the property

The real property is the land area and the items with fixed and permanent connection to the area, e.g. buildings, technical installations, trees etc. If a building is erected by someone other than the owner of the land, the building in itself will represent a real property. If the owner of the land acquires the building later, the land and the building will become one real property, and it will not be possible to separate the building again.⁴⁸ In principle the ownership rights also cover everything above and below the land surface. However, the rights of the owner are restricted in both cases in order to account for aspects of both social and neighbour law.

The owner can exploit deposits in the soil to a limited extent for his own use or he may grant others similar exploitation rights. On the other hand, commercial extraction of raw material and mineral deposits or of subsurface groundwater is only permitted if a license is granted. Building work or other construction on the property may not cause lowering of the groundwater, tremors or other nuisance for neighbours. The ownership rights of the owner extend as far down into the soil as it is reasonable to believe the owner will be able to exploit. Hunting and fishing rights belong to the ownership rights.

2.7 Rights in properties

2.7.1 Introduction

According to section 1 of the Land Register Act, rights in real property must be registered in the Land Register to protect them against other agreements on the property and against legal proceedings. Some rights have the same protection without registration, but such rights must have express statutory authority. Private rights of way, as mentioned in section 2.7.3 are an example of such an exemption. Leases are exempted by section 3 of the Land Register Act, if they are established with an ordinary term. Rights of use in houses or rooms are regulated by the Rent Act.

State and municipal taxes as well as fire-protection charges are exempted by section 4 of the Land Register Act, and services related to supply of water, electricity and heat etc. are exempted by section 5.

According to section 10(1) of the Land Register Act, in order to be registered a document must confirm, establish, change or cancel one or more rights in the relevant real

⁴⁸ TL, sec. 38.

property. Documents which meet this requirement include those on transfer of part of property, as mentioned in section 2.8, mortgage rights, as mentioned in section 2.7.5, and easements, mentioned in section 2.7.2-4. Finally, rights of use in relation to section 16 of the Subdivision Act are mentioned in section 2.7.6.

2.7.2 Easements

Easements contain a number of different rights which restrict the title holder's right to physically have his real property at his disposal. The interim report no. 1461/2005 of the Land Register committee categorises easements and encumbrances as in the table below. The term "encumbrance" is used as a generic term to cover easements and other rights which follow the property from owner to owner.

Schematic overview of easements and encumbrances:

		Private law	Public law
Easements	Positive	A	B
	Negative	C	D
Other encum.		E	F

Figure DK-8: Land Register Committee's report no. 1461/2005, page 100.

"Positive easements" entitle the rights holder to exercise restricted rights in a property, e.g. the right of way on a road or path on the property. "Appropriation easements" are a special group of positive easements which entitle the rights holder to appropriate benefits from the servient property, for example gravel, chalk, peat or grass. Appropriation easements differ from encumbrances on the land because the rights holder must take initiative himself to exercise his rights. For encumbrances on the land the person subject to the obligation must take initiative to disburse the benefits.

"Negative easements" entitle the rights holder to demand that the servient property be kept in a specific condition, for example the right to demand that trees and bushes be pruned so that there is an unobstructed view, or that areas must not be built on, etc.

Furthermore, there is a distinction between personal easements, which grant rights to a specific person, and actual easements, which grant rights to whoever is the permanent owner or user of a property at any specific time.

Rights linked to persons can be provisions that the rights holder may have access to the property or gather firewood from the property for as long as the person lives. They may also grant the rights holder a registered pre-emptive right to purchase the property or the right to quarry gravel on the property. Hunting and fishing rights are considered personal "positive" easements.

When cables are to be laid in the ground or hung over a real property, this will normally require the owner's signature on a declaration, which is then registered on the property in the Land Register. If it is not possible to reach an agreement on this with the landowner, an expropriation order will be necessary.

A special type of "association of landowners" is an *association of owners in properties with condominiums*. This type of owners' association takes care of the owners' joint interests and maintenance of the common parts of the property, and must be established in accordance with the Condominiums Act. The articles of association of the owners' association are registered in advance of mortgage debt in the individual condominiums.

2.7.3 Private rights of way

According to the Private Common Roads Act⁴⁹, a private common road is a road which serves as a thoroughfare for another property than the property the road runs over. A private common road is usually drawn on the cadastral map as part of the cadastral number over which the road runs.

Private rights of way need not be registered in the Land Register for protection against third parties. The Act on Private Rights of Way,⁵⁰ states that when a road is the only or the most important access to a property, and the road is indicated on the cadastral map, and the contents of the map accord in all important aspects with the actual conditions in the field, the right to use the road may not be restricted by later acquirers of rights in the servient property, even if the road has not been registered in the Land Register.

The road may, however, be registered in the Land Register in exceptional circumstances. For example if there is a wish to use another access road than the access road shown on the cadastral map.

According to section 18 of the Subdivision Act, subdivision, entry in the Cadastre, or transfer of part of property may not take place if this will result in a cadastral property or a

⁴⁹ Act no. 670/1999 on private common roads, as amended by Act no. 172/2001.

⁵⁰ Act no. 143/1938 on private rights of way, sec. 1.

separate area on such a property which does not have access to a public road. If access to a public road is only possible using a private common road, the road must be registered on the cadastral map

Provisions on recording private common roads on the cadastral map are laid down in part 3 of the Statutory Order on cadastral work.⁵¹ If a private common road is recorded on the cadastral map, this means that there is a right of way.

Before a private road can be included on the cadastral map, the owner of the property on which the road is recorded must make a declaration of approval of the course of the road, or other documentation is required that the road is an access road for another property.

Other documentation could be a judgement, expropriation, or registered contract that the right of way for another property attaches to the road. There may be a declaration from the municipal council that the road has been identified for future use as a private common road for the area according to section 23(2) and (3) of the Private Roads Act or finally set in a local plan and that the road has been laid.

If access to public road is only possible using an existing private common road which has been recorded on the cadastral map, there must be

- 1) a declaration recognising the right of way from the owner of the property on which the road runs, or
- 2) a declaration from the owner of the property from which subdivision or transfer of part of property has taken place that, to the best of his knowledge there is a right of way for the area, and a declaration from a licensed land surveyor that he has no reason to doubt that the area has this right of way, or
- 3) some other documentation for the right of way, see above.

The licensed land surveyor has specific instructions that the declaration under no. 2 should only be made in circumstances where the surveyor has no doubt that the area has a right of way, taking into account the nature and scope of the traffic. Application of this provision does not actually determine the existence of the right of way, but it makes the existence of the right of way likely. If the right of way is later questioned, it must be determined by the courts. The licensed land surveyor accepts a significant responsibility when issuing the declaration under no. 2. Therefore this approach is especially appropriate when the matter involves an existing private road which runs over a large number of properties.

⁵¹ Stat. Order no. 291/2005 on cadastral work.

In a similar manner, the Statutory Order on cadastral work lays down rules for restricting, rerouting and deleting private common roads on the cadastral map. The rules on deleting roads from the cadastral map take into consideration that the special protection of rights under the Rights of Way Act must not be disregarded. Therefore, the principal rule is that a private road which, on the cadastral map is the only access to a property or a separate area cannot be deleted from the cadastral map unless another access road is recorded at the same time.

A road which has been closed in the field during a period of prescription, or which has existed in the field with its current breadth and location during a period of prescription, may be deleted or changed on the cadastral map on the basis of a declaration from the licensed land surveyor as well as a declaration that no document has been registered in the Land Register on rights of way on the road and that the road is not the only access to a property or part of a property.

2.7.4 Statutory easements and restrictions

A number of acts contain provisions that the statutory restrictions imposed on real property must be registered in the Land Register on the property affected by the regulation. In many cases, the legal effect of the regulation commenced before registration in the Land Register, for example in connection with publication in a local newspaper of specific plans or decisions, or when the owner is notified by letter. The purpose of registration is therefore to provide information about the restrictions for others.

A local plan involves restrictions on the individual properties covered by the plan. Section 18 of the Planning Act states that conditions which conflict with the local plan must not be established once the plan has been announced to the public. Section 31(2)⁵² of the Planning Act states that local plans must be registered on the properties affected in the Land Register in order to provide information about the local plan for the public, enterprises and public authorities.

A local plan can also contain provisions that the landowners in the local plan area must also be members of a landowners' association. Such associations are commonly established; typically to take responsibility for maintenance of roads and other common areas.

According to section 4 of the Act on Public Roads, the Road Board can impose building lines on the property to account for road expansion or to secure completion of new roads or road extensions. The Road Board can also lay down provisions on

⁵² The Minister for the Environment is to stipulate the date of repeal of section 31(2), cf. Act no. 539/2006

restricting access to public roads. Decisions by the Road Board in this regard must be announced to the public and registered on the properties affected in the Land Register. Provisions on building lines and restrictions of access must, however, be respected as soon as they are announced to the public.

Listing under the Protection of Nature Act is a third example of a restriction which must be announced to the public and registered on the property affected in the Land Register, and where registration serves as information for the public, enterprises and public authorities.

Finally, there are a number of other restrictions which, according to the legislation must be registered in the Cadastre and noted in the Land Register. These include

- farming obligation under sections 4 and 5 of the Agricultural Act,
- protected forest under sections 3 and 41 of the Forest Act,
- preservation of dunes and protected beach under sections 8 and 15 of the Protection of Nature Act,
- soil pollution at knowledge levels 1 and 2 under section 14 of the Soil Pollution Act, and
- subsidies granted after storm damage under section 19 of the Act on storm flooding and storm falls.

Registration in the Cadastre establishes the basis for administration of the above acts, as registration of the information in both the cadastral register and the cadastral map enables geographical presentation of the data. Recording in the Land Register with the cadastral standard data is to provide information for the public, enterprises and public authorities.

Under section 2⁵³ of the Land Register Act, rules can be laid down dictating that statutory rights which appear in an easily accessible public register can no longer be registered in the Land Register. Such rules could be set when the new e-registration system comes online and an internet portal is established on which information from different property registers can be collated and presented to users. This is expected in 2008.

2.7.5 Mortgage rights

Owners of by far the majority of Danish real properties will have taken out a loan on the property, e.g. in connection with purchase of the property, modernisation, or in connection with purchase of a car or other consumer goods.

⁵³ Act no. 539/2006, in which the Minister for Justice stipulates the date of entry into force of the Act.

In Denmark, mortgage credit institutions provide loans secured by registered mortgages on real property in the Land Register. The borrower/owner of the property issues a mortgage to the mortgage credit institution, which is registered on the property in the Land Register. In practice, the mortgage credit institution draws up the mortgage deed in accordance with relevant requirements on format, and the owner signs the mortgage deed with a witness before registration in the Land Register.

In order to finance the loan, the mortgage credit institution issues bonds with the same interest and repayment profile as the loan. The advantage of a mortgage credit loan compared to a private loan for the borrower is that the bonds can be sold on the securities market so that the effective interest rate is lower, and the interest rate is fixed. The person who buys the bonds can sell them again on the securities market without affecting the underlying loan.

A mortgage credit loan is the cheapest source of finance and therefore the most important for new building and trading of real property.

In order to take out a mortgage credit loan, the owner of the real property will often approach a mortgage credit institution and ask for a quotation for a specific type of loan and a specific amount. The owner will usually be referred to the mortgage credit institution by his bank, which will recommend its own mortgage credit institution. With regard to loans taken out to purchase a real property, the estate agent or the buyer's lawyer or bank may refer to the mortgage credit institution and administrate application for the loan.

An application for a loan offer must include information about the owner's financial situation and about the property on which the loan is to be secured. When processing the application, the mortgage credit institution will inspect the property and, if the application is approved, the institution will send a loan offer stating the amount of the loan (principal), the loan proceeds, term and annual interest, as well as costs of establishing the loan and registering it in the Land Register. The final amount will only be revealed once the sales price of the bonds has been set.

After this, the owner of the property signs the mortgage deed with a witness and the accompanying form for disbursement of the loan. At the same time it is agreed whether the loan is to be hedged so that the rate applying at the time the contract was made determines the precise amount of the loan, proceeds, and gross repayments over of the term of the loan.

As mentioned above, the owner's bank will often manage applications for new loans and repayment/conversion of existing loans.

An example:

1. A receives a quotation for a loan and a mortgage deed on a bond loan of DKK 800,000 at 5 per cent annual interest and a term of 30 years.
2. A signs the mortgage deed and contracts that the bonds are to be sold when the mortgage deed has been registered in the Land Register and the loan proceeds are to be paid to A's bank.
3. A does not opt to hedge the loan.
4. The mortgage credit institution issues bonds for a total of DKK 800,000 in series 03D, interest 5%, term 2035, and securities ID 0975346.
5. The mortgage credit institution sells the bonds on the Copenhagen Stock Exchange two days prior to payment of the loan. The rate at which the loan is paid is based on the rate obtained on the sale or the average price (all trades) 5.00 pm. On the day in question the rate was 96.2500 and the value of the loan was therefore DKK 770,000.

Costs of registration in the Land Register etc. amount to:

	DKK
Tax, 1.5% x DKK 800,000	12,000
Registration fee	1,400
Loan charges	2,200
Total	15,600

The amount paid is: DKK 770,000 – 15,600 = DKK 754,400.

Over the next 30 years, A has to pay about DKK13,000 per quarter. In the first year, interest will amount to about DKK10,000 and repayment of principal about DKK 3,000. In the final year the amounts are reversed. The tax saving from deducting interest is about 33 %, and the actual cost in the first year is therefore about DKK 10,000 per quarter.

The owner has received DKK 754,400 and has to repay a debt of DKK 800,000, of which DKK 30,000 is the loss on the sale of the bonds. The borrower agrees to pay this loss, which expresses the difference between the nominal interest rate of 5 % and the market interest rate at the relevant point in time. A mortgage credit loan is more advantageous for the borrower than a private mortgage deed because the bonds are very liquid and can be sold on the securities exchange, providing the borrower with a lower effective rate of interest on his loan.

The buyer of the bonds accepts the lower effective interest rate, partly because the bonds are liquid and can easily be sold again, but also because the bonds are more secure than private

mortgage deeds. Not only the individual borrower is liable for the payments on the bond, but the mortgage credit institution is also liable to pay the purchaser of the bond.

The interest and principal repayments made by the borrower on his mortgage credit loan correspond precisely to the interest and principal the mortgage credit institution has to pay to the bond owners. Interest and repayments are made regularly to the bond owners by drawing bonds at par every settlement date so that these are redeemed.

In addition to this the mortgage credit institution demands a charge from the borrower. This is to cover the institution's administration costs and contributions to reserve funds, i.e. possible losses on other borrowers.⁵⁴

Interest on a fixed interest loan is fixed throughout the term of the loan. If the market rate falls, the borrower can decide to convert the loan to a lower rate of interest and thus have a lower monthly payment. If the market rate rises, the borrower can decide to convert the loan to a higher interest rate and thereby reduce the amount of the debt remaining.

There are many different types of mortgage credit loan. In recent years it has been possible to take out "*flexlån*", whereby the interest rate is set in December for one or several years at a time, and/or "*pauselån*", whereby repayments of the principal are not made for an agreed period. The latest type of loan is called "*rentemax lån*", and these were available in 2005 at a flexible interest rate of about 3%, which was slightly more than the market rate, with a ceiling for rises in interest rates to 5%.

It is very common for the seller to issue a "seller's mortgage deed", to pay for the difference between the cash payment and the amount it was possible to take out as a mortgage credit loan.

Ordinary consumer loans with a shorter repayment term are usually taken out with the bank without registration in the real property. The owner may also opt to set up a "owner's mortgage deed", which is registered in the Land Register on the property and can then be given to the bank as collateral for the bank loan. Once the bank loan has been repaid, the owner's mortgage deed can be used as collateral for a new bank loan.

The priority ranking is usually: mortgage deed, seller's mortgage deed and finally owner's mortgage deed.

⁵⁴ Finn Tråff: *Køb og salg af fast ejendom*, 3rd edition, 2005, page 261.

Mortgage deeds must be issued by the owner of the property as stated in the Land Register, and endorsed by two witnesses or a lawyer who expressly confirm the authenticity of the signature, correctness of the date, and authority of the issuer. The original title deeds or other authority of title as well as the fire insurance policy must be enclosed for registration in the Land Register in order to further reduce any risk of fraud. Liability for the mortgage rests on the entire real property.

In contrast to title deeds, mortgage deeds must be established using a specific standard form, e.g. mortgage deed form A for private mortgages and mortgage deed for B for mortgage deeds. Several mortgage rights can be registered in a property, but each mortgage deed must state the senior rights.

When a mortgage deed is registered in a real property, the Land Register Act⁵⁵ states that it is not necessary to register assignment or other transfer of the mortgage deed. However, it is important to note that in principle mortgage loans become due on the date of change of owner. Therefore, the issue of whether the buyer can take over both new and existing mortgage loans in the property always relies on the approval of the mortgage credit institution. Seller's mortgage deeds can be taken over by the buyer automatically unless something else is stipulated in the mortgage deed. Taxes and duties etc. as well as insurance contributions for state-approved fire insurance for the real property apply to all parties without registration.

When purchasing a real property, it is normal to expect that 80 % of the purchase price can be financed from a mortgage loan. As the loan is repaid, equity will arise in the property and this will facilitate the opportunity to take out new loans. In Denmark, many older people have large equity in their real property. They can take out mortgage loans for consumption so that they can enjoy the equity themselves. Therefore it is possible to raise extra money to supplement a pension.

A mortgage credit institution or association is a union of property owners looking for loans who, with joint and several liability, seek to obtain larger, cheaper and higher ranking loans than they could obtain individually. The concept originates from Prussia (the "*Landschaften*" established in 1770 by Frederick the Great) and was realised in Denmark in about 1850.⁵⁶

⁵⁵ The regulations were changed by the introduction of e-registration, cf. Act no. 539/2006.

⁵⁶ Hagerups Illustrerede Konversationsleksikon, 6th volume, 1951, page 364.

Each borrower had an interest in ensuring that the other borrowers kept to their obligations. The borrowers elected a committee of representatives for the association and these representatives assessed the value of the property and set the maximum amount of the loan. They also had a certain interest in the property not losing value through lack of maintenance. The rules on this are laid down in the 1851 Mortgage Credit Institution Act (*Kreditforeningsloven*) with later amendments. In the 1970s a process began whereby the mortgage credit institutions were gradually integrated into the ordinary banking system and a greater variation in the types of loan on offer arose.

2.7.6 Rights of use

The distinction between rights of use and easements can be blurred and depends on what the rights involve. The Subdivision Act in practice emphasises that the relevant rights exclude the owner of the property from having charge over it. If this is the case, the rights are treated as rights of use which are subject to the subdivision requirements in the Subdivision Act. However, if the owner retains a certain degree of charge over the property, the rights are treated as an easement under the Subdivision Act.⁵⁷

According to section 16(1) of the Subdivision Act, rights of use may not be established in an area for a period of more than 30 years, if the area comprises part of a cadastral property, or ten years if the area comprises part of a property not registered in the Cadastre. If use of the area is to be permitted for a longer period, the area must be subdivided.

However, in accordance with section 16(2) of the Subdivision Act, the Statutory Order on the subdivision requirement⁵⁸ lays down exemptions for areas of insignificant size. Therefore, rights of use can be established for unlimited time in land areas of no more than 5 m², if they involve the right to erect a technical installation on the land, e.g. a radio mast, antennae, transformer, well etc. The right to erect a mast which is part of a line is also exempt from the subdivision requirement.

2.7.7 Potential rights

In areas covered by a local plan, land use may not be changed if this conflicts with the provisions of the local plan. The use hitherto, e.g. agriculture, may continue, but if the owner wants to change the land use, perhaps in connection with a sale, the change in the land use must be in accordance with the local plan.

⁵⁷ Peter Mortensen: *Tinglysning*, 2nd edition, 1997, page 30.

⁵⁸ Stat. Order no. 107/1991.

This means that if a local plan assigns an area to housing, the area cannot be used to build a factory or other industrial plant.

The municipal council can ban establishment of conditions on a property that can be prevented by a local plan. The municipal council can expropriate areas covered by a local plan in order to realise the plan. Finally, the owner of an area which is designated for public purposes in a local plan may require that the municipal council take over the area or the whole property because of the provisions in the local plan, including for example that the area is transferred to an urban zone and cannot be exploited economically.

Pre-emption right for the state can be registered in the Land Register on an area without farming obligation in order to secure that the area, when it is sold, becomes a part of an agricultural property, Areas in the rural zone without farming obligation are called “free land”.

2.8 Conveyance of real property

Conveyance of real property can take place with a contract to buy. It can also be through inheritance, prescriptive acquisition, expropriation, or reallocation of land. In some cases, conveyance of real property requires authorisation or other documentation that the relevant rules of acquisition, e.g. the Agricultural Act, have been complied with. The various forms of conveyance are discussed in section 3.1.

The conveyance can relate to an entire property, a share, or a physical part of a property. A physical part of a property can be acquired with a view to establishment of a new independent property or else transfer of part to another property already owned by the buyer. For transfers of a physical part of a property, the transfer document cannot be registered in the Land Register before the change in the property boundaries has been registered in the Cadastre, see section 2.9.

There are special regulations for conveyances of freehold residences. The Act on Trade in Real Property (*lov om omsætning af fast ejendom*), which entered into force on 1 January 1994, introduced requirements for the property agents and on the information to be submitted or which must be available in the trade in freehold residences in order to protect the consumer. Two years later, consumer protection was further strengthened in the Consumer Protection Act (*lov om forbrugerbeskyttelse*)⁵⁹ which

⁵⁹ Act no. 391/1995 on consumer protection in the acquisition of real property etc., amended by Act no. 406/2003.

introduced rules on the right to annul an agreement, which the buyer can argue before a time limit stipulated in the Act. These special rules do not apply for trade in commercial properties, including agricultural properties.

A person wishing to sell his property will commonly ask an estate agent to assess the property and estimate what the property is worth. According to the Act on Trade in Real Property, the property must be offered at a cash price, i.e. the amount to be paid for the property without taking loans into consideration. In the sales material, the estate agent will present different financing suggestions, possibly including that the buyer takes over existing mortgage credit loans in the property.

It is also common that a potential buyer will approach his own bank to help ascertain the size of a possible financial commitment, taking into account the buyer's financial situation and income as well as mortgage loan potentials etc. The buyer may also talk with his bank about how the purchase can be financed and the bank will perhaps recommend that the buyer apply for a loan from the bank's mortgage credit institution and agree to carry out the activities necessary to complete the application and transaction.

Ordinary financing of a real property may comprise the following three parts:

- Cash deposit (about 10%)
- Mortgage credit loan (about 80%)
- Seller's mortgage deed (about 10%)

The buyer must usually raise the cash deposit, e.g. from savings or a bank loan. The mortgage credit loan may be an existing loan taken out by the previous owner, or a change-of-owner loan taken out in connection with the sale of the property. It may also be a new mortgage credit loan taken out by the buyer in connection with the purchase. The remaining amount can normally be financed by the buyer issuing a private mortgage deed to the seller to be repaid over 10-15 years.

Conveyance of real property can be divided into phases, and in *the first phase* the buyer and the seller make preparations as mentioned above. Next, the buyer will research the market in newspapers and on the internet, make appointments with relevant estate agents to look at properties etc. and find a specific property on which the buyer and the seller want to make a purchase agreement.

In the second phase, the buyer signs a purchase agreement. Usually a very comprehensive standard purchase agreement is used. Under the purchase agreement the parties agree on the terms for the conveyance, including the date the buyer can take over the property and terms for payment of the purchase sum. By no later than the date of the conveyance the purchase sum must be deposited in the seller's bank and the parties will usually agree that the purchase sum is released to the seller once the new title deed have been registered without remarks.

The purchase agreement usually contains reservations regarding approval by a lawyer and that the buyer can be approved to take over the existing mortgage credit loans or to take out new loans as recommended, or corresponding loans in another mortgage credit institution. Other terms may be agreed which must be met before the transaction can be realised. A reservation by a lawyer means that the buyer can withdraw from the agreement, if the buyer's lawyer cannot approve the whole transaction. Under the Consumer Protection Act, the buyer can freely withdraw from the agreement for as long as it remains unsigned by the seller.

Once the agreed reservations have been fulfilled, the purchase agreement becomes binding on the buyer in accordance with its contents. After this the cash deposit is deposited with the estate agent and/or the seller's bank, after which the estate agent will present the purchase agreement for approval and signature by the seller.

At the same time as the buyer signs the purchase agreement, he must also sign a declaration of right to annul an agreement as, in a separate document, the estate agent must tell the buyer about the right to annul in accordance with section 8 of the Consumer Protection Act.

The right to annul an agreement can be applied, if, within six working days of the date of the purchase agreement between the buyer and the seller, the buyer notifies the seller in writing that he wants to withdraw from the agreement. The right to annul the agreement also requires that, before expiry of the six-day limit mentioned above, the buyer pays the seller compensation of one per cent of the agreed purchase sum.

After expiry of the six-day limit, the relationship between the buyer and seller is finally clarified. In order for the conveyance to be registered in the Land Register, a title deed must be prepared. A title deed is any document which conveys ownership right in a Land Register property or in part of such a property. The title deed must be issued by the person who owns the property according to the Land Register.

The title deed is normally drawn up by a lawyer, but they may be prepared by others. The title deed must be prepared in accordance with formal requirements laid down in or pursuant to the Land Register Act, which also states that the issuer's signature must be confirmed by two witnesses or a lawyer.⁶⁰

There is no statutory requirement that the conveyance must be registered in the Land Register, but registration provides protection against other agreements on the property and against legal proceedings. It is very common that immediately after completing a purchase agreement, conditional title deed are registered; conditional upon certain events taking place such as payment of the deposit or the purchase sum, or that authorisation for acquisition is granted or subdivision of the area acquired. Once the conditions have been met, the seller will issue final title deed, which will be made available for the buyer. After this, the seller has no further demands on the property.⁶¹

The buyer's lawyer writes the title deed in accordance with the purchase agreement and must ensure that the purchase sum is paid according to the agreement.⁶² At the same time, the buyer's lawyer and the buyer ensure that the financing is arranged so that the transaction can be completed as agreed.

In connection with the purchase agreement, the buyer will have clarified how the transaction is to be financed with the estate agent, the lawyer or the bank, and the buyer will either have been granted a mortgage credit loan or he will have received a loan offer and a mortgage deed which he is to sign. The buyer's bank will normally receive the mortgage credit loan and agree to ensure that the purchase sum is paid as agreed. This may be by depositing the agreed sum in the seller's bank, to be released once title deed have been drawn up and registered in the Land Register without remarks, or by the bank guaranteeing payment of the purchase sum once there is a registered title deed without remarks.

One of the conditions which must always be met before the mortgage credit loan can be paid is that the mortgage deed is registered in the Land Register without remarks or that there is a guarantee that the mortgage deed will be registered without remarks.⁶³ If the buyer takes out the mortgage credit loan with his bank's mortgage credit institution, it can be easier to get the bank to issue this guarantee, because the bank knows the buyer's financial situation.

⁶⁰ TL, sec. 10(2).

⁶¹ Peter Mortensen: *Tinglysning*, 2nd edition, 1997, page 110

⁶² Finn Tråff: *Køb og salg af fast ejendom*, 3rd edition, 2005, page 296.

⁶³ BRF: *LånGuide*, June 2004, page 12.

If the mortgage credit loan is taken out by the seller, or in the name of the seller, the buyer will sign a declaration in which he takes over the debt and this will be approved by the mortgage credit institution, after which the buyer will take over the loan with the property. The debt obligation is therefore part of the purchase sum. Once the final title deeds have been registered in the Land Register, the mortgage credit institution draws up a final debt transfer document.

If there is also an agreement on a seller's mortgage deed, which the buyer has to issue to the seller, this amount will also be part of the purchase sum, and the lawyer must write the seller's mortgage deed so that it can be registered in the Land Register as the same time as the title deed.

The third phase relates to registration in the Land Register. The lawyer sends the final title deed for endorsement by the municipality⁶⁴ together with a report form for the tax authorities and subsequently he sends the deed for registration in the Land Register. Stamp duty of 0.6 % of the purchase sum plus DKK 1,400 must be paid or enclosed. At the same time mortgage deeds and seller's mortgage deeds are submitted and stamp duty of 1.5 % of the nominal value plus DKK 1,400 must be paid for each mortgage deed.

Profits on the sale of single and two family houses or condominiums are not taxable according to the Act on Tax on Profits from Sale of Property (*ejendomsavancebeskatningsloven*),⁶⁵ provided the property has served as the principle residence of the owner or his household. There is a further provision that the land area of the property is less than 1400 m², or that there is documentation that the property cannot be subdivided. Profits on sales of summer cottages used for the owner's private purposes are also not taxable. Profits on commercial purchases and sales of property are taxable, however.

There are a few areas in Denmark which have no owner. This means that the area has no owner registered in the Land Register, or the registered owner is not the person who uses the area and considers himself as the owner. Ownership of these areas can be different in the Land Register and the common municipal property data system (the ESR), which is the basis for tax collection. The person who considers himself as owner of such areas cannot sell the area before he has had his ownership rights confirmed by a property judgement. For example, a property judgement can be obtained if the person has had undisputed use of the property for a period of at least 20 years.

⁶⁴ The procedure has been changed by introduction of e-registration, cf. Act no. 539/2006.

⁶⁵ Act no. 975/2004 on tax on profits from sale of real property (*ejendomsavancebeskatningsloven*).

2.9 Property formation

2.9.1 Introduction

The regulations in the Subdivision Act form the foundation of property formation in that the boundaries of a property are changed by subdivision, entry in the Cadastre, transfer of part of property, amalgamation, or rectification of boundaries.⁶⁶ Through property formation it is ensured that new boundaries are not registered where the boundaries or intended land use conflict with the Subdivision Act or other legislation.

The reason for changing the registered boundary of a cadastral property may be an agreement between the owners of the properties, or expropriation or reallocation of land. The case may involve prescriptive acquisition or there may be coastal withdrawal or growth of areas. Property boundaries can also be changed by legal determination of boundary,⁶⁷ or when a prescriptive right is ascertained or confirmed by judgement. Finally, the owner of one or more properties may request subdivision of his property or amalgamation or transfer of part of property between his properties. All situations will require the assistance of a licensed land surveyor and/or the cadastre authorities.

Outside of the municipalities of Copenhagen and Frederiksberg, private licensed land surveyors are responsible for marking and measuring new boundaries as well as preparation and procurement of the documents required for registration in the Cadastre. This means that the permits necessary pursuant to land regulation legislation and legislation regulating acquisition must be obtained when the case is submitted to the National Survey and Cadastre. The licensed land surveyor must also document that rights in the properties affected which are registered in the Land Register are observed.

The Statutory Order on Control of Subdivision⁶⁸ lays down more detailed provisions on which authorities are relevant in the matter and the information they require. All matters relating to subdivision, entry in the Cadastre, transfers of part of property and amalgamation must be submitted to the municipal council, which must issue a declaration in a standard form and decide the matter in relation to the Planning Act, the Public Roads Act, the Private Common Roads Act, the Building Act, the Environmental Protection Act and the Soil Pollution Act. Authorisation from the Agricultural Commission or a declaration from the licensed

⁶⁶ UL secs 5-9

⁶⁷ UL secs 35-40

⁶⁸ Stat. Order no. 1012/2004 on control of subdivision.

surveyor that authorisation is not necessary is required for all matters related to agricultural property. A corresponding declaration is required from the surveyor according to the Forest Act, the Protection of Nature Act, and others, or authorisation from the competent authorities must be enclosed.

The Subdivision Act requires that there must be access via a public road to a new property or a separate area arising in a cadastral case, see section 2.7.3. The Subdivision Act also contains provisions to prevent a real property from being separated by narrow bands from the coast, from a lake belonging to the owners of the bank, or from open watercourses.

The National Survey and Cadastre carries out a certain number of checks (both formal and technical) in connection with registration in the Cadastre, and the cadastral authority notifies the Land Registry and the municipal council about the registration in order to keep the Land Register and the ESR up to date.

At the same time as registration in the Land Register, the Land Registry completes allocation of the registered easements on the basis of a certificate from the licensed land surveyor.

2.9.2 Establishment of a new cadastral property

A new cadastral property can be formed by subdivision, entry in the Cadastre or amalgamation.

Subdivision

Subdivision means that a new, independent cadastral property is formed and the boundary of the remaining property is changed. Usually, the separated property will be given a new cadastral number, while the remaining property will retain its cadastral number.

In subdivision, the subdivided property is relaxed (released from liability to mortgages) after the subdivision has taken place and before the final title deed to the property is registered in the Land Register.

A new property can also be formed by subdivision of areas from several properties, so that the individual areas together form a new independent property with a new cadastral number. The remaining properties each retain their cadastral number, even though the boundaries to the properties have changed. However, in this type of subdivision, from two or more properties, the areas to be separated have to be released from liability to mortgages before the subdivision can be registered in the Cadastre.

Entry in the Cadastre

A new property can also arise when a previously unregistered area is registered in the Cadastre. Properties which are not registered in the Cadastre are not usually registered in the Land Register. If part of a registered public road area is to be sold or mortgaged independently, a new property is established by registering the area in the Cadastre. If an island is formed as part of land reclamation, it must be registered in the Cadastre. If an island is formed naturally and is to be registered, this will also be through entry in the Cadastre.

Amalgamation

When several properties are owned together and are jointly liable to mortgages or if they are not mortgaged, the properties can be amalgamated into one property. However, other legislation, for example the Agricultural Act, stipulates requirements related to the location of the land and the maximum size of an amalgamated property.

2.9.3 Transfer of part of property between existing properties

Transfer of part of property

Transfer of a piece of land from one property to another property may be through transfer of part of property. Before transfer of part of property can be registered in the Cadastre, a certificate from the Land Registry must document that registered mortgages and easements have been observed. If the two properties affected by the transfer of part of property have different owners, a transfer document (title deed) must be drawn up and there must be documentation that the deed has been registered in the Land Register as an encumbrance on both the property transferring the part and the recipient property. The deed must be enclosed with the cadastral case when it is submitted to the National Survey and Cadastre. When the case is submitted, the deed must be a final title deed, furnished with authority for the cadastral authority to forward it, on behalf of the applicant, for final registration in the Land Register for the acquirer, once the transfer of part of property has been registered in the Cadastre.

If there is a transfer of part of property and the value of the part transferred does not exceed DKK 40,000, the title deed can be replaced by a declaration of title from the owners of the property.

For transfers of part of property to or from public roads or railways, there must be a declaration from the owner of the property affected and the road board or the owner of the railway area, which may be the Danish state railway (DSB), Banedanmark or a private railway owner.

Rectification of boundaries

When a property boundary is changed by prescription, the area taken over may be transferred to the neighbouring property by rectification of boundaries. However, this requires that the owners of both properties declare that the change in the boundary is due to prescriptive rights, i.e. the situation had remained unchanged for at least 20 years. The boundary resulting from prescription may also be proposed through legal determination of boundary.

When the boundary to a property is changed through natural coastal withdrawal or growth, the registered boundary may be changed through rectification of boundaries, if there is a declaration from the owner of the property affected that the change is due to natural coastal withdrawal or growth.

3 The responsibility of society regarding conveyances of real property, property formation, and establishment of rights in real property

Denmark is currently undergoing extensive changes in the organisation and division of responsibilities in the public sector. These changes are greatly affecting the authorities involved in conveyance of real property and in property formation.

The municipal structural reform

The Structural Commission published its report no. 1434 in January 2004, and this suggested a nationwide debate on what Denmark's administrative structure should look like in the future. The need for change in the administrative structure arose from developments in society, including comprehensive legislative regulation of social, environmental and many other aspects as well as technological potentials for digital solutions in a number of areas.

The new municipal structure⁶⁹, was laid down in 2005, and entered into force on 1 January 2007. The new structure means the previous 270 municipalities become 98. It turned out that it was not just a question of merging whole municipalities. In many cases local referendums were held on which municipalities an area should belong to and in some cases an entire parish, cadastral district and even a property or cadastral number from one municipality was separated and transferred to the new neighbouring municipality, while the remaining part of the old municipality was merged with another new municipality. In this regard it was extremely advantageous that the cadastral identification of Danish real property in the Cadastre and the Land Register are based on the original administrative division into "shires" and parishes and are therefore not dependent on the municipal division.

The structural reform also involved converting the previous 13 county authorities into five regional units with far fewer responsibilities and employees. The new regions are primarily responsible for the hospital service as well as some environmental tasks. Most of the responsibilities of the old counties have been transferred to the municipalities, while some go over to the regions or the state. More than 700 employees from the counties have been transferred to the Ministry of the Environment and they have been dispersed to seven new environment centres spread throughout Denmark. At the same time as implementation of the municipal structural reform, a number of consequential amendments have been adopted in a large number of Acts in order to realise the whole reform.

⁶⁹ Act no. 540/2005 on revision of the municipal structure and Statutory Order no. 656/2005.

Furthermore, the current 13 state counties (statsamter) have been converted into five regional state administrations with more or less the same responsibilities as the old 'state counties'.

Transitional arrangements were implemented in 2006 for merged municipalities under which the newly elected municipal councils acted as merger committees until the old municipal councils stepped down at the end of the year.

The Land Register Reform

In August 2003 the Minister for Justice set up a Land Register Committee to work out proposals for overall modernisation and efficiency enhancement of the Land Register. The Committee was to make proposals for how best to implement a completely paperless Land Register and to consider whether management of the Land Register task could be organised better and more efficiently, including whether the task should be privatised or continue under the courts.

In its first interim report no. 1461/2005, the Land Register Committee recommended that the Land Register be managed at one single location for the whole of Denmark and it should be organised as a 'public-private cooperation model' based on centralising the current Land Register service in the courts with as much involvement as possible from private actors in carrying out tasks. Amongst other things, development, operation and maintenance of the anticipated IT solution should to a large degree be assigned to the private sector. This cooperation model is therefore based on retaining the well tried Land Register scheme while also considering possible efficiency improvements.

The Land Register Committee concluded its work in February 2006 with its report on digital land registration no. 1471/2006, which in addition to the considerations and recommendations of the Committee also contains a draft Act. Both reports are available (in Danish) at www.jm.dk.

On the basis of the Land Register Committee's reports, the Minister for Justice presented a Bill which the Danish Parliament adopted in June 2006. Amongst other things, provisions were inserted in the Administration of Justice Act⁷⁰ on setting up a Land Registry Court at Hobro in Mid-Jutland to take charge of Land Register tasks for all of Denmark, including registration concerning mortgages in cars, marriage contracts, and mortgages in cooperative housing. The amendment to the Land Register Act⁷¹ and various other Acts provides the necessary basis to introduce digital land registration. The Land Registry Court was established on 1 January 2007, and it is expected that the digital land registration scheme will be introduced in 2008, when the new IT system is ready for use.

⁷⁰ Act no. 538/2006.

⁷¹ Act no. 539/2006.

The digital land registration scheme means, amongst other things, that all documents to be registered must be digital and affixed the digital signature of the issuer. As an alternative to issuing or notifying documents for registration itself, a power-of-attorney scheme and a notifier scheme will be introduced.

The power-of-attorney scheme means that persons and others without a digital signature can use a power-of-attorney scheme by which the holder of the power of attorney with a digital signature may act in the place of the issuer of the power of attorney. The person etc. with charge of the property (the issuer of the power of attorney), issues a power of attorney on paper or electronically and sends it to the Land Registry Court. The power of attorney must be witnessed and the period of validity must be stated. The power of attorney must be set up on a standard document which can be read electronically. Following a manual check of the document, it is scanned and transferred to the digital land registration system. When the holder of the power of attorney submits the digital document for registration, it must be affixed the holder's digital signature. After this the document can be registered in the Land Register in real time.

The notifier scheme is a sort of supplement to the power-of-attorney scheme and it aims at making conversion of loans more efficient by enabling real-time land registration, thereby reducing the need for hedging. The Land Register Act restricts the notifier scheme to mortgage rights, and it means that special, authorised notifiers with a digital signature, guarantee that there is a power of attorney. The authorised notifiers must put up their own collateral for compensation claims.

3.1 Authorities and others involved in conveyance of real property

Conveyance of real property from one person to another is basically purely a matter of private law. There is nothing to prevent a buyer and a vendor from entering into such an agreement without involving professional advisors. However, this usually only takes place in family transactions or in cases where the buyer is well acquainted with both the vendor and the property to be sold.

The role of the estate agent on conveyance of real property

In Denmark, the vendor of real property usually lets an estate agent manage the sale. The job of the estate agent primarily involves working with the owner to set a cash price for the property and then preparing terms of sale with several proposals for different loans on the property. When

preparing the terms of sale, the estate agent retrieves information from the Land Register about rights in the property as well as information from the municipality about other matters related to the property such as sewerage, road access, proposed building work etc. as well as planning information.

Commercial property broking is regulated by the Act on Trade in Real Property,⁷² also known as the Estate Agent Act. The Commerce and Companies Agency keeps a register of estate agents and only persons on this register are permitted to call themselves estate agents. In addition to estate agents, lawyers can also act as commercial property brokers. No one may act for both parties in the same property transaction.

The Estate Agent Act and the Act on consumer protection in the acquisition of real property etc.⁷³ aim at consumers and they do not apply for trading in commercial property, including agricultural property.

According to the Estate Agent Act, the agreement between the vendor and the broker / estate agent must be in writing and it may cover a period of up to six months with possibility for extension.

The estate agent is responsible for showing the property and, with due consideration for both parties, he should work towards a sale. He should advise his client, usually the vendor, and provide information for both parties on the need and possibility for a building survey of the property. If a survey already exists, this must be supplied to both parties. The estate agent must also advise both parties on the possibility of taking out change-of-ownership insurance against hidden defects etc.

The Consumer Protection Act stipulates more detailed rules on change-of-ownership insurance and building surveys, which must be prepared by an authorised building expert. If, before entering into a purchase agreement, the buyer has received a survey of the condition of the building as well as information about the possibility of taking out change-of-ownership insurance against hidden defects etc., the buyer cannot later claim for defects in the condition of the building.

Usually, the estate agent represents the interests of the vendor. Once the estate agent has found a buyer, the estate agent prepares a purchase agreement,

⁷² Consolidated Act no. 691/2003, as amended by Act no. 605/2005 and Act no. 453/2006.

⁷³ Act no. 391/1995, most recently amended by Act no. 406/2003.

which is signed by the buyer. The purchase agreement may contain reservations to be fulfilled before the estate agent can present it to the vendor for signature.

The involvement of banks and mortgage-credit institutions

Before purchasing real property, the buyer will usually have talked to his bank about how the purchase is to be financed. The bank may typically have undertaken to manage temporary financing while the transaction is being completed, including dealing with administering redemption of the old debt and taking out new mortgage loans as well as paying both the cash deposit and the remaining purchase sum on the dates agreed. The buyer's bank will usually advise the buyer to take out a mortgage loan with the bank's own mortgage-credit institution.⁷⁴

Mortgage loans can be made for up to 80 per cent of the value of the property and for up to a maximum term of 30 years. Mortgage loans are extended against registered mortgages in real property. The difference between the mortgage loan and the buyer's own capital, including the costs of the transaction, can possibly be raised through a bank loan or by the vendor issuing a seller's mortgage deed. This affects the agreements entered into.

Other involvement of the lawyer in purchases of real property

Before or after the buyer signs a purchase agreement, the buyer will usually contact his lawyer to go through the agreement. The lawyer will be aware that the purchase agreement will include a deadline for approval of the transaction. If the buyer and his lawyer find that they want to change some terms in the agreement or other conditions, the lawyer will write to the estate agent that the agreement has not been approved and that the transaction is therefore null and void. He will also account for the reasons why.

Once the purchase agreement has been approved and signed by the vendor, the buyer will request the lawyer to draw up a title deed. The lawyer will often undertake to prepare and process the documents necessary to complete the transaction as agreed. The lawyer may also attend to conversion of the mortgage loans on the property.

Once a final title deed has been signed by the buyer and vendor and witnessed, the lawyer sends the title deed to the municipality for endorsement⁷⁵ and then to the Land Register office with any mortgage deeds. If old loans on the property

⁷⁴ Act no. 454/2003 on mortgage loans and mortgage bonds.

⁷⁵ The procedure was changed with the introduction of e-land registration, cf. Act no. 539/2006.

are to be redeemed, the title deed can usually receive preliminary registration. The title deed and mortgage deeds are then sent to the lawyer who then has the buyer's bank take delivery of the new loans and redeem the old loans. In connection with this, the old mortgage deeds are forwarded to the mortgage-credit institution, which confirms them for cancellation and pays the loan to the bank, after which the mortgage deeds are returned to the lawyer. The lawyer then forwards the old mortgages for cancellation and the title deed and the new mortgage deeds for final registration. After registration in the Land Register, the documents are returned to the lawyer who sends the valid mortgage deeds to the mortgage-credit institution via the bank.

If the buyer has taken over the vendor's loans on the property, or some of them, the lawyer prepares declarations of debt taken over, which are sent to the mortgage-credit institution and other mortgagees.

Involvement of the municipal council in purchases of real property

Before the title deed can be registered, it must have an endorsement from the municipality which shows whether, according to the municipal property register, which contains a copy of the cadastral property registration, the property is a whole property or part of a property. The endorsement on the title deed helps ensure that title to a part of a property is not registered in conflict with the Subdivision Act⁷⁶. The endorsement must also contain information about the value of the property as this is important for the stamp duty⁷⁷ which is calculated on the basis of the lower of the purchase sum or the property value. For sales of agricultural properties, the title deed must also usually be endorsed by the municipality to comply with the Agricultural Act.

At the same time as the title deed is submitted to the municipality for endorsement, according to the Valuation Act⁷⁸ a notification form must be sent to the municipality with the financial and transaction details (names and addresses of buyer and vendor, date of conveyance, price, cash price and any debt to be taken over, type of property etc.). The information must be included on a special form and forwarded to the Central Customs and Tax Administration, which uses the information in assessing and taxing real property. The municipality may not endorse the title deed before the form has been received. The municipality returns the title deeds with the endorsement to the lawyer.

⁷⁶ Section 1 of Statutory Order no. 107/1991 on the subdivision requirement.

⁷⁷ Section 4(2) of Act no. 382/1999 on land registration fees etc. as amended by Act no. 539/2006.

⁷⁸ Section 47A of Act no. 740/2002 on valuation of real properties in Denmark, as amended by Act no. 539/2006.

With the introduction of e-land registration, endorsement of the title deed will be phased out and the relevant municipality will be notified about the conveyance in connection with registration in the Land Register. At the same time the notification form with the required information will be integrated into the digital title deed.

The Land Register authorities

Land registration is carried out at the Land Register officers in Denmark's 82 judicial districts. All documents relating to real property which are notified for registration are entered in the journal. After this the Land Registry checks the document before the right is entered in the Land Register. When checking the right, a number of conditions are examined, including whether the formal requirements regarding the document and the copy are fulfilled. Payment of all the stamp duty is checked unless the relevant person has a special arrangement under which the duty is paid in arrears each month. There are checks to ensure that the person who issued the title deed is entitled to take charge of the property. If the formal requirements are not met, the document is rejected.

The checks also ensure that there is the necessary documentation regarding declarations and authorisation pursuant to other legislation. If anything is lacking, the document is registered with a deadline to procure the required documentation.

As mentioned previously, organisation of the Land Register service and management of land registration has been changed over some years. New regulations on the boundaries of the judicial districts and the establishment of the Land Registry Court entered into force on 1 January 2007 at the same time as the municipal structural reform. The new regulations reduce the number of judicial districts from 82 to 24, and the Land Registry Court was no. 25. The Land Registry Court is expected to take over land registration from the town courts in connection with the planned transition to digital land registration in 2008, possibly gradually if Courts of Denmark decide this.

A digital land registration scheme will allow for real-time land registration as manual checking will be almost completely replaced by machine checks. To enable this, all documents regarding real property notified for registration in the Land Register must be digital and have a digital signature. The journal will be phased out in connection with introduction of digital land registration.

Decisions by the Land Registry/Land Registry Court are judicial decisions which are not covered by the Public Administration Act. Decisions can be appealed to the High Court.

Acquisition regulations are checked in connection with land registration. Basically, any person over 18 years of age who has not had the legal ability to act removed under section 6 of the Guardianship Act or any legal person is entitled to acquire real property in Denmark. However, there are special provisions for acquisition of real property by foreigners and for acquisition of agricultural property.⁷⁹

Acquisition of real property by foreigners

According to the rules on acquisition of real property,⁸⁰ people without a residence in Denmark and who have not previously had a residence in Denmark for five years in total may only acquire real property in Denmark with the permission of the Ministry of Justice. The same rule applies for companies, associations etc. which are not registered in Denmark and for foreign public authorities. The object of the Act is to allow people resident in Denmark priority to acquire real property. Areas for building summer cottages in particular have been considered as a limited resource which should be kept for people living in Denmark.⁸¹

If the buyer is resident outside Denmark, the title deed must be accompanied by a statement that he has previously been resident in Denmark for five years, or there must be authorisation from the Ministry of Justice.

There are special rules, however for EU citizens and citizens of EEA countries⁸² as well as companies with their registered office in an EU country or in an EEA country as, according to the Treaty of Rome, these have a free right to work, acquire a year-round residence, or be self-employed in another member state.⁸³

Access for EU/EEA citizens to acquire real property in Denmark, without special permission, only applies if the property is to serve as a year-round residence for the acquirer, or if the property is to be acquired to carry out commercial operations⁸⁴, including agricultural property for commercial farming. Acquisition by EU/EEA citizens of summer cottages for private use therefore requires special permission if they do not meet the residency requirements of the Acquisition Act. The practice in this area is very restrictive as permission is only granted if the applicant has considerably strong links to Denmark.

⁷⁹ Bo von Eyben et al: *Fast ejendom*, 2nd edition, 2003, page 33.

⁸⁰ Section 1 of Act no. 566/1986 as amended by Act no. 1102/1994.

⁸¹ Bo von Eyben et al: *Fast ejendom*, 2nd edition, 2003, page 34.

⁸² Section 1 of Act no. 963/1992 on the accession of Denmark to the agreement on the European Economic Area.

⁸³ Bo von Eyben et al: *Fast ejendom*, 2nd edition, 2003, pages 36-37.

⁸⁴ Section 3 of Statutory Order no. 764/1995 on acquisition of real property with regard to certain EC citizens and EC companies as well as certain persons and companies from countries which have acceded to the agreement on the European Economic Area.

The Acquisition Act, together with supplementary regulations in the Summer Cottage Act, the Planning Act and the Agricultural Act, comprises an overall safeguard to ensure that the restrictions in the Acquisition Act on the ability of foreigners to acquire second homes (summer cottages) in Denmark are not evaded.

Regulations of the Summer Cottage Act on acquisition of real property

The Summer Cottage Act⁸⁵ contains restrictive regulations in section 1 on commercially renting out summer cottages, and in section 8 that companies, associations and other organisations may not acquire real property without authorisation from the Minister for the Environment, unless the property is to be used on a year-round basis or for commercial purposes. The regulations of the Summer Cottage Act therefore have the independent consequence that companies etc. which are not subject to the authorisation requirement in the Acquisition Act, must have authorisation to acquire real property which is not to serve some commercial purpose, and that the Ministry of the Environment and the Forest and Nature Agency must be involved for applications for authorisation to acquire a property which is not to be used as a year-round residence or for commercial purposes.⁸⁶

To register title deeds when a company, an association or other organisation is to acquire real property, according to section 8 of the Act there must be authorisation from the Forest and Nature Agency or a statement from the acquirer that the property is to be used as a year-round residence or for commercial purposes.

According to the Planning Act⁸⁷, except for short holiday stays etc., a residence in a summer cottage area may not be used for overnight stays in the period from 1 October to 31 March. However, a pensioner who has owned a property in a summer cottage area for eight years does have a personal right to use the property as a year-round residence.

Regulations in the Agricultural Act on acquisition of real property

According to the Agricultural Act⁸⁸ a person without authorisation may acquire an agricultural property, if the person is 18 years or over, does not own other agricultural property, and undertakes to take permanent residence in the property within six months.

If the property is larger than 30 ha, there is also a requirement that the person must have an agricultural qualification and must operate the property himself. A person meeting these requirements

⁸⁵ Cons. Act no. 920/1989 on summer cottages and camping etc.

⁸⁶ Bo von Eyben et al: *Fast ejendom*, 2nd edition, 2003, page 45.

⁸⁷ Sections 40 and 41 of Cons. Act no. 883/2004 on planning.

⁸⁸ Parts 7-10 of Act no. 435/2004 on agricultural property, as amended by Act no. 533/2006.

may acquire or own several agricultural properties, provided they are all within a 10-km straight line and the total area does not exceed 400 ha or no more than four agricultural properties are owned. If the acquirer will come to own more than 100 ha, the owners of nearby agricultural property may, however, require that their agricultural property be increased. Parts 9 and 10 of the Act contain less restrictive regulations for persons acquiring an agricultural property through family inheritance.

The Agricultural Act also contains rules by which public-sector authorities, funds and companies can acquire agricultural property as well as rules by which, in special circumstances, authorisation can be granted for associations or other organisations to acquire an agricultural property.

EU citizens are free to acquire agricultural property in Denmark, provided the acquisition provisions of the Agricultural Act, including the residence requirement, are met. The same applies for citizens of EEA countries⁸⁹ such as Norway and Iceland.

If a title deed is to be registered for an agricultural property, which wholly or partly lies in the rural zone, the deed must be furnished with a declaration from the municipality that the acquirer has submitted to the municipality the necessary statements that the acquisition provisions of the Agricultural Act have been met, or it must have an authorisation from the Agricultural Commission present, or in certain circumstances, if the acquirer is a company etc, from the Directorate for Food, Fisheries and Agri Business.

The procedure whereby the municipality can issue a declaration on certain agricultural title deeds is expected to be changed in connection with introduction of e-registration and phasing out of endorsements on title deeds.

Conveyance of a complete property through inheritance

Conveyance by inheritance is treated more or less in the same manner as by purchase. If the estate is administered by the court, the Probate Court registers notification, after which the conveyance by assent, which is issued by the Probate Court, can be registered. For private administration, where the heirs take over the property, the certificate from the Probate Court forms the basis for registration of the conveyance by assent of the executor, which in this case will be issued by the heirs.

Conveyance through expropriation

The state, the municipal council and the county council can expropriate a property for a specific purpose. The resolution to carry out an expropriation is registered on the

⁸⁹ The EEA agreement entered into force on 1.1.1994, cf. Chr.Jørgensen et al: Jordlovgivning, 1997, page 522.

property affected. Completion of the expropriation in the Cadastre and the Land Register is often not possible before the relevant construction work has been carried out. For expropriations by the state, completion is carried out by the commissariats for state expropriations and the chief licensed land surveyor for state expropriations. No title deed is registered for the acquirer for registration of title to areas acquired through expropriation. An expropriation list is registered instead, which is prepared by the National Survey and Cadastre or the chief licensed land surveyor.

Completion of expropriation of property rights to the benefit of the state is carried out by the commissariats for state expropriations. Decisions regarding expropriation are made by expropriation commissions. Expropriations for the benefit of other authorities are usually completed by the authority in question and a practising licensed land surveyor.

Conveyance via forced sale

Forced sales of property are held at the petition of a mortgagee or some other person who has had execution levied in the property by the Enforcement Court (or by special sheriffs for customs and tax claims). The petition for a forced sale is registered on the property to prevent the owner from disposing of the property. Forced sales are carried out by the courts (Enforcement Courts). The petitioner for a forced sale prepares a sales notice which contains a statement of the mortgagee's claims at the date of the sale and which forms the basis of the sale. When documentation has been presented to the Enforcement Court that the buyer at the sale has fulfilled the conditions in the sales notice, the Enforcement Court will issue deeds (sales deeds) to the buyer at the sale or to someone with temporary authority from the buyer.

Pre-emptive right

A pre-emptive right will usually be registered on the relevant property and the registration prevents registration of title for others without the permission of the holder of the right. Conveyance of property rights pursuant to a pre-emptive right is completed as other purchases, although the pre-emptive right can be cancelled at the same time as registration of title for the holder of the right.

Property judgment

In a property judgement an owner can receive a judgement that he owns a property. A property judgement merely confirms that the relevant person owns the property and in fact a property judgement has nothing to do with conveyance of property rights.

The basis for obtaining a property judgement will often be that the owner has had the property in his possession for so long (at least 20 years) that he is entitled to prescriptive rights in the property. The basis may also be a conveyance which has not been completed.

The procedure for obtaining a property judgement is similar to cancellation of securities. The person wanting a property judgement applies to the Town Court in the judicial district in which the property is situated for permission to convene a property judgement. If the person in question can provide evidence of his title to the property, the Court will allow the invitation to the property judgement in the Danish Official Gazette. The invitation will include the date of court proceedings at which anyone who believes they are entitled to the property can meet and enforce their right. If no others meet up and enforce their right, the person convening the property judgement will usually be awarded title to the property. If others meet up and have objections to the person convening the judgement having title to the property, the question of the property rights will be determined by court proceedings between the parties. The property judgement can be registered as title for the rights holder.

Areas which since the land consolidation in the late 1700s have been for common use by owners in a cadastral district are subject to special rules. Such areas are now presumed to belong to the municipality unless others can prove that they have property rights to the area. The municipality may apply to have its title registered in accordance with special rules in the Subdivision Act and the Land Registration Act and these rules are less restrictive than the rules on property judgements.

3.2 Authorities and others involved in property formation

"Property formation" is the term for the practical and legal activities which are necessary to establish a new real property or to change the boundaries between existing properties.⁹⁰ The regulations regarding this are in the Subdivision Act. New property can be established by subdivision or entry in the Cadastre, and the boundaries of a property can be changed through subdivision, entry in the Cadastre, transfer of part of property, amalgamation, or rectification of boundaries.⁹¹

Outside the Municipalities of Copenhagen and Frederiksberg, property formation requires the assistance of a licensed land surveyor in private practice and the cadastral authority.

The National Survey and Cadastre is the cadastral authority for all of Denmark outside the Municipalities of Copenhagen and Frederiksberg. The Municipality of Copenhagen has had a municipal cadastral service since 1690 and the Municipality of Frederiksberg since 1925. The cadastral authority in

⁹⁰ Bo von Eyben et al: Fast ejendom, 2nd edition, 2003, page 18.

⁹¹ Sections 5-9 of the Subdivision Act.

the Municipality of Copenhagen is exercised by Stadskonduktøren and in the Municipality of Frederiksberg by Stadslandinspektøren. In these two municipalities, the cadastral authorities have exclusive rights to perform cadastral work and other work which, according to legislation, must be performed by a private practising licensed land surveyor.⁹²

The provisions of the Subdivision Act apply for all of Denmark, except for the provisions on legal determination of boundary which do not apply for the Municipalities of Copenhagen and Frederiksberg. In the municipalities, boundary disputes are determined by the courts.

The licensed land surveyor

The parts in a legal relationship requiring cadastral change must, within three months of the establishment of the relationship, request a licensed land surveyor in practice to apply for registration in the Cadastre.⁹³ In Copenhagen and Frederiksberg the application shall be to the relevant municipality.

Outside the Municipalities of Copenhagen and Frederiksberg, licensed land surveyors in private practice have exclusive right to carry out cadastral work which includes marking boundaries and preparation of the documents necessary for registration in the Cadastre, including procurement of the necessary authorisations pursuant to other legislation.⁹⁴ After 1 April 2006, according to the Surveyor Act (landinspektørloven)⁹⁵ there is a further condition for performance of cadastral and other work which licensed land surveyors have a statutory exclusive right to perform. This is that the practising licensed land surveyor must be insured against claims arising from the performance of cadastral work or other surveying activities.

The licensed land surveyor carries out cadastral work in accordance with the regulations in the Statutory Order on cadastral work and the associated guidelines.⁹⁶ The licensed land surveyor marks and measures new boundaries, and existing boundaries, when required, and involves the owner and neighbours where necessary. After this the licensed land surveyor prepares a measurement sheet and other measurement documents, a changes map which shows the changes in the cadastral map, and a schematic report on the desired cadastral changes. The licensed land surveyor must also acquire the necessary judge's certificate as evidence that the provisions of sections 21-24 of the Land Register Act on title, mortgage and easement have been observed.

⁹² Section 13(3) of the Subdivision Act.

⁹³ Sections 21 and 22 of the Subdivision Act.

⁹⁴ Section 13 of the Subdivision Act.

⁹⁵ Sections 4c and 4d of Act no. 84/2006 on activities of licensed land surveyors, and Statutory Order no. 83/2006.

⁹⁶ Statutory Order no. 291/2005 on cadastral work and guidelines no. 46/2001.

Before commencing field work, the licensed land surveyor will have considered and possibly carried out preliminary hearings with the relevant authorities if there is doubt as to whether the desired changes can be carried out according to the relevant rules.

Pursuant to the Statutory Order on control of subdivision⁹⁷ and the associated guidelines, the licensed land surveyor must submit all matters regarding subdivision, entry in the Cadastre, transfers of part of property, amalgamation and changes in the registration of private roads on the cadastral map to the municipal council. The licensed land surveyor must also issue a statement on whether there is an application to implement cadastral changes or changes in land use which are in conflict with the provisions of the Agricultural Act, Nature Protection Act, Museums Act, or Forests Act, and if so enclose authorisations from the relevant authorities.

After this, the licensed land surveyor sends the case to the National Survey and Cadastre so that the desired cadastral changes can be registered in the Cadastre. In 2005 the licensed land surveyors were required to prepare and submit the registration documents (measurement sheet, changes map and schematic report) electronically and the digital data to update the cadastral register and map must now be formatted as MIA data. MIA is a digital cadastral and information update system developed by the National Survey and Cadastre in collaboration with the Danish Chartered Surveyors Association and municipal representatives.

When the licensed land surveyor receives notification of registration in the Cadastre, the licensed land surveyor sends a copy of the notification and an invoice to the applicant. For subdivision, the licensed land surveyor prepares a subdivision map,⁹⁸ which is a copy of the current cadastral map with the new cadastral number, and sends this to the applicant as well.

For subdivision or transfers of part of property, the licensed land surveyor prepares a certificate of easement which lists the registered easements that will apply in the individual areas after the registration. The certificate of easement is sent to the Land Registry which transfers the relevant easements to the individual plots in accordance with sections 22 and 23 of the Land Register Act.

⁹⁷ Statutory Order no. 1012/2004 on control of subdivision and guidelines no. 116/2004.

⁹⁸ Section 40 of Statutory Order no. 291/2005 on cadastral work.

In the event of boundary disputes or in other contexts, any person wishing to confirm a property boundary can request a licensed land surveyor to hold a legal determination of boundary. According to section 38 of the Subdivision Act, legal proceedings cannot be brought regarding the location of a boundary before legal determination of boundary has been held. At legal determination of boundary the licensed land surveyor decides on the location of the boundary, including whether the location has been changed through prescription. The decision of the licensed land surveyor is binding on the owners of the property in question unless one of them instigates legal proceedings on the location of the boundary within eight weeks of the date they received notification of the decision of the licensed land surveyor.

If a property is divided into condominiums, no later than registration of the first title deed in a condominium, the licensed land surveyor must submit a notification of division of the entire property into condominiums. This material, including the lists of the individual condominiums, maps etc. which are to accompany the notification, must be certified by a practicing licensed land surveyor with special authorisation. These regulations apply correspondingly for changes in condominiums.⁹⁹ Furthermore there must be a declaration from the licensed land surveyor that subdivision is not possible.

The Licensed Land Surveyor Service

The Licensed Land Surveyor Service is regulated by the Act on Licensed Land Surveyor Activities.¹⁰⁰

According to section 1 of the Act, the Minister for the Environment grants a license to land surveyors. Anyone is entitled to a license who

- is legally competent and not under guardianship,
- has not filed for suspension of payments and is not under administration in bankruptcy,
- has passed the Danish land surveyors exam, and
- for no less than three years after passing the exam as a licensed land surveyor, has taken part in performance of cadastral work through employment by a practicing licensed land surveyor.

The Minister for the Environment may allow that employment at other places can be included in the three-years' employment. The requirement for a Danish land surveyor exam lapses if there is authorisation in international agreements.

In 2005 there were 100 firms of licensed land surveyors in Denmark with about 160 branches.

⁹⁹ Sections 26-28 of Statutory Order no. 1024/1993 on land registration in the Land Register.

¹⁰⁰ Cons. Act no. 84/2006 on the activities of licensed land surveyors.

There are about 200 owners and about 170 assistant land surveyors with or without authorisation. The licensed land surveyor sector employs a total of about 370 licensed land surveyors with 240 employees with technical or administrative qualifications.

Over the past 80 years, practicing licensed land surveyors have taken over duties from the authorities and the courts. These include the following duties:

In 1927, in accordance with the Land Register Act, practicing licensed land surveyors became responsible for preparing declarations of easements as the basis for allocation by the Land Registry of registered easements in connection with subdivision etc.¹⁰¹ In 1949, in order to relieve pressure on the courts, provisions were introduced in the Subdivision Act regarding legal determination of boundary, under which the licensed land surveyor became a sort of first instance in determining the location of boundaries. In 1963 the responsibilities and duties of the licensed land surveyors were specified and extended. Licensed land surveyors took over cadastral duties related to obtaining necessary authorisations from other authorities (known as *stjernehøring*), activities of licensed land surveyors became regulated by law and a Board of Licensed Land Surveyors (*Landinspektørmævn*), was set up to deal with complaints about practicing licensed land surveyors. In 1966 licensed land surveyors were made responsible for tasks related to preparation and certification of maps and other material for subdividing properties into condominiums, and later they were authorised by sections 3 and 10a of the Act¹⁰² to certify other information on the property. Over the past 15 years licensed land surveyors have undertaken further important duties in connection with administration of agricultural legislation.¹⁰³

The amendment to the Land Register Act etc. in 2006 introduced rules stating that in certificates of easement drawn up by licensed land surveyors to be used by judges in allocating easements in connection with subdivision and transfers of part of property, there should also be geographic description of registered easements in the Land Register and corresponding confirmation for registration of new easements and first registration in the Land Register of a right in a building on rented land.

Rules were also introduced on a change in the procedure for issuing certificates of innocuousness which will afford even more responsibility to the licensed land inspectors. It has been proposed that in future the cadastral authorities should assess whether an intended cadastral change can be made without any risk to mortgage security

¹⁰¹ Sections 22-23 of the Land Registration Act.

¹⁰² Section 4(2) of Cons. Act no. 53/2006 on condominiums, cf. part 6 of Statutory Order no. 1024/1993 on registration in the Land Register.

¹⁰³ Statutory Order no. 420/2005 on declarations from licensed inspectors pursuant to the Agricultural Act.

and with only insignificant reduction in the value of the property. In order to make such an assessment there must be a declaration from a practicing licensed land surveyor. It has also been proposed that more detailed rules be stipulated on the issue of certificates of innocuousness, including limits on amounts.

Practicing licensed land surveyors also carry out technical measurements in connection with construction and many other tasks. These other tasks make up more than one-half of the work of a traditional firm of licensed land surveyors.

By far the majority of practicing licensed land surveyors are members of the Danish Chartered Surveyors Association, and the constitution of the Association requires that practicing licensed land surveyors take out indemnity insurance. Since 1 April 2006 this duty to take out insurance has been written into statute.

Complaints regarding practicing licensed land surveyors are dealt with by the Board of Licensed Land Surveyors (Landinspektørnævn), which has three members appointed by the Minister for the Environment. The chairman must be a judge and the two other members must be licensed land surveyors; one employed by the National Survey and Cadastre, and the other a practicing licensed land surveyor. The Board of Licensed Land Surveyors hears about ten cases each year.

Complaints regarding practicing licensed land surveyors can also be brought before a committee preparing legal opinions (Responsumudvalg) under the Danish Chartered Surveyors Association. Three members are practicing licensed land surveyors, one is employed at the University of Aalborg, and one at the National Survey and Cadastre. The Committee also makes statements to be used in legal proceedings. The Committee hears about 5-10 cases each year.

Land owners

Usually, the land owner will request subdivision and other cadastral changes. Land owners must approve the marking of the new boundary and the existing boundary by the licensed land surveyor in cases of rectification of boundaries as a result of prescription or through natural coastal withdrawal or growth. Land owners must also approve registration and changes to private roads on the cadastral map as well as rights of way, and they must sign conveyance documents relating to transfers of part of property.

The municipal council

The municipality is usually involved at an early stage in a cadastral change because the licensed land surveyor at the municipality has to obtain information about affected properties, including the names and addresses of owners as well as planning and environmental conditions.

Later in the process, all matters regarding subdivision, entry in the cadastre, transfer of part of property, amalgamation and registration of private roads are presented to the municipal council in order to ensure that cadastral changes are not registered in the Cadastre contrary to section 20 of the Subdivision Act or other legislation. The municipality ensures compliance with planning provisions, distance to the boundary from buildings and other installations, as well as certain environmental aspects. Furthermore, the municipality approves access from the area to public roads and installations or registration of private roads, in which case the municipality is the road board. According to the Statutory Order on control of subdivision, the municipal council must issue its statement/approval on a special form (the green form).

When the municipality receives notification from the National Survey and Cadastre on registration in the Cadastre, the municipality will update the common municipal property data system (the ESR), BBR building identification numbers etc.

Other authorities

If the case relates to areas adjoining or requiring access to a main road, for which the Land Register may include provisions on limits on access and building lines, the road authority must approve the case.

Cases relating to agricultural property require authorisation from the relevant agricultural commission, unless the licensed land surveyor can declare that the cadastral change can be made without authorisation.¹⁰⁴ If the case leads to intervention in or establishment of areas with protected forests, protected habitat types or other nature interests, the local state forest district, the municipality or the Forest and Nature Agency must be heard. If the case relates to a change in parish and/or municipal boundary, the Ministry of Ecclesiastical Affairs or the Ministry of the Interior and Health, respectively, must be heard. The Coast Directorate must notify authorisation if the matter involves intervention or land reclamation along the coast.

¹⁰⁴ Statutory Order no. 420/2005 on declarations from licensed land surveyors pursuant to the Agricultural Act.

If an authority has notified authorisation which can be appealed, the time limit for appeals must have expired or the appeals case determined before the cadastral change can be registered in the Cadastre.

For transfer of part of property, the area to be transferred must be released from any mortgage. This means that mortgage-credit associations and banks and any other possible mortgagees must be involved and if necessary include an endorsement on the mortgage deed on relaxation, unless the matter relates to transfer of an insignificant plot and there is a certificate of innocuousness according to section 23(3) of the Land Register Act.

For reallocation of land, the reallocation plan is usually prepared by the licensed land surveyor, while the Directorate for Food, Fisheries and Agri Business takes care of the secretariat function for the agricultural commissions. When an order is to be issued, the reallocation commission is expanded with a judge as chairman and a credit expert member. Cadastral rectification is carried out by the licensed land surveyor.

The cadastral authorities

The National Survey and Cadastre Act¹⁰⁵ requires the National Survey and Cadastre to take charge of the cadastral and licensed land surveyor service in accordance with the relevant legislation. The acts mentioned are under the auspices of the Minister for the Environment. The cadastral service is regulated by subdivision legislation.

The cadastral authority must manage and maintain the Cadastre as a register of all properties and as a map reference with associated measurement documentation for property boundaries.¹⁰⁶ The Cadastre register contains information about cadastral identifications, area sizes, journal numbers etc. for cadastral changes related to the individual cadastral number which together comprise a cadastral property, and information about whether the area is subject to agricultural use obligations, protected forests or protected beaches etc.

Separate areas which arise from subdivision, transfer of part of property etc. are always allocated a new cadastral number and there must be access from the area to a public road. The remaining property usually retains its cadastral number. The cadastral authority makes entries in the Cadastre and ensures that the cadastral change or the intended land use as informed will not lead to conflicts with the provisions of the Subdivision Act or other legislation.¹⁰⁷

¹⁰⁵ Act no. 749/1988 on the National Survey and Cadastre, as amended by Act no. 313/2004.

¹⁰⁶ Section 11 of the Subdivision Act.

¹⁰⁷ Section 24, cf. sections 18-20 of the Subdivision Act.

The cadastral authority can only refuse to register a cadastral change, if

- the change or the intended land use conflicts with provisions of the Subdivision Act or other legislation,
- the necessary information is not available, or
- an amount required paid in advance has not been received.

The cadastral authority must notify the Land Registry and the municipal council of cadastral changes in order to update the Land Register and the common municipal property data system (ESR).¹⁰⁸

The National Survey and Cadastre receives about 10,000 cadastral cases a year as well as 2000 cases on registration of restrictions (protected forests, soil contamination etc.). In recent years about 10,000 new properties have been subdivided each year. In 2005 the number of subdivided properties reached 14,500 new properties.

If there are errors or omissions in cases, the National Survey and Cadastre sends the cases back to the licensed land surveyor for correction. About 8 per cent of cases are returned to licensed land surveyors because of errors or omissions. In other circumstances the licensed land surveyor is requested by telephone or email to submit the outstanding information. When the case is as it should be, the National Survey and Cadastre makes the necessary registration in the Cadastre and notifies the licensed land surveyor and other authorities of the registration. The notification of registration is now sent by email and published on the National Survey and Cadastre website.

The applicant pays the costs of the licensed land surveyor as well as a fee for registration¹⁰⁹ with the National Survey and Cadastre. The following amounts applied for 2005:

• Subdivision	DKK	1900
• Trans. part of property	DKK	1425
• Amalgamation	DKK	950
• Change of internal boundary	DKK	475

A fee (tax) is payable for subdivision of a new property of DKK 5000 for each new property.¹¹⁰ However, this does not apply if the subdivided property is less than 100m², a road area, an area free for common use under a local plan, or if it was established through expropriation.

¹⁰⁸ Section 32 of the Subdivision Act.

¹⁰⁹ Statutory Order no. 1165/2004 on cadastral taxes and fees etc.

¹¹⁰ Section 1 of Cons. Act no. 42/1998 on taxes for subdivision etc.

Decisions by the cadastral authorities under the Subdivision Act cannot, according to section 12 of the Act, be appealed to another administrative authority. Decisions by the cadastral authorities may be brought before the courts or the Ombudsman of the Danish Parliament.

Ongoing modernisation of the Cadastre

The current cadastral registration and case processing system was first used more than 15 years ago, and the digital cadastral map system was made nationwide almost 10 years ago. Both systems have been regularly adapted in line with developments, but they are in need of technological renewal. The National Survey and Cadastre is currently working with IBM to develop a new up-to-date cadastral updating and quality system (miniMAKS), to be implemented in 2008. The goal is to ensure increased efficiency and improved standardised digital interplay, partly through use of MIA data, and partly by developing a general method to register and maintain items (statutory notes) in the Cadastre. The new system has the cadastral register and cadastral map in a common database so that the register and the map are updated simultaneously. Electronic filing of the digital cadastral cases has been introduced in the new system as well as requirements on digital signatures for licensed land surveyors.

The Land Registry

The Land Registry or the information in the Land Register, are part of the process of property formation at several stages. Early on, the licensed land surveyor examines whether the intended cadastral change conflicts with registered easements.

When the cadastral case is to have a declaration from land owners on private rights of way, rectification of boundaries, or transfer of part of property, the case must also have a certificate of title, which is either issued by the Land Registry or is a transcript from the electronic Land Register signed by the licensed land surveyor.

For transfer of part of property and amalgamations, there must be documentation from the Land Registry that the provisions of the Land Register Act on title, mortgage rights, and easements have been observed.

For transfer of part of property in which the value of the area transferred is greater than DKK 40,000, there must also be documentation that the transfer document has been registered in the Land Register on the property, the area from which the transfer was made, and the area to which the transfer was made. For

transfer of part of property in which the value of the transferred property does not exceed DKK 40,000, this documentation can be replaced with a declaration from the parties.¹¹¹

For transfer of part of property to or from a public road or railway, a certificate from a licensed land surveyor can replace the Registry's certificate if the licensed land surveyor certifies that the value of the area transferred does not exceed DKK 8,000 and that the transfer of part of property is not deemed to have any effect on the value of the area from which the transfer was made.¹¹²

The Land Registry must be notified of registration in the Cadastre and after this updates the Land Register. For transfer of part of property with title deed, the cadastral authority also sends the title deed to the Registry which then registers the title deed in the Land Register and sends it to the notifier.

Finally, in subdivision and in transfer of part of property, the judge allocates the registered easements. The licensed land surveyor will have prepared a declaration on easements as a basis for this allocation.

New real properties can also be in the form of condominiums. Division of a property into condominiums requires the involvement of a practicing licensed land surveyor, and of the cadastral authority for condominiums in the Municipalities of Copenhagen and Frederiksberg. Finally the Land Registry is also required to register the division of the property in the Land Register.

New real properties can also arise when new buildings are established on rented land. There are no special rules for identification or other documentation for registering rights in the Land Register to such real property. Existing buildings which have been erected by or belong to the owner of the land cannot be separated from the land and are treated as an independent real property.

Decisions by the Land Registry can be appealed to the High Court. The time limit for appeals is two weeks. The appeals procedure is that the notice of appeal is submitted to the Town Court for which the decision was made, after which the Town Court forwards the notice, with its comments, to the High Court. The appeal is processed by the High Court in accordance with the regulations on appeals in the Administration of Justice Act. The appeal is usually processed in writing by the High Court, but the Court may decide that it is to be processed by verbal negotiation.

¹¹¹ Section 25(2) of the Subdivision Act.

¹¹² Section 13(2) of Statutory Order no. 291/2005 on cadastral work.

As a point of departure, decisions by the High Court cannot be appealed to the Supreme Court. However, this is possible with permission from the Board for Leave to Appeal (Procesbevillingsnævnet), which can be granted in cases of principle.

Forced sales

Forced sales are held by the Enforcement Court, which is part of the Town Court. Decisions by the Enforcement Court during a forced sale can be appealed to the High Court. The time limit for appeals is four weeks.

3.3 Authorities and others involved in establishment and transfer of other rights in real property

Rights other than ownership rights in property include mortgage rights, contracts on rights of use and easements. Establishment and transfer of mortgage rights and private road rights are dealt with in section 2.7. The following looks more closely at the involvement of the authorities in transfer of rights of use and easements.

Rights of use

The Land Registry ensures that documents on rights of use of an area are not registered in the Land Register contrary to the Subdivision Act.¹¹³ According to the Subdivision Act, rights of use for more than 30 years may not be established for an area which comprises a part of a cadastral property. Legal practice interprets this provision fairly loosely so that it merely prevents either of the parties in a use relationship from binding themselves for more than 30 years. The provision does not prevent establishment of new rights of use after 30 years, and a right of use which runs until it is terminated is legal as long as the notice of termination does not exceed 30 years. The provision only covers rights of use in land and does not include house or room rentals.

The provision is especially relevant for buildings erected on rented land. If the tenant of the land wants to erect a permanent building in which he wants to secure a right of ownership of more than 30 years, the land on which the building is to be erected must be subdivided according to the usual rules under which the cadastral authority and other authorities which deal with cases on cadastral changes become involved. The owner can retain the right of ownership in the subdivided land and this can be rented without time limit. This approach is used in harbour areas, for example, where the owner permits erection of necessary commercial buildings.

¹¹³ Sections 16 and 23 of the Subdivision Act.

When a building is erected on rented land, the building and the land are considered as two independent real properties, each with its own property page in the Land Registry. Rights in the building can only be registered in the property page for the building, while rights in the land can only be registered in the land's property page.¹¹⁴ When establishing rights in the building, the holder of the rights must ensure that no problems arise with the owner of the land. A mortgagee in the building should, for example, ensure that at the same time as the mortgage is registered in the building, a right is registered in the Land Register to be subrogated to the lease if the land is sold at a forced sale.

However a right of use may be established without time limit in a land area of a cadastral property of no more than 5 m² in the event of location of a pylon, well or similar.¹¹⁵

The Agricultural Act prevents an agricultural property from being leased in its entirety for more than 30 years.

Pre-emption rights

According to the Reallotment of Land Act,¹¹⁶ the Directorate for Food, Fisheries and Agri Business can impose pre-emption rights for the state on areas for agricultural or nature purposes or to establish or supplement allotment gardens. Previously, many free plots of land were subject to pre-emption rights for the state in order to prevent these areas from being bought by people from other EU countries.

According to section 57 of the Nature Protection Act, the Minister for the Environment can stipulate that property in rural zones or summer cottage areas, which are especially suited to meeting the objects of the Act, can be subject to pre-emption rights for the state. The pre-emption right is registered in the Land Register for the property in question.

The Reallotment of Land Act states that the pre-emption right does not enter into force in the event of inheritance or transfer within a family, and that the pre-emption right must be asserted within a statutory period; usually four weeks.

There is a sort of pre-emption right for owners of agricultural property of less than 70ha. If neighbouring agricultural land is sold, under certain conditions the Agricultural Act grants them a preferential position for supplementary land, ie. a right to take over a piece of land which the vendor had actually agreed to sell to another. However, the vendor is not obliged to complete the transaction.

¹¹⁴ Peter Mortensen: Tinglysning, 2nd edition, 1997, page 39.

¹¹⁵ Statutory Order no. 107/1991 on the subdivision requirements.

¹¹⁶ Sections 1 and 12 of Act no. 535/2005 on reallocation of land and public purchase and sale of real property for agricultural purposes (the Agricultural Act).

Expropriation

In expropriations of real property, the expropriation authorities register the court order in the Land Register as a right in the affected property until the cadastral rectification of boundaries has been completed. Expropriation can be carried out by public authorities according to specific statutory authority when required for the public good. The cadastral work to rectify the court order is carried out by a practicing licensed land surveyor in the event of state expropriations.

Reallotment of land

In reallotments of land, the Agricultural Commission, extended by a town court judge and a member who is an expert in credit, delivers a preliminary court order on the basis of the agreements on land redistribution between the land owners involved. The court order is binding on the land owners and the rights holders in the properties covered by the reallotment of land plan. The preliminary court order is registered in the Land Register as an easement on the participating properties. After this a practicing licensed land surveyor is requested to carry out measurements, mark out boundaries and other cadastral work as the basis for registration in the Cadastre.

Easements imposed on the owner in connection with a permit from an authority

Sometimes, in exemptions or permits in connection with applications for subdivision etc., public authorities may require that the owner register in the Land Register a declaration on conditions for the exemption or permit, even though registration of conditions for the decision is not otherwise required by the law. Such conditions are also registered even if it is doubtful whether this is necessary.¹¹⁷ Some Acts contain provisions that such conditions must be registered in the Land Register.

An example of this is the standard declarations required registered by the Agricultural Commission pursuant to the provisions of the Agricultural Act on ensuring maintenance of a specific condition and/or that the area is again made subject to a farming obligation if the intended use ceases.

Houseowners' associations

In a specific area, typically a residential area in which plots are subdivided at the same time and to where residents move within a brief number of years, an obligation will be registered in the Land Register on the individual plot to be a member of a houseowners' association,

¹¹⁷ Lars Buhl et al: *Illum Tinglysning*, 7th edition, 1994, page 50.

which is responsible for maintenance of private roads, green areas, other common areas, a common aerial and similar. The articles of association of the homeowners' association may be prepared on the basis of standard articles of association.

Such a homeowners' association commences activities when the first residents move in to the development. The registered articles of association contain provisions on the election of a board, composed of a chairman, vice chairman, treasurer and proxies, who are to administer the association. There may be provisions that each year, in February, a general meeting is to be held at which half of the board are elected and that the term of office is two years. The articles of association may also contain provisions on convening and holding general meetings, as well as on attendance or the number of votes to be submitted for the general meeting to reach a quorum. The provisions of the articles of association can be changed at a general meeting, provided a specific number of those attending vote for the proposed changes.

The articles will also state the costs payable by the association and what they cover. The board may be left to set the annual subscription for the members of the association, payable for example every 1 April. Larger investments may require a resolution by the general meeting.

The articles of association can contain provisions allowing for collection of subscriptions and additional subscriptions through the courts and that the person in arrears must pay the associated costs, including lawyers' fees.

Easements established by law

Easements or general land use restrictions can be an immediate consequence of legislation or they can be imposed by administrative decisions in pursuance of legislation.

Usually, land use restrictions laid down in pursuance of legislation do not have to be registered in the Land Register, unless this is stipulated in the legislation.

An example of statutory land use restrictions which do not require registration in the Land Register are the protection lines around forests, lakes and watercourses, historical monuments etc. laid down in the Protection of Nature Act. This is probably because this is not an especially onerous regulation.

On the other hand, the legislation states that the cadastral authority must register the land use restrictions mentioned below in the Cadastre and it must notify the Land Registry with a view to registration in the Land Register. This registration and notification takes place in part as the basis for administration of the relevant act, and in part in order to inform residents, enterprises and other public authorities about the legal position of the properties.

- **farming obligation**¹¹⁸

A farming obligation covers the cadastral properties noted as agricultural in the National Survey and Cadastre's cadastral register. The National Survey and Cadastre must change the note on the farming obligation in accordance with the changes resulting from the rules in the Agricultural Act on registration and cancellation of farming obligations. Administration of the Act is the responsibility of the licensed land surveyors, regional agricultural commissions, the National Survey and Cadastre, and the Directorate for Food, Fisheries and Agri Business. The cadastral case must state when the farming duty is cancelled for a subdivided area or for a remainder property. The farming obligation can be cancelled for the whole property or for a part of the property in subdivision. Therefore the farming obligation always rests on the whole cadastral property.

- **protected forest obligation**¹¹⁹

Registration of protected forests in the Cadastre was terminated in 1999. After this, the note in the Cadastre and Land Register are kept up to date in connection with cadastral case processing and for routine notifications from the local state forest district.

- **preservation of dunes and protection of beaches**¹²⁰

A 300m beach protection and preservation of dunes zone was stipulated at the recommendation of a temporary Beach Protection Commission. After this the lines were finally set from county to county by statutory orders issued by the Minister for the Environment. At the same time the lines/areas were entered into the digital cadastral map. Registration of preservation of dunes and protection of beaches areas in the Cadastre under the Nature Protection Act was completed in 2003. The County Council and the Forest and Nature Agency can grant exemptions within the protection lines.

¹¹⁸ Sections 2, 4 and 5 of the Agricultural Act.

¹¹⁹ Sections 3 and 41 of the Forest Act.

¹²⁰ Sections 8 and 15 of the Nature Protection Act.

- **soil pollution mapping on V1 and V2**¹²¹

Registration in the Cadastre of soil pollution at V1 and V2 levels is currently carried out on the basis of reports from the County Council, which conducts mapping in collaboration with the municipalities. The V1 and V2 levels are described in more detail in section 2.2.

- **subsidies granted after storm damage**¹²²

Registration in the Cadastre of statutory subsidies granted for replanting trees on private areas of protected forest suffering storm damage is currently done on the basis of notification from the Forest and Nature Agency. The Storm Council can determine that a subsidy granted is to be repaid if the basic insurance is cancelled within 15 years of payment of the subsidy.

- **other registrations**

In addition, changes in registration in the Cadastre and the Land Register are also registered according to older legislation. These are registrations such as family property, workers' residences, interest on land, and gathered forest areas.

Interest on land is interest on loans which were previously extended for workers' residences on land and to buy land for state smallholders. However, interest on land is not based on the amount of the loan, but on the value of the land. Interest on land is registered in the Land Register and the Cadastre. In recent years the interest on land in many properties has been cancelled and the registration in the Land Register and the Cadastre has been deleted on the basis of notification from the Danish Agency for Governmental Management. The same trend applies for workers' residences, for which deletions are made every month.

Registration as a family property must be deleted if the area of the property is increased. This takes place on the basis of notifications from the Agricultural Commission. Similarly, registrations of gathered forest areas are changed on the basis of notifications from the Forest and Nature Agency.

According to the Public Roads Act¹²³ the road board for the relevant public road can impose building lines on a property along the public road with a view to extending the road or ensuring a path for new roads or rerouted roads. The road board must ensure registration in the Land Register of the building line provisions, but these provisions must be respected after the date of public announcement. According to similar

¹²¹ Section 14 of Act no. 370/1999 on contaminated soil, amended by Act no. 507/2006.

¹²² Section 19 of Act no. 349/2000 on flooding and storm damage.

¹²³ Statutory Order no. 671/1999 on public roads.

regulations, the road board can lay down provisions on limits of access to public roads. These provisions must also be made public and registered in the Land Register on the properties deemed to be affected by the provisions.

According to the Nature Protection Act, the Conservation Board can impose on properties land use restrictions which are established via expropriation or via specific listing pursuant to part 6 of the Nature Protection Act. Provisions on listing must be upheld by everyone once they have been announced to the public.

4 Conveyance of real property

4.1 Introduction

Section 2.8 provided an introductory overview to conveyance of real property in Denmark. The section concentrated on conveyance of freehold residences. Furthermore, section 3.1 provided an account of the authorities and others who may be involved in conveyance of real property. Section 4.2 below first describes the process required in connection with conveyance of real property in its simplest form, i.e. without involving estate agents, lawyers or lenders. So, it is assumed that the buyer has decided to purchase a specific residence offered for sale at a cash sum which the buyer has in his bank.

The process itself is shown step-by-step and the text describing each step follows after. References are to the numbers stated in the figure.

4.2 Conveyance of real property on purchase

Conveyance of a real property without involvement of an estate agent, lawyer and lender

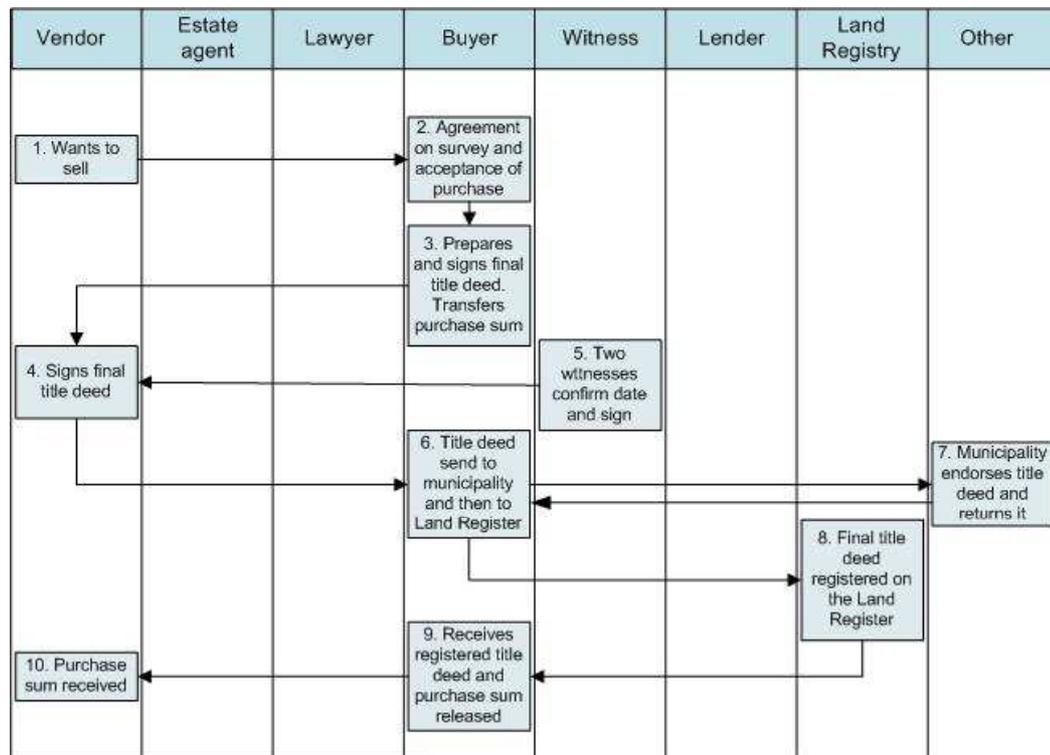


Figure DK-10: Conveyance of real property through purchase - simple

1. The owner wants to sell his residence.
2. The buyer inspects the property and decides to buy it. The buyer has also investigated what easements have been registered on the property and whether there are other matters noted in the Land Register which he should be aware of. After this the buyer contacts the vendor and offers to buy the property at the price stated. The buyer and vendor agree the terms of the transaction, including the amount of the purchase sum and payment, the date the buyer is to take over the property and any special conditions the buyer should be aware of regarding the property. Furthermore, allocation and payment of the costs of the transaction are agreed.
3. The buyer prepares a final title deed in accordance with the agreement. A final title deed must be a document in A4 format and the cadastral identification and address of the property should be stated at the upper left of the first page of the document, and at the upper right the name, address and telephone number of the notifier must be given. Information on the costs of registration of the title deed in the Land Register must also appear on the front of the title deed. The title deed usually contains a comprehensive text, starting with that the vendor (name and address) conveys and finally transfers to the buyer (name and address) title in the property (cadastral identification, address) of an area of (xx m²). After this, there is often information about the value of the property at the latest public valuation, information about registered easements or a reference to these in the Land Register, possibly special information about the property or associated items, information about the agreed purchase sum, as well as date of payment of the purchase sum and for take over by the buyer of the property. Finally the allocation and payment of the costs linked to the transaction will be stated, including registration of the title deed, as well as that the purchase sum can be released to the vendor when the title deed has been registered in the Land Register without comment or objection from the court. The buyer signs the title deed and deposits the purchase sum with the vendor's bank.
4. The vendor checks that the purchase sum has been deposited and then signs the title deed, which is now a final title deed. The property has now been conveyed to the buyer, since both parties are now bound by the agreement in the final title deed.
5. Two witnesses or a lawyer are called to confirm that the signatures are genuine and the date is correct.
6. The buyer sends the title deed to the municipality for endorsement with a notification form¹²⁴ which states the names and addresses of the buyer and the vendor, the date and time of conveyance of the property, information about price, cash payment, and possibly debt to be taken over, as well as the use of the property.

¹²⁴ Section 47A of Consolidated Act no. 740/2002 on assessment of real property in

The buyer prepares a completion statement in which accruals between the vendor and buyer are calculated with respect to property tax, electricity, water, heat etc. on the date of take over. Any amounts due or prepaid are reconciled between the parties. Once the title deed has been endorsed by the municipality, the buyer sends the deed, with a copy and the registration tax (0.6 % of the purchase sum plus DKK 1400), to the Land Register with a request for registration.

7. The municipality endorses the title deed with information on whether there is an independent valuation of the property, and if so a statement of the value of the property, including the land value and the date of the latest public valuation. At the same time the municipality inserts the name and address of the new owner in the common municipal property data system (the ESR). The municipality forwards the notification form to the Central Customs and Tax Administration, who use the information to assess and tax the real property as well as for statistics on property transactions and prices. The municipality cannot endorse the title deed before the notification form has been received. The municipality returns the endorsed title deed to the buyer.
8. The title document is entered in the journal at the Land Register Office. After this the document is checked, amongst other things to ensure that the issuer is entitled to take charge of the property and that the required declarations and permits are present. If the document etc. is as it should be, it is registered by entry in the Land Register and by adding a signature to the title deed with the following information from the electronic Land Register: The purchase sum.... regarding cadastral identification...., the owner of the property...., registered in the Land Register on DDMMYYYY. The title deed is final. TheCourt on DDMMYYYY and the Land Register employee's signature. The registered title deed is returned to the applicant, in this case the buyer, and the copy is filed at the Land Register Office.
9. The buyer receives the title deed and informs the vendor that the title deed has been registered in the Land Register without comment or objection from the court and the purchase sum is released to the vendor.
10. The vendor receives the purchase sum.

Conveyance of real property with an estate agent, lawyer, bank and lending institution

The following section provides a description of the usual process, under which the estate agent, as the professional property agent is involved, and where the relevant regulations for offers and sales information must be observed, as well as other regulations. Furthermore, in this process the most common situation is described where the buyer is assisted by a lawyer and where the buyer takes out a loan in the property to pay the purchase sum.

The extended process is shown in a similar fashion, step-by-step, with a subsequent description referring to the numbers in the figure.

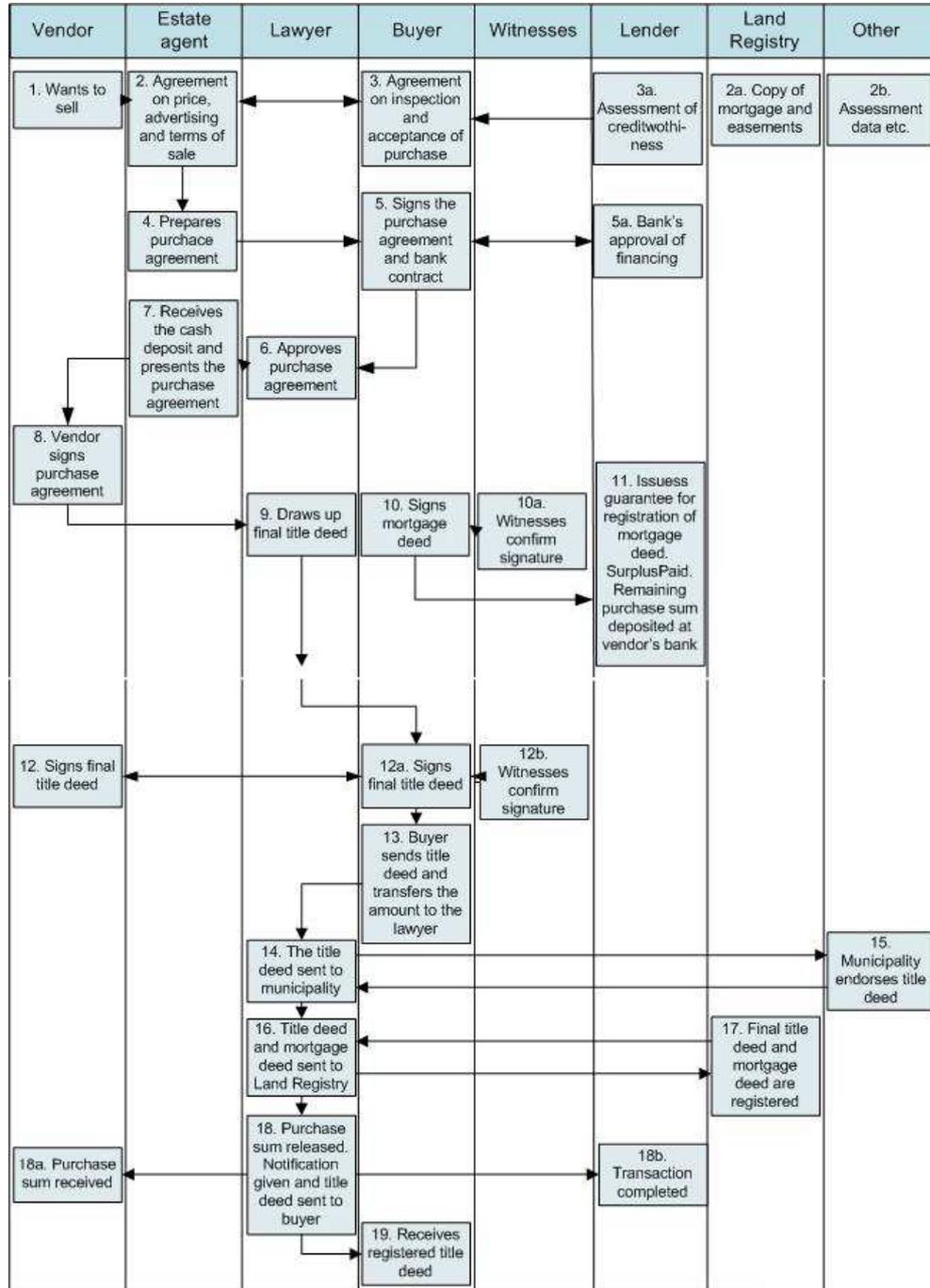


Figure DK-11: Conveyance of real property through purchase – with estate agent and loans.

1. The owner decides to sell his residence. In order to set the correct price and find a buyer, the owner/vendor approaches an estate agent. The estate agent is primarily responsible for the interests of the vendor and is paid by the vendor.
2. and 2a. The estate agent inspects the property, and with the vendor sets a cash price, including the cash deposit, for which the property is to be sold. The estate agent draws up a preliminary sheet of information with calculations of the amount the vendor will receive from the sale and suggested financing for interested buyers. A copy of the information sheet is sent to the vendor for approval.

A written agreement is made which contains terms, duration and fees. The estate agent obtains information on easements etc. from the Land Register and prepares sales material which includes pictures of the house, plans of the property, a description of the location of the property, date of construction, condition, as well as the cash price, deposit and various estimates of monthly costs (before and after tax) to finance the purchase sum, less the deposit. The estate agent puts adverts with the information sheet in the local and national press and on the internet, with advice for interested buyers to contact his firm and arrange a viewing.

2b. The estate agent obtains information about the property valuation etc. from the municipality, because the annual property value tax to be paid by the buyer after taking over the property is calculated on the basis of the public property valuation.

At the moment, property value tax is calculated on the basis of the least of the 2001 valuation + 5 per cent; the 2002 valuation; or the current valuation.

Property value tax usually amounts to 1 per cent of this amount. If for example, the least amount is DKK 2 mill. in addition to income taxes, the buyer must pay DKK 20,000 property value tax. (In addition annual property rates must be paid to the municipality, and these are collected twice a year. In the City of Copenhagen, these currently amount to 3.4 per cent of the land value of the property.) The estate agent usually reports this information as it is important in the buyer's assessment of the size of the annual payments involved in the transaction.

3. The buyer wants to buy a residential property. Therefore, the buyer has consulted his bank in order to find out how much he can borrow to purchase real property, taking into account his assets and annual income. After this, the buyer will have studied the market and inspected various properties in the relevant price range and with the desired location. The buyer next contacts the estate agent in order to buy the vendor's property. The buyer asks the estate agent questions about the property, registered easements, residents association etc., and may ask the estate agent to obtain a specific loan offer to finance the purchase. Estate agents often collaborate with a

specific mortgage-credit institution and they offer to apply for approval of the buyer. The loan application requires that the buyer forwards, for example, copy payslips for the past three months and copy tax assessments from the tax authorities for the past two years. The buyer may also decide to have his own bank organise financing and obtain an offer of a mortgage loan.

The estate agent or bank sends the application and enclosures to the mortgage-credit institution and requests a loan offer for a specific type of loan. There are many different types of loan, e.g. cash loans or bond loans at fixed or variable interest rates and with or without interest-only periods.

- 3a. The mortgage-credit institution decides about the application, inspects the property, and prepares a loan offer based on the current rate for the required loan. The offer is sent to the estate agent, who forwards it to the buyer. The buyer decides to purchase the property on the terms of the offer. The buyer's bank will often be the financial consultant in connection with the purchase of real property and will receive the new mortgage loan and deal with redeeming the old loan. If this is the case, the buyer will agree with his bank to set up an account for temporary financing of the purchase. Once the buyer has signed the purchase agreement, the papers for the bank are signed. This means that the bank has guaranteed that the cash deposit can be paid to the estate agent when the purchase agreement is ready for the vendor's signature and later the remaining purchase sum can be deposited with the vendor's bank once the property has been taken over and when the final title deed is ready for signature. Most transactions are cash transactions.

4. The estate agent draws up a purchase agreement. The estate agent usually uses the standard purchase agreement prepared by the Danish association of estate agents - *Dansk Ejendomsmæglerforening*. The purchase agreement is extremely comprehensive (26 pages). The estate agent will also have contacted an energy consultant who, after inspecting the property, will prepare an energy certificate and a heating inspection report. According to the Trading in Real Property Act (*lov om omsætning af fast ejendom*), the estate agent must inform the buyer of his right to have an expert survey of the property carried out, and if there already is such a survey report, both the buyer and the vendor must be provided with a copy. The estate agent must also inform the buyer that he can take out change of ownership insurance against hidden problems with the property. After this the buyer can no longer claim for any deficiencies in the condition of the building. The estate agent should also supply copies of the current energy label report, insurance policies, articles of association of the residents' association and the minutes of the most recent annual general meeting, registered easements, the most recent property valuation, a print out from the BBR register and any other information.

5. The buyer meets with the estate agent and signs the purchase agreement, which contains the agreed terms of the transaction, including the purchase sum, the date the buyer is to take over the property, dates the purchase sum is to be paid, and any special conditions relating to the property of which the buyer should be aware or items which are included in the purchase. The purchase agreement also states how the costs of the transaction are to be divided and paid. According to section 15 of the Trading in Real Property Act, the estate agent may not represent both parties in the same transaction. Therefore, the purchase agreement also contains a reservation that the buyer may seek advice from his lawyer. Under the purchase agreement the buyer may also include a reservation regarding approval by the mortgage-credit institution of the buyer as a borrower. A deadline is agreed for the earliest date when the estate agent may present the purchase agreement to the vendor for signature. Until the vendor has signed the purchase agreement, the buyer's lawyer may, without stating a reason, notify the estate agent that the buyer withdraws from the purchase agreement. When the buyer signs the purchase agreement, the buyer also signs a declaration on the right of cancellation which provides him with a right to withdraw from the purchase agreement no later than six working days after the vendor has signed the purchase agreement. The buyer sends the purchase agreement and the other material from the estate agent to his lawyer.
6. The lawyer reviews the material and consults the buyer on any problems or special conditions. The lawyer can also advise the buyer on financial aspects, including the choice of mortgage loan. If the lawyer has any queries regarding the agreement, he will notify the estate agent before expiry of the agreed time limit of any changes or clarification the buyer would like, if the purchase agreement is to remain valid. Once all the queries have been clarified, the lawyer approves the purchase agreement.
In connection with the loan offer and the bank's advice, the buyer has also agreed and signed documents under which the bank undertakes to deposit the whole purchase sum or warrant for payment by the buyer. The buyer transfers the cash deposit to the estate agent's bank, while the remainder of the purchase sum is not deposited until a final title deed is presented to the vendor for signature.
7. The estate agent submits the purchase agreement to the vendor.
8. The vendor signs the purchase agreement. However, the vendor is free to decide whether he will sign the agreement as it stands. For example, he may decide that the price is to be increased or the property is to be advertised again.
9. and 10. The buyer asks his lawyer to prepare a final title deed in accordance with the purchase agreement. The amount the buyer is to pay to the lawyer (fee) for advice and for preparing the title deed.

is agreed. The buyer accepts the loan offer and any fixed-interest agreement/hedging agreement with the mortgage-credit institution. The loan offer is prepared on the basis of the bond rates applying at that date. As the rates can change from day to day, through hedging the buyer can avoid further uncertainty as a result of rate/price changes. After this the mortgage-credit institution prepares a mortgage deed according to the agreed rate/price. The nominal value of the mortgage is set so that it also covers registration tax and other costs connected to drawing up the mortgage deed. The mortgage deed and the payment form are sent to the buyer. The buyer signs the mortgage deed with witnesses and states that payment will be to the buyer's bank. The lawyer draws up a final title deed. For the form and content of the title deed, see step 3 in the first example. The lawyer sends the title deed to the buyer once it has been completed.

11. Once the agreement between the parties is final and the mortgage deed has been signed, the bank has security that completing the transaction is merely a matter of execution. Therefore the bank can notify the mortgage-credit institution that the bank guarantees that the mortgage deed will be registered in the Land Register without comment and that payment of the proceeds should be transferred to the bank and paid into the buyer's account. The mortgage-credit institution pays the proceeds and the bank deposits the remaining purchase sum in an account at the vendor's bank.
- 12 and 13. The buyer and vendor meet with the title deed. They confirm that the purchase sum has been transferred to the vendor's account and the buyer and vendor sign the title deed, which now becomes final. After this, both parties are bound by the agreement in the final title deed and immediately after, the buyer can take over the property as agreed. Two impartial persons or a lawyer sign the witness declaration that the signatures are genuine and confirm the date. The buyer sends the signed title deed to the lawyer and transfers an amount corresponding to the registration tax and the agreed lawyer's fee for preparing the title deed etc. to the lawyer's bank account.
- 14, 15, 16 and 17. The lawyer completes a notification form and sends it with the title deed for endorsement by the municipality. Later, the lawyer sends the title deed and any mortgage deeds for registration with the Land Register. At the same time, copies of these documents are attached and the registration tax is paid.
- 18 and 19. The purchase sum is released, the transaction completed and the title deed is sent to the buyer.

4.3 Mortgaging real property

A cadastral property can be mortgaged separately or together with one or more cadastral properties. The commonest form of mortgaging in Denmark is

a mortgage-credit loan, which can have a term of up to 30 years. There are different types of loan, as described in section 2.7.4.

For registration of mortgage-credit loans and other loans in the Land Register, the title deed must be enclosed. The mortgage deed should always be signed by the borrower and witnesses. A tax of 1.5 per cent of the nominal value of the loan and a registration fee of DKK 1400 must be paid when the deed is registered.

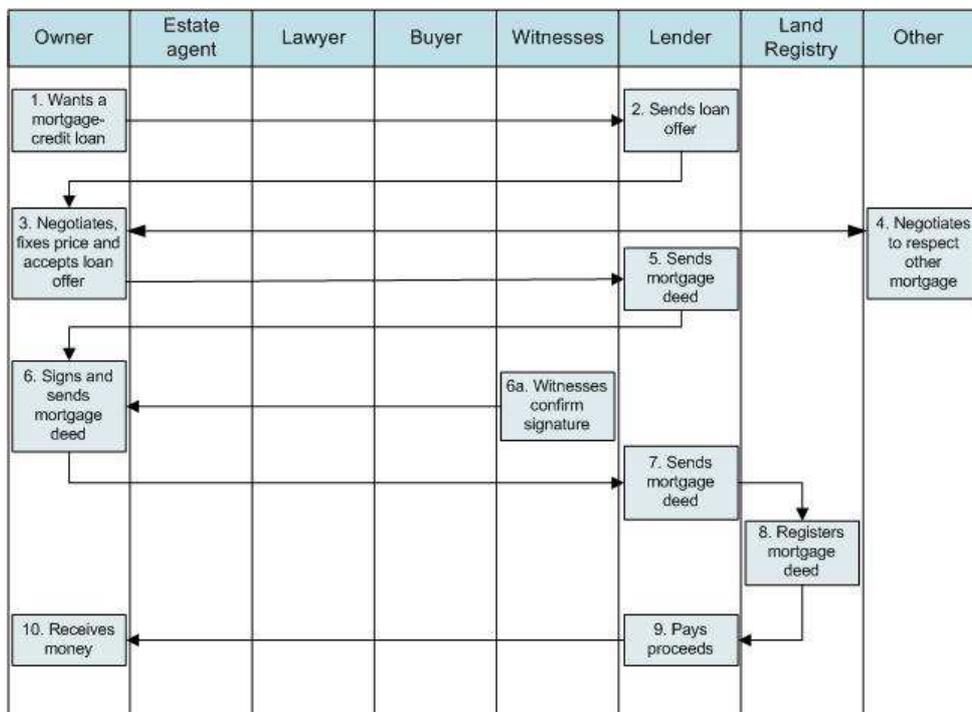


Figure DK-12: Mortgaging real property.

1. The owner/borrower of a real property wants to take out a mortgage-credit loan. After considering the amount, type of loan, term, etc. the owner approaches a mortgage-credit institution.
2. The mortgage-credit institution examines the Land Register, inspects the property and possibly asks the owner for any supplementary information. After this the institution sends a loan offer stating the amount of the loan, interest and annual repayment and instalments before and after tax. The offer is based on the current bond prices and is valid for three months, for example.

3. and 4. If a private mortgage is registered on the property, which is to respect the new loan, the relevant mortgage deed must have a registered endorsement about this. A private mortgagee in the property could demand an extraordinary repayment of the mortgage as a condition for allowing the new mortgage. The owner must therefore negotiate an agreement about this. After this the borrower should consider fixing the price when he accepts the loan offer.
 5. The lender draws up the mortgage deed as agreed and sends it to the borrower.
 6. and 6a The Borrower signs the mortgage deed and after having the signature witnessed, sends the mortgage deed to the lender with the title deed for the property and proof of fireinsurance etc.
10. The lender sends the mortgage deed and a copy, the title deed etc. as well as the registration fee for registration in the Land Register.
 11. The Land Registry registers the mortgage deed, attaches the copy to the file and returns the documents.
 12. The mortgage-credit institution pays the proceeds to the borrower.
 13. The borrower receives the money and the documents as well as a copy of the registered mortgage deed.

Part of a property cannot be mortgaged separately

A non-specific share in or a physical part of a cadastral property cannot be mortgaged separately. For example, two people, each of whom owns half of a real property, cannot each mortgage their half share. They are mutually liable for any registered loans.

On the other hand, a registered agreement to rent an area of a cadastral property can form the basis for taking out a loan to erect a building on the rented area. An agreement to rent a physical part of a cadastral property cannot be registered in the Land Register for more than 30 years¹²⁵. In other words, it must be possible for either party to terminate the rental agreement at notice of no more than 30 years. If, at the end of the period, the parties cannot agree on a new period, any building on the area reverts to the owner of the land. In general, the owner of the building has a duty to remove it.

Building loans

When constructing a building on a site owned by the main contractor, the normal procedure is that the main contractor, or his architect or advisor, applies to the municipality for a building permit and encloses drawings of the proposed building. Once a building permit has been granted, the main contractor makes an agreement with his bank on an overdraft to finance construction temporarily.

¹²⁵ Section 16 of the Subdivision Act.

When the building has been erected and approved by the municipality, the owner sends a loan application to a mortgage-credit institution. The loan can also be paid against a bank guarantee before construction work has been completed. Lending follows a similar procedure to that described in section 2.7.4. When the new loan has been registered in the Land Register, the loan proceeds are paid to the bank.

The owner of the land built-on will usually agree a building loan with his bank for any difference between the loan proceeds and the overdraft, and this will normally be repaid over a number of years by a fixed annual amount and at a fixed or variable interest rate. The bank will usually require collateral for the loan in the form of an "owner's mortgage deed" to cover the amount. The mortgage deed is registered on the property in the Land Register and kept by the bank until the building loan has been repaid.

5 Changes in property boundaries

5.1 Introduction

The boundaries of a property may be changed because of an agreement under private law to sell a physical part of a property, or because the owner wants to subdivide an area in order to sell or transfer part of the property to another property he owns. A prescriptive right may also be identified, there may be expropriation under public law, or a re-allotment of the land.

Cadastral changes are carried out using the following types of case: subdivision, entry in the Cadastre, transfer of part of a property, amalgamation, or rectification of boundaries, as mentioned in section 2.9. The different types of case and use of part numbers are shown in the figure below.

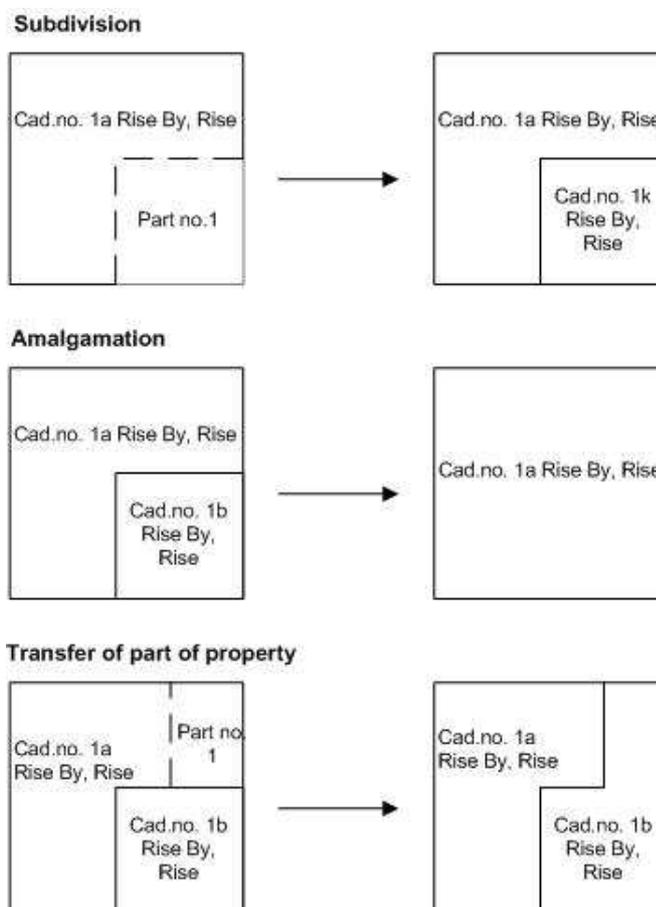


Figure DK-13: Types of cadastral case.

The private practicing licensed land surveyors who carry out cadastral work have many routes by which to access the data required for case processing. Much of the data can be retrieved from the internet.

The Ministry of Economic and Business Affairs has set up a Public Information Server (OIS) to disclose and distribute property data from the Cadastre via the municipal property registers under specific agreements. The practicing licensed land surveyors now have direct access and can retrieve personal information from a municipality on the names, addresses etc. of the owners, while as a group they have set up an agreement to retrieve information on-line via OIS and transfer to the digital cadastral map. Since 1997, the Danish Association of Licensed Surveyors in Private Practice has had agreements with the National Survey and Cadastre on use of the digital cadastral maps and other Agency products for a fee.

The practicing licensed land surveyors have also obtained extensive access to the electronic Land Register, and when certified by the licensed land surveyor, a print-out from this can replace a certificate of title from the judge.

In order to promote digital administration, the National Survey and Cadastre, in cooperation with the Danish Association of Licensed land surveyors in Private Practice and municipal representatives have developed a cadastral information and update system known as MIA.

MIA was developed over a number of years and since 1 September 2005 it has been used by all firms of licensed land surveyors. MIA establishes a standardised digital interplay for the registration documents covering maps of changes, schematic reports and measurement sheets. MIA is a program installed at the offices of the practicing licensed land surveyors, and it establishes a data link between the licensed land surveyors, the municipality and the National Survey and Cadastre so that data can be transferred directly between these parties without repeated input of the same data. MIA allows the licensed land surveyors to submit the digital data required to update the cadastral register and the cadastral map. However, the licensed land surveyors still have to submit analogue case documents. This is because requirements have not yet been introduced for digital signatures and the National Survey and Cadastre is not yet ready for digital filing of the entire case.

5.2 Procedure for cadastral changes

Anyone wanting to change the boundary of a property must contact a practicing licensed land surveyor. The licensed land surveyor completes the required marking and measurements of both the new and the existing boundaries. The licensed land surveyor also

involves the neighbours, if necessary, and other parties in connection with setting the boundaries and documenting rights of way. The licensed land surveyor is also responsible for contacting other authorities and obtaining the necessary permits required by other legislation.

When applying for authorisation under a specific Act, the licensed land surveyor must clearly and systematically describe the desired changes to the property and areas and he must submit maps showing the changes. It is important that there is no uncertainty regarding the size and location of the properties to be changed. The licensed land surveyor must also describe the intended use of the areas. This applies for the remainder property and for the areas required to be subdivided or transferred to another property.

If the licensed land surveyor is in doubt as to whether the desired change is permissible under other legislation, the licensed land surveyor will carry out a preliminary consultation with the relevant authority before commencing the field work.

Finally, the licensed land surveyor must attach the necessary certificates from a judge on who owns the property and that the provisions on mortgage liability and easements have been observed.

In ordinary cadastral cases, the case documents can be categorised as

- registration documents,
- declarations from the parties,
- certificates from a judge, and
- permits from other authorities.

The Statutory Order on Cadastral Work¹²⁶ (BMA) and the associated guidelines (VMA) describe the registration documents in detail. They also explain clearly when neighbours and others should be involved and in what circumstances certificates from a judge are required.

The registration documents

The registration documents include the measurement sheet, map of changes, schematic report and case file.

¹²⁶ Statutory Order no. 291/2005 and Guidelines no. 46/2001 on Cadastral Work.

Boundaries which are to be registered in the Cadastre must be marked out by an approved boundary marker so that the course of the boundary can be clearly seen at the site. This does not apply, however, if the boundary at the site is marked by a brick wall, a fixed fence or similar. Neither does it apply for property boundaries towards the sea or boundaries in lakes, watercourses or canals.¹²⁷

New boundaries to be registered in the Cadastre must be set by measurements and these measurements must be linked to the grid of fixed points for large measurements or if fixed points have been established in the area within 300 metres.

The *measurement sheet* must be prepared on materials and in the formats approved by the National Survey and Cadastre, and the measurements must be stated on the measurement sheet in a standardised manner.¹²⁸

A *map of changes* must be available when changes are to be made to the cadastral map. The map of changes must be prepared as a copy of the existing cadastral map with the measured boundary and the new boundary superimposed in red.¹²⁹

There must be a *schematic report* when changes in the information in the cadastral register or the cadastral map are required. The schematic report must systematically describe the desired changes for each cadastral number, including the size of areas and the basis for calculating these, road areas and future notes on the cadastral numbers which make up a cadastral property, whether there is a farming obligation, protected forest etc. For subdivision, an ESR number (number for municipal valuation) must be stated for each new property.¹³⁰

The *case file* is designed so that the front contains boxes in which the licensed land surveyor discloses what the case is about, the location of the property (cadastral district and municipality), the documents set up for the case, and the licensed land surveyor's signature.

In addition there is space for information added to the case by the National Survey and Cadastre. This includes reference number, date received, date forwarded, name of case officer, etc. Page two contains different printed combinations of case types and phrases which are used for automatic case processing, including formation of

¹²⁷ Section 27 of the Statutory Order on Cadastral Work

¹²⁸ Sections 35 and 36 of the Statutory Order on Cadastral Work

¹²⁹ Section 39 of the Statutory Order on Cadastral Work

¹³⁰ Section 42 of the Statutory Order on Cadastral Work

the registration report which is sent to the licensed land surveyor, the municipal council and the Land Registry when the cadastral changes have been registered in the Cadastre.

Declarations from the parties etc.

When new boundaries are to be registered in the Cadastre, there must be declarations from the owners of the properties affected, approving the boundary as it is or will be marked out in the field.

According to the Subdivision Act¹³¹, subdivision, entry in the Cadastre, or transfer of part of property is not possible if this results in a property or separate part of a property which does not have access to a public road.

When private roads are included on or deleted from the cadastral map, there must be a declaration from the owner of the property(ies) through which the road runs. If a private road is narrowed or rerouted on the cadastral map, there must also be declarations/approvals from those entitled to use the road.¹³²

For transfer of part of a property, there must be a document of conveyance, signed by the owners of the property affected. For rectification of boundaries there must be a declaration from the owners of the properties affected that the change in the boundaries of the property are due to prescription.

Certificates from a judge

When declarations from owners of the properties affected are required in connection with registration of private roads or rectification of boundaries, there must also be a certificate of title for the properties. The certificate of title must be issued by the judge, or it may be a print-out of the electronic Land Register, certified by a licensed land surveyor.

Before transfer of part of property can be entered in the Cadastre, there must be a certificate from the judge that the provisions of section 23 of the Land Register Act on mortgage liability and easements have been observed.¹³³ If the area has been conveyed and the value of the area exceeds DKK 40,000, there must also be a certificate from a judge that the document of conveyance has been registered in the Land Register for both the transferor and the transferee properties.

¹³¹ Section 18 of the Subdivision Act

¹³² Sections 5-10 of the Statutory Order on Cadastral Work

¹³³ Section 13(1) of the Statutory Order on Cadastral Work

5.3 Permits from other authorities

According to the Subdivision Act,¹³⁴ subdivision, entry in the Cadastre, transfer of part of property or amalgamation may not take place if the cadastral change or the intended land use as reported will conflict with other legislation.

This is a general provision which covers any legal precept in other legislation (Acts, Statutory Orders, local plans etc.). The cadastral authority is required to carry out this subdivision inspection, but the cadastral authority is only able to do this if the cadastral case contains the information necessary. Therefore the Statutory Order on Inspection of Subdivision¹³⁵ and the associated guidelines stipulate the permits and information required in cadastral cases.

All cases on subdivision, entry in the Cadastre, transfer of part of property and amalgamation must be submitted to the municipal council, who must issue their declaration/approval on a "green form" obtained from the National Survey and Cadastre (now on the internet). The municipal council issues a declaration on this form regarding aspects related to the following acts: the Planning Act, the Public Roads Act, the Private Common Roads Act, the Building Act, the Environmental Protection Act and the Soil Contamination Act.

All the cases mentioned above must also have a "white declaration" in which a licensed land surveyor issues a declaration on whether the case involves matters which require authorisation under the following Acts: the Nature Protection Act, the Museum Act and the Forest Act.

If authorisation is required, the licensed land surveyor must submit the case to the relevant authority and obtain the necessary permit/authority.

Finally, if they involve areas with a farming obligation, all these cases must *either* have a "pink declaration", in which the practicing licensed land surveyor issues a declaration that a number of provisions pursuant to the Agriculture Act have been or will be met, or a permit/authorisation from the relevant agricultural commission.

Furthermore, in processing the case the licensed land surveyor should be aware of provisions in other Acts which must be observed, for example the Mineral Resources Act, the Acquisition Act etc.

¹³⁴ Section 20 of the Subdivision Act.

¹³⁵ Statutory Order no. 1012/2004 and Guidelines no. 116/2004 on Inspection of Subdivision.

If an authority imposes conditions regarding a permit, and these conditions are not registered in the Land Register for the property affected, the licensed land surveyor must ensure that the conditions are met, possibly by obtaining declarations from the parties that the conditions will be met and by sending these declarations to the relevant authority.

The cadastral authority cannot refuse to register a cadastral change just because the authority states that it is against the cadastral change in question. The change or the intended land use must conflict with current legal precept, without the authority having granted exemption.

See also section 2.2 describing public-law regulation of land use.

5.4 Subdivision

Formation of a new property must be through subdivision. The area(s) which are to make up the new property must be separated from the parent property through subdivision. When an area is subdivided from a property, the mortgage liabilities in the parent property will usually also rest in the subdivided property, after entry in the Cadastre. Only when the new owner wants to register title in the subdivided property will it be released from the mortgage liabilities linked to the parent property. Likewise, only at this time will there be a requirement to allocate the easements registered in the Land Register on the parent property. In connection with this, and often earlier in the process in connection with the subdivision, the licensed land surveyor draws up a certificate of the easements which are to be transferred to the new property. On the basis of this certificate, the Land Registry updates the information on easements in the Land Register.

Subdivision of a building plot without transfer

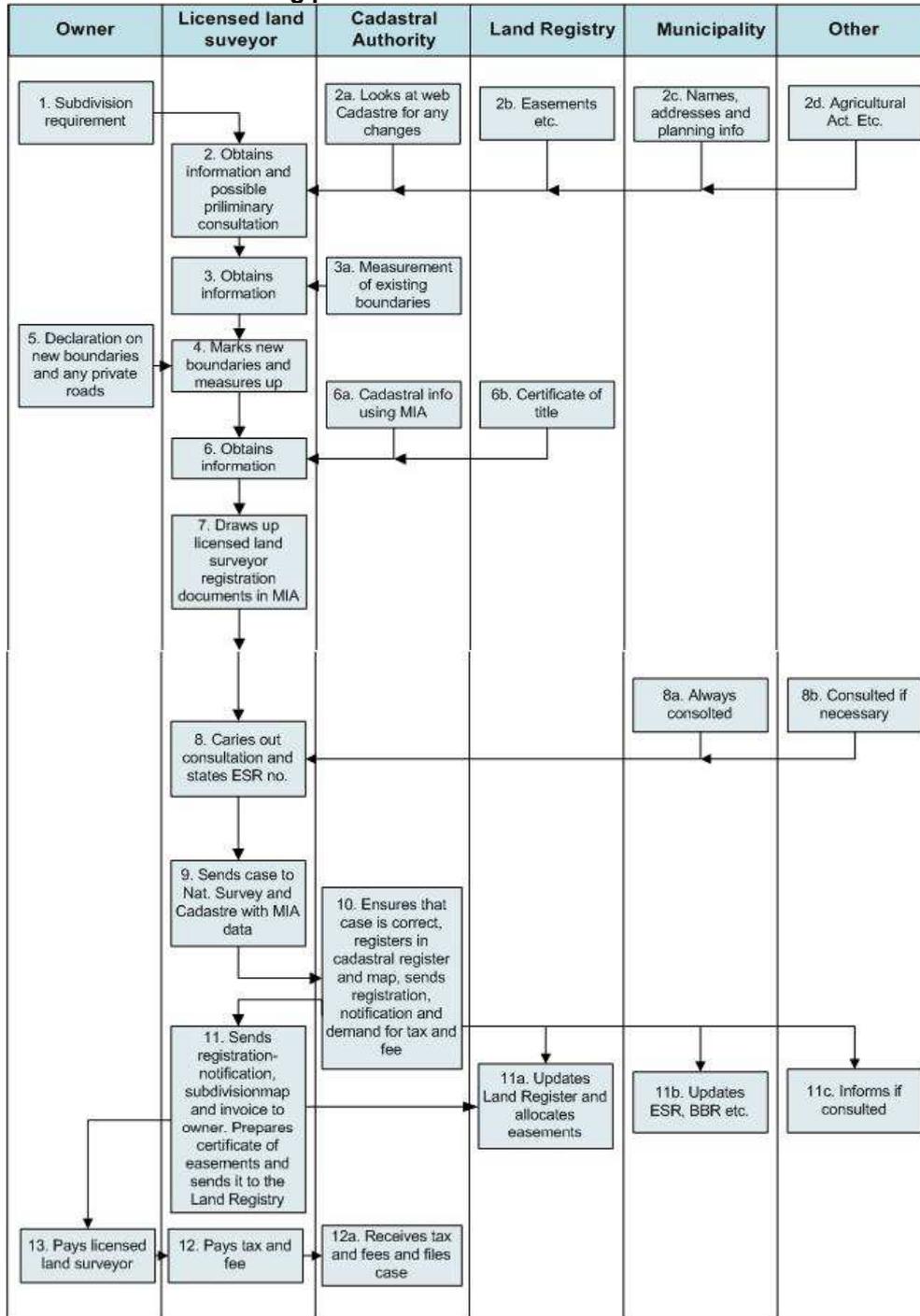


Figure DK-14: Subdivision of a building plot.

1. The owner wants to subdivide a building plot from his property and he approaches a practicing licensed land surveyor.
2. The licensed land surveyor obtains cadastral information from the web Cadastre, including farming obligations etc. and location. After this he looks at the Land Register for easements, including local planning etc. By contacting the municipality, the licensed land surveyor obtains the name and address of the owner and if necessary of the neighbours. At the same time the licensed land surveyor requests a copy of the local plan, information about water and drainage etc.

If the licensed land surveyor deems that completion of the case may be in doubt, for example whether exemption from specific legal provisions will be granted, the licensed land surveyor will carry out preliminary consultations with the relevant authorities.
3. The licensed land surveyor requisitions measurements of the existing boundaries and coordinates of the fixed points linked to the measurements, unless the licensed land surveyor already has this data on file.
4. The licensed land surveyor arranges to meet the owner on site to obtain more detailed information about where the new boundaries are to be set. The licensed land surveyor marks and measures the new and existing boundaries, including any links to the grid of fixed points.
5. The owner signs a declaration in which he authorises the licensed land surveyor to request subdivision from the National Survey and Cadastre and declares that he is satisfied with the new boundaries as they have been marked out.
6. The licensed land surveyor retrieves current cadastral data over the internet from the server at the National Survey and Cadastre. If a private road is to be included or changes to private roads, the licensed land surveyor submits information from the Land Register on who owns the property(ies) affected.
7. Using the MIA program, the licensed land surveyor then draws up measurement sheets, changes maps and a schematic report as well as covering letters.
8. The licensed land surveyor makes the case ready for hearing by the municipal council and, if necessary, any other authorities. At the hearing by the municipal council, the licensed land surveyor submits a "green form", in which the licensed land surveyor describes access from the areas to public roads. The licensed land surveyor also often adds information on local planning etc. to help in municipal administration of the case. During the hearing by the municipal council, the licensed land surveyor may have to obtain information about the ESR number of the new subdivided property and add this number to the schematic report. The ESR number is the identification number of the new property in the joint municipal property data system and in the valuation register.

At the same time, the licensed land surveyor issues a declaration on whether there are requirements for permits under the Nature Protection Act, the Museum Act, the Forest Act, and the Agricultural Act. If this proves necessary, the licensed land surveyor submits the case to the relevant authority.

This hearing documents that the cadastral change or the intended land use will not conflict with other legislation.

9. After this, the licensed land surveyor sends the case to the National Survey and Cadastre with the annexes and requests approval of the subdivision.
10. The National Survey and Cadastre records the case and ensures that the case contains the necessary documents, declarations, certificates, statements or permits from other authorities. If anything is missing, the licensed land surveyor is contacted or the case is returned. A technical check is next performed in connection with registration in the cadastral register and the cadastral map, during which the submitted MIA data is used. At the same time as registration, a draft registration notification is created as well as the invoice for the subdivision tax and the administration fee. The registration notification is sent to the licensed land surveyor, the Land Registry, the municipal council and any others involved in the case.
- 11, 11a, 11b and 11c. The licensed land surveyor draws up a subdivision map and an invoice and sends these documents with the registration notification to the owner/client. The licensed land surveyor prepares a certificate of easements and this forms the basis of the allocation of the easements by the Land Registry. The Land Registry updates the Land Register. The municipality updates the ESR, BBR etc.
- 12 and 12a. The licensed land surveyor pays the subdivision tax and fee within 30 days to the National Survey and Cadastre, which files the case.
13. The client pays the licensed land surveyor within the time limit stipulated.

Subdivision of a building plot in connection with a sale

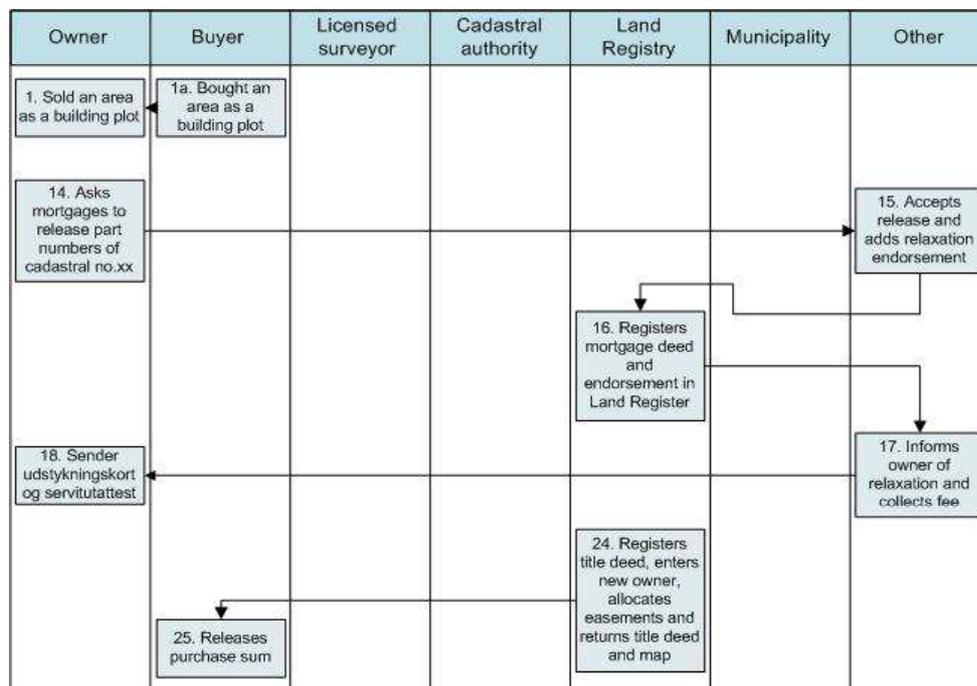


Figure DK-15: Subdivision of a building plot in connection with a sale.

- 1 and 1a. The buyer and the vendor have entered into a purchase agreement for a building plot which they want subdivided. If the plot is in an area which has been planned for residential purposes, the parties can draw up and sign a conditional title deed containing the agreed terms for the transaction, which is then registered in the Land Register for the property to be subdivided. This means that the buyer can ensure that the plot is not sold to another party. The owner contacts a licensed land surveyor and requests a subdivision. If there is doubt about whether subdivision of the plot is permitted, the owner will first contact a licensed land surveyor to clarify this point.
- 2 -13. See the process description above for subdivision. With regard to no. 5 note that both the buyer and the vendor must declare that they are satisfied with the marking of the boundaries when they enter into a purchase agreement.
14. Liability for the mortgage on the parent property continues to lie in the subdivided property. The owner therefore asks the mortgagees for their consent for the subdivided property

to be released from the mortgage. If the property has a relatively large mortgage liability, the mortgagee may demand an extraordinary repayment as a condition for releasing the subdivided part.

15. The mortgagee notifies consent, attaches the relaxation endorsement to the mortgage deed, and submits it for registration in the Land Register with the registration fee.
16. The Land Registry registers the mortgage deed with the endorsement.
17. The mortgagee notifies the owner that the new property has been released by the registered relaxation endorsement and sends an invoice for administration costs and the registration fee.

18 - 25. See the procedure for sales.

Note that the subdivision map must be presented when the first title deed of a new property is registered in the Land Register.

5.5 Entry in the Cadastre

When a new property is to be formed on a public road area which has been registered in the Cadastre, or when a new unregistered area, e.g. an island, has emerged, these must be registered in the Cadastre

In many respects, entry in the Cadastre resembles subdivision, and with respect to other legislation, the required permits must be obtained in a similar manner, if the cadastral change or the intended land use requires this. However, this does not apply for registration of an island which has previously been an unregistered property.

5.6 Amalgamation

Combining two or more cadastral properties into one property is called amalgamation. In order to register amalgamation in the Cadastre, there must be documentation that the properties belong to the same owner and are equally encumbered (mortgaged) or unencumbered.¹³⁶ The provisions of a local plan on the maximum size of an area for a building plot may prevent amalgamation. In this case, the municipality will contest the amalgamation and refer to the provisions in the local plan. For amalgamations of two or more agricultural properties, the provisions of the Agricultural Act will often determine whether the amalgamation can be completed, including provisions on the size of the amalgamated property, the location of the area, the training and education of the owner and residency obligations etc. as well as that in certain circumstances the owner of nearby smaller agricultural properties is entitled to supplementary land.

¹³⁶ Section 21 of the Land Register Act.

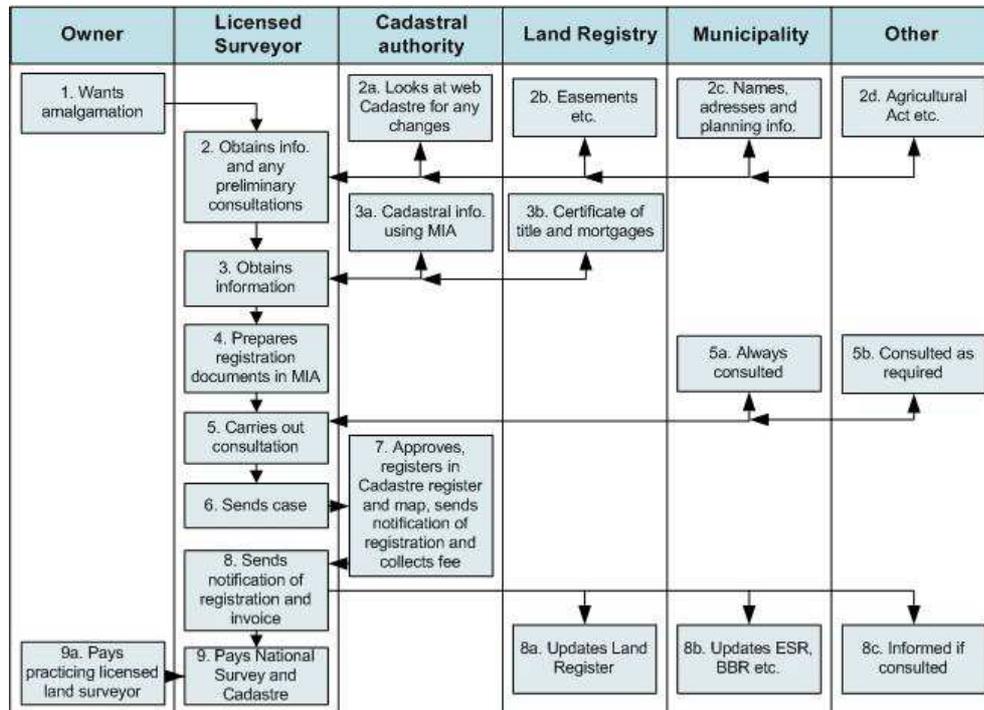


Figure DK-16: Amalgamation of real property.

1. An owner wants to amalgamate his properties and contacts a licensed land surveyor.
2. The licensed land surveyor makes investigations and carries out preliminary consultations if necessary.
3. The licensed land surveyor obtains cadastral information and certificates from a judge
4. - 9. The licensed land surveyor prepares registration documents and after this the process is the same as for subdivision, except that a subdivision map or certificate of easements is not necessary.

5.7 Transfer of part of property

When an area of a cadastral property is to be transferred from one cadastral property to another cadastral property or to a public road area, the process is called transfer of part of property. Before a transfer of part of property can be registered in the Cadastre, there must be documentation that the area to be transferred has been released from mortgage liabilities and that the easements registered in the Land Register do not prevent transfer of the area.

If the area is to be transferred to a public road or railway area, and the value of the area does not exceed DKK 8,000, a certificate from a licensed land surveyor can replace the judge's certificate

for mortgage liabilities. In other circumstances, where the area to be transferred has a low value, mortgage liabilities can be accounted for in a certificate of innocuousness, which is a declaration signed by the licensed land surveyor and an expert valuer, after which the declaration is endorsed by the court.

If the area to be transferred is conveyed to a new owner, there must also be a conveyance document (title deed), registered in the Land Register on both the transferor property and the transferee property, as well as a declaration from the owner that the conveyance is not conditional on anything other than entry in the Cadastre.

If the value of the area to be transferred is less than DKK 40,000, conveyance can be documented by a declaration from the owner on the value and a certificate of title from the court.

If the transfer of part of a property is between properties belonging to the same owner, there must just be a declaration from the owner and a certificate of title.

The process is organised according to the nature of the case. It may be transfer of a small area where account can be taken of the mortgagees by issuing a certificate of innocuousness, and where the conveyance document is just a declaration from the parties. Or else it may be a transfer of part of a property for which a licensed land surveyor consults the mortgagees and writes the title deed. For transfers of areas of greater value, a lawyer will often write the title deed and sort out mortgages, including any preliminary consultations. The process described below is based on a specific case and the dates on the case documents indicate the sequence of activities.

Transfer of part of property

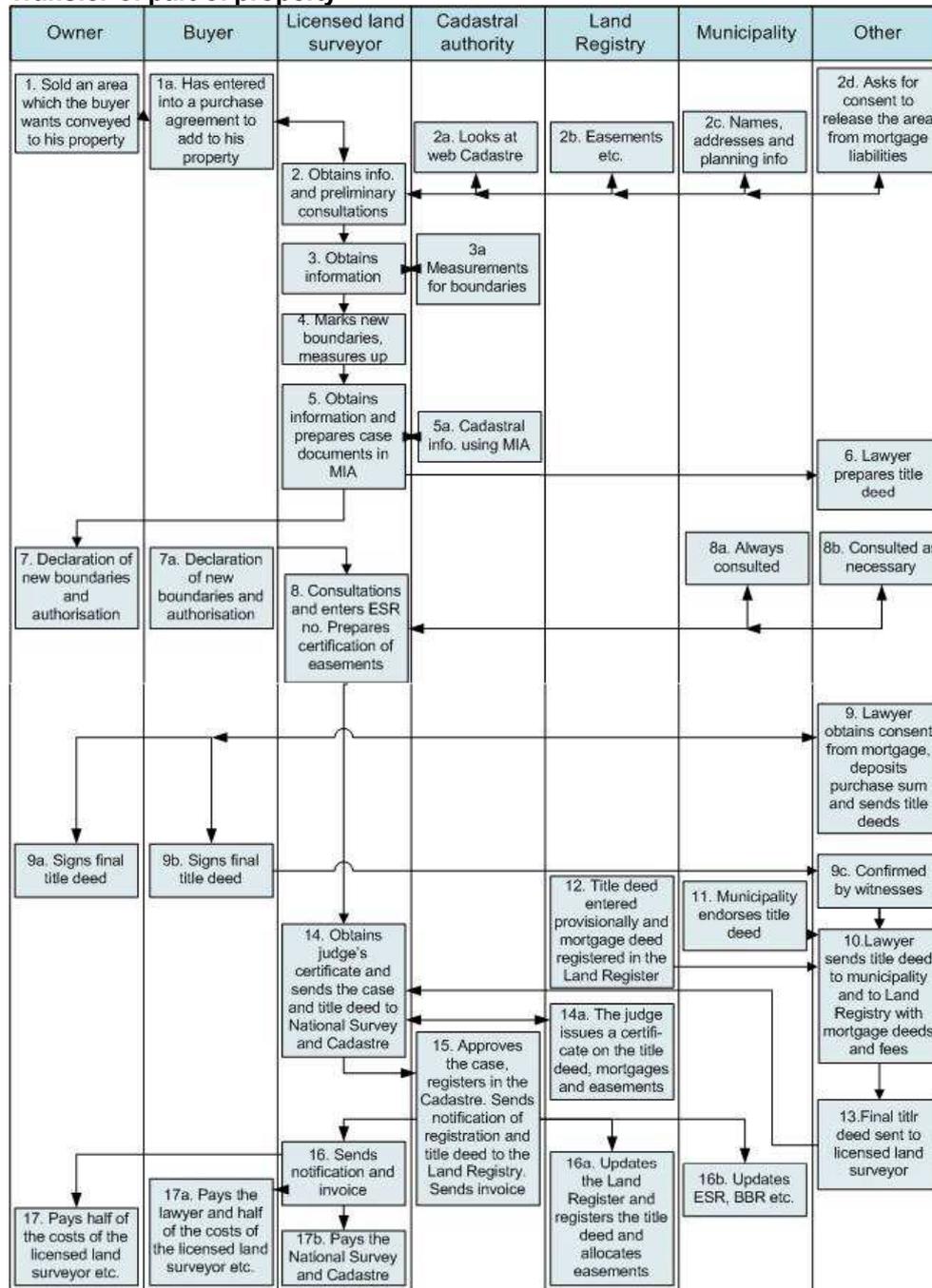


Figure DK-17: Transfer of part of property

1. The parties, or their lawyers, contact a licensed land surveyor and request transfer of the area in accordance with the purchase agreement.
2. The licensed land surveyor investigates when the last changes were made in the properties, registered easements etc. and in this case a preliminary consultation is carried out to ask for consent to release the area from mortgage liabilities.
3. The licensed land surveyor orders measurements of the boundaries of the area. The measurements are purchased from the National Survey and Cadastre, if the licensed land surveyor does not have adequate measurements in his own files and if he cannot obtain them from a colleague.
4. After this the licensed land surveyor marks the new boundaries and measures the boundaries as required.
5. The licensed land surveyor obtains cadastral information (from the register and map) via the MIA, after which the registration documents are drawn up. The MIA data is converted/supplemented with the licensed land surveyor's measurements so that the new boundaries and any corrected data are incorporated and drawn as a measurement sheet, a changes map and a schematic report. This also means that calculations are made of the area to be transferred, which has been allocated a part number. Information about this is given to the lawyer.
6. The lawyer draws up a title deed for part number 1 of cadastral number 23p Skals By, Skals stating the size of the area to be transferred.
7. The licensed land surveyor asks the owner/vendor and buyer to sign a declaration of satisfaction with the new boundaries that have been marked out and at the same time authorises the licensed land surveyor to apply for completion of the transfer of part of property.
8. The licensed land surveyor consults the municipality and any other authorities required. If the matter involves land conversion within the framework of the Agricultural Act, the licensed land surveyor can, to a large degree issue a declaration that a number of conditions have been met and that the land conversion can take place without permission under the Agricultural Act. At the same time the licensed land surveyor prepares a certificate of easements which is later sent to the judge via the lawyer.
9. The lawyer obtains the consent of the mortgagee as endorsements of relaxation on any mortgage deeds in the vendor's property. After this the purchase sum is deposited with the vendor's bank and the final title deed is sent for signature by the parties with relevant declarations from witnesses. The title deed is returned to the lawyer.
10. The lawyer sends the title deed and a sales report form to the municipality for endorsement and afterwards registration in the Land Register, as well as any mortgage deeds with endorsements of relaxation and registration taxes.

11. The municipality adds an endorsement to the title deed that the area covered is part of a cadastral property and is therefore not valued separately. The report form is forwarded to the Central Tax Administration.
12. The title deed is registered in the Land Register and entered in the encumbrance box for both the transferor and the transferee properties with a time limit for entry in the Cadastre. The mortgage endorsements are registered in the Land Register. The title deed etc. is returned to the notifier/lawyer.
13. The lawyer sends the title deed to the licensed land surveyor and informs the mortgagee.
14. The licensed land surveyor asks the judge to certify that the provisions of the Land Register Act on liability for mortgages and easements have been observed, and that the conveyance document has been registered in the Land Register on both properties and is not conditional on entry in the Cadastre. Therefore it must be established whether, through a registered endorsement, any mortgagees in the transferor property have agreed to the area being released from the mortgage, unless a certificate of innocuousness has been issued. The licensed land surveyor adds authorisation to the title deed for the National Survey and Cadastre to forward the title deed for final registration in the Land Register.
15. The National Survey and Cadastre makes certain checks of the case, registers the changes in the Cadastre and sends the notification of registration to the licensed land surveyor together with an invoice for the fee for registration; to the Land Registry together with the title deed; and to the municipality and any other relevant authorities. After this the case is filed.
16. The licensed land surveyor sends the notification of registration and an invoice to the client. The Land Registry updates the Land Register, registers the title deed as final, transfers the relevant easements and sends the title deed to the notifier/lawyer. The municipality also receives the notification of registration and updates the ESR, BBR etc.
17. The parties pay the costs as agreed and the licensed land surveyor pays the National Survey and Cadastre.

5.8 Rectification of boundaries

The registered limits of a property can be changed through rectification of boundaries, as a result of prescription or as a result of natural coastal withdrawal or growth.

For rectification of boundaries, there must be a declaration from the owners of both properties that the change in the boundary is due to prescription and that they have demonstrated to the licensed land surveyor the boundary between their property which they consider has applied for the past 20 years. There must also be a declaration from the licensed land surveyor that he has no reason to doubt the prescription.

For rectification of boundaries arising from natural changes in the boundary of the property towards the sea, a water course or a lake, there must be a declaration from the owner that correction of boundaries is due to natural coastal withdrawal or growth. If boundaries to neighbouring properties are fixed in the new area, there must also be declarations from these neighbours that they approve the boundaries as they are marked out on site.

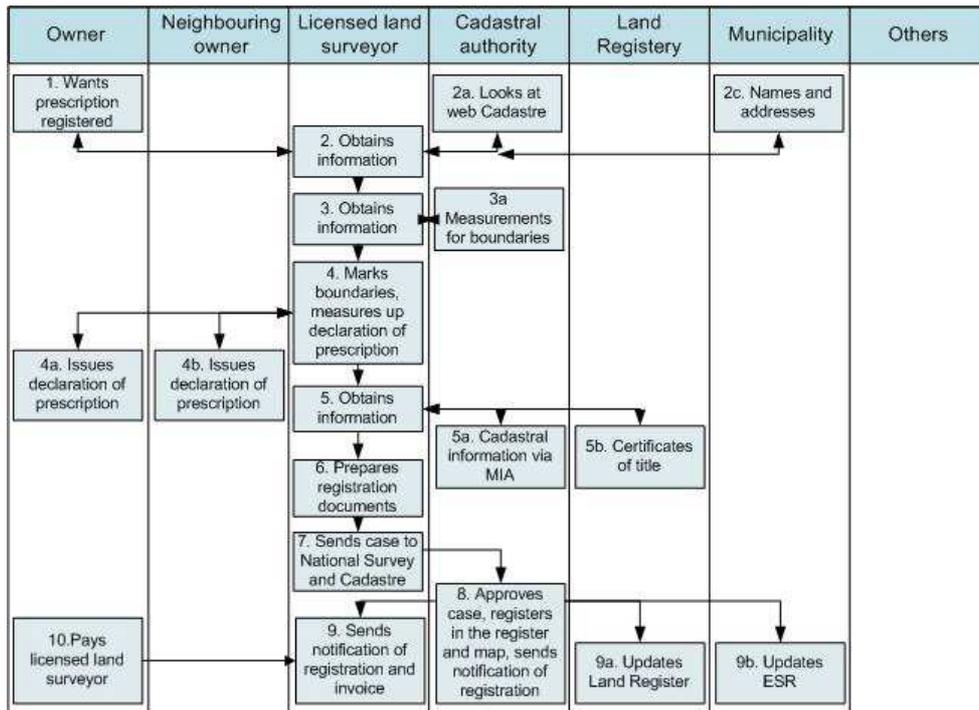


Figure DK-18: Correction of boundaries

1. The owner wants a boundary change through prescription registered in the Cadastre and the Land Register. Therefore, he contacts a licensed land surveyor.
2. and 3. The licensed land surveyor makes investigations and obtains measurements for the boundaries.
4. The licensed land surveyor marks out the boundary on site, measures the boundary and asks the owner and the neighbour to sign a declaration that the change is due to prescription. The licensed land surveyor declares that he has no reason to doubt that the matter involves acquisition through prescription.
5. The licensed land surveyor obtains cadastral information via MIA and certificates of title for the owner of the property in question.
- 6 and 7. The licensed land surveyor draws up the documents in MIA and sends the case to the National Survey and Cadastre.

8.- 10. The National Survey and Cadastre registers the new boundary in the Cadastre and sends the notification of registration to the licensed land surveyor, the Land Registry and the municipality who update the Land Register and the municipal registers. The licensed land surveyor sends an invoice and this is paid by the owner.

5.9 Registration of public roads

An area which has been a public road (or public path) for at least 20 years can be registered in the Cadastre through rectification of boundaries. For registration of a road, there must be a declaration from the road board that the road has been included in the road register for the past 20 years.

There must also be a declaration from the owners of the properties from which the areas are transferred that they approve the marked boundaries. The declarations from the owners can be replaced with

- a declaration from a licensed land surveyor that he has given the relevant owners written notification of the marking of boundaries and that they have a time limit of four weeks to ask for the boundary to be proved by the licensed land surveyor, and
- a declaration from the owners who have asked for the boundary to be proved that they approve of the boundaries as marked.

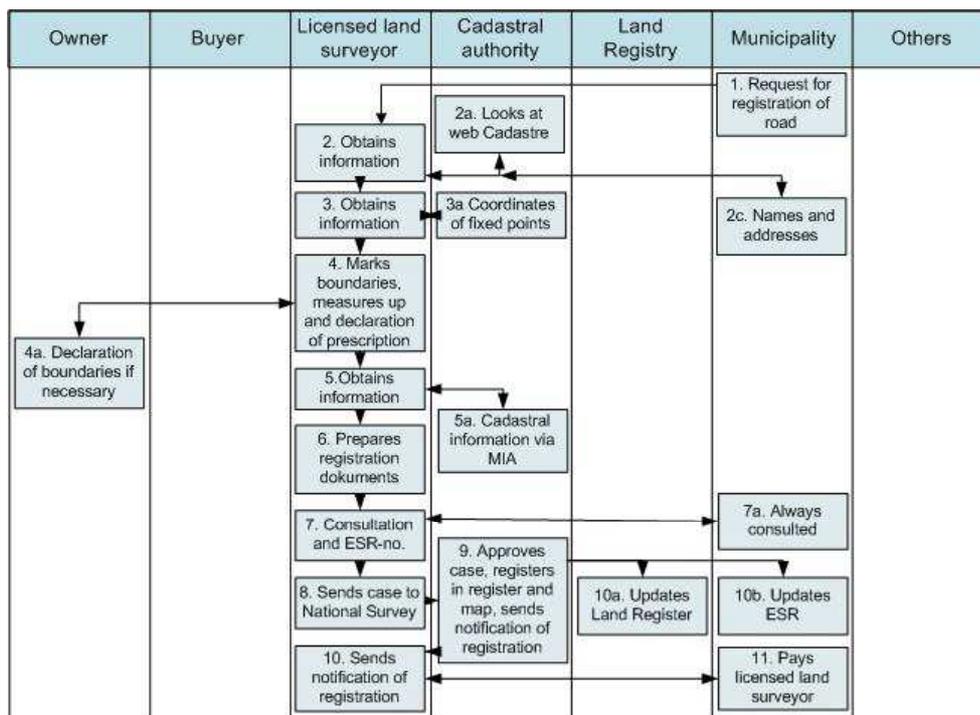


Figure DK-19: Registration of public road.

1. The municipality requests registration of a public road which has been included in the municipal register of public roads for more than 20 years and which has had the boundaries which can be seen on the site for more than 20 years.

2 and 3. The licensed land surveyor examines the matter and obtains names and addresses as well as the coordinates of the fixed points linked to the measurements.

4. The licensed land surveyor marks out the new boundaries on the edge of the road, measures up and informs the land owners affected about the marking of the boundaries and that they have a time limit of four weeks to demand that the boundaries be proven by the licensed land surveyor. If an owner demands that the boundaries be proven, there must be a declaration that he approves the boundaries as they are marked.

5 - 11. After this the process is the same as described above for rectification of boundaries.

6 Establishment of rights in real property

6.1 Introduction

Rights in a property, in the form of restrictions in the use of the property to, e.g. build, replant etc. can be regulated in two ways: by *private law* and by *public law*.¹³⁷ Private law regulation is established by agreement, will, or prescription, and it usually proceeds by having a document (easement) registered on the property in the Land Register on the future use or condition of the property. A registered easement must be respected by future buyers or acquirers of rights in the property. Private rights of way can also be established when a road is registered on the cadastral map and in the cadastral register in connection with formation of a property.

If a document is to be registered in the Land Register, the document must establish, change or cancel one or several rights in a specific real property. With respect to easements, documents which establish the rights may be different, depending on whether there is a private easement, or an easement established on the basis of legislation, or decisions by authorities pursuant to legislation.

With regard to subdivision etc., the cadastral case must state how access from the area to a public road has been or will be established. This applies both for separated areas and when remainder areas arise in the case.

Rights of use

Agreements on rights of use in connection with rented areas of a cadastral property can be made for periods of up to 30 years, or in other words: the parties cannot be bound by the agreement for a period exceeding 30 years. Whether the rental agreement can be transferred to others depends on the specific agreement between the parties. A rental agreement with a term of 30 years, and which allows transfer in the event of sale of the servient tenement or sale of the rental agreement, can be used as the basis for registration in the Land Register of mortgage liabilities with a term of 30 years, provided that the rented property and mortgage liabilities are registered at the same time.

With regard to a personal rental agreement, which is cancelled on change of owner, both parties must be free to enter into a new agreement with another party.

¹³⁷ Bo von Eyben and others: *Fast ejendom*, 2nd edition, 2003, page 53.

Private easements established by agreement

Private easements can be established between the owner of the servient tenement and the owner of the dominant tenement. If the easement relates to matters which can be included in a local plan, the easement can only be registered in the Land Register with the consent of the municipal council, which is granted through an endorsement on the easement document.¹³⁸ However, this does not apply for easements imposed by a public authority on the authority of legislation.

Private rights of way are very often established in connection with subdivision etc. and are therefore registered in the Cadastre. In many cases rights of way are also registered in the Land Register. Rights of way and most other private easements are linked to the properties affected and follow with conveyance of real property.

Private easements established by prescription, possibly court order

Private land use easements can also be established by prescription according to the general provisions of Danish Act 5-5-2. If it is a non-apparent easement, e.g. a right of way, usually a prescription of time immemorial is required. Easements established through prescription must be registered in the Land Register, if they are to be protected against third parties. However, a special provision in section 26 of the Land Register Act applies for rights established by prescription so that the person who can defeat the unregistered right must make his right apply within two years after the right is registered in the Land Register, as otherwise the prescription will be valid against him.

¹³⁸ Section 42 of the Planning Act.

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Denmark

Purchase and subdivision processes in the Nordic countries – comparisons

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1 Introduction

Comparisons between real estate purchase and subdivision processes in different countries can focus on a variety of aspects, such as cost, rapidity and simplicity of the processes, risk elimination and legal safeguards. The emphasis here will be on efficiency in the sense of rapidity from the viewpoint of parties in the market, the reason for this prioritisation being that rapidity probably reduces the cost of the process in time and money, to the benefit of both the general public and society. The question is whether activities which delay processes can be avoided or whether the sequence of activities can be altered so as to improve efficiency without augmenting legal uncertainty and risk assumption. Rapid processes, with elements of risk built into them, can actually reduce legal uncertainty and risk assumption, by shortening the duration of the elements of risk.

The following comparisons, which are based on reports from the five Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) in a Nordic publication¹, will deal with purchase/sale and subdivision, but the material in the reports provides opportunities for several other interesting comparisons.

In conjunction with the comparisons, brief summaries will be given of the processes in the individual countries. This serves to highlight specially important comparable activities in order to bring out characteristic features revealing both similarities and dissimilarities. An evaluation is presented in a separate section following each comparison. This is solely intended to present queries concerning elements of the individual processes with reference to corresponding activities in the other countries. In this way ideas can be obtained for efficiency improvements, even if the general structure of legislation and the existence of powerful interest groupings can stand in the way of change. The ideas may therefore be impossible

¹ Kort & Matrikelstyrelsen. 2006. Dannelselse og transaktioner.

to implement in practice. Before embarking on the process comparisons, the national property concepts will be briefly considered.²

2 The property concept

At first sight, all five countries seem to employ much the same property concept. The property owner owns the ground surface and, in principle, whatever he can lay claim to above and below it. But closer inspection reveals a number of differences. In Norway, as in Finland, road tunnels can in certain situations be constructed beneath another party's land without negotiating for the right to do so, while in Sweden the question of rights is solved by drawing up a contract with the landowner, creating some form of right of way or forming a 3D property. Thus the Swedish property owner has a more comprehensive right of disposal, because in Sweden one always has to secure the right to space for facilities of this kind, which does not exclude the possibility of secret tunnels deep down of which the landowner knows nothing.

In all countries the basic property structure is delimited by X and Y co-ordinates (2D properties) and with no restriction above or beneath. Sweden and Norway, however, have 3D properties, i.e. property units there can also be delimited on the Z axis, and the volume above and beneath a 3D property has a different owner. Denmark, Iceland and Norway have freehold apartments (ejerlejlighed, eierseksjon), which means that 3D demarcation is possible within buildings.

The real property concept also creates problems of comparison. In Finland it is ownership title that constitutes real property, rather than the land itself, while in other countries the opposite applies. Buildings and other things permanently fixed to the land are usually fixtures of the property. But it is really legislation that defines the nature of real property. In Danish and Icelandic law, buildings on leasehold land are regarded as real property, with the result that the law of real property is made to apply, not only to land but also to buildings belonging to a party other than the landowner. In Sweden such buildings are regarded as chattels, personal property, and the law does not equate them with real property. Homes are real property in Iceland, can be real property in Denmark and Norway but cannot in Finland and Sweden.

² The terminology of the comparisons will be mainly Swedish, translated into English, but to facilitate reference back to the different countries, terms used in the countries, italicised, are sometimes also included.

The joint property association is another legal entity with early historical roots in European societies and its purpose may be the joint exploitation of forest, pasture, fisheries, roads etc. Such rights can also, as in Finland and Sweden, be tied to property units. In this way ownership of a particular property automatically confers the right of using jointly owned land. The same construction occurs in Norway (realsameine), but in addition there are various forms of common land which are used by joint customary right without being tied to particular property units.

Denmark is perhaps of interest in this connection. Joint property associations there are of two kinds. One of them (fælleslodder) pertains to a limited circle of property units through notional participation rights.³ The other type is areas of land laid out for the joint use of all property units in a locality, e.g. cemeteries and sandpits. These are now deemed to belong to the municipality unless others can prove their title. In reality there is also a third form of joint property association, in all but name. Ownership of an apartment (ejerlejlighed) carries the right and obligation to participate in the management of communal land and communal parts of buildings. Here, then, a modern kind of joint property association has been developed which pertains to the urban space and is not a part of agrarian society. Road maintenance associations in Finland and joint facilities (gemensamhetsanläggningar) in Sweden for roads, water, sewerage, landing stages etc. are also modern types of joint property association.⁴ Property owners co-operate in forms defined by statute, with co-operation automatically tied to ownership of property units. Denmark has a corresponding arrangement for certain private roads (privat fællesvej).

Interesting similarities and dissimilarities can also be noted between the various countries regarding relations between the property owner and other right-holders. In all the Nordic countries, the owner of a property may be entitled in some respect to use another property. Right of way is one such instance. This goes with the property and if the property changes hands, the right accrues to the new owner. In other words, the property has a vested right in another property. These rights can be simple in the sense of one property having a right in another (realservitut), or they can be more complicated in the sense of one group of properties being entitled to have complicated facilities on another property (joint facilities in Sweden being one such example). It is worth mentioning that in Finland and Sweden the easement concept (servitut) refers solely to real easements, while other countries have the concept of personal easements (personliga servitut).

³ The desire is to abolish the few remaining.

⁴ Perhaps "joint management bodies" is a preferably term, to avoid confusion with the Swedish legal concept of joint property association.

Usufructuary rights, i.e. one person being entitled to use land belonging to another, are of interest where land is concerned. They can, for example, take the form of leasehold tenure of agricultural land (which exists in all the Nordic countries), but they can also be geared to the right of having some form of facility, e.g. a dwelling house, on someone else's land. The latter is interesting, because clear differences become apparent in this respect. In Iceland nearly all urban buildings stand on municipal land and their owners have contracts for the land. The owner can mortgage the building and the mortgage rules are basically the same as if he had been the landowner. He is at liberty to dispose of the building, and the new owner takes over the leasehold contract for the land. In fact the landowner need not be a public body at all. The same relation can exist between a private landowner and a house-owner who has leased the land, e.g. for a weekend cottage. Finnish and Norwegian towns follow the same principles as in Iceland. In Norway the leasehold construction has been made a little easier for weekend cottages by means of a punkt feste with a point defining the type of use. Problems of demarcation are made less dramatic. Although this is a form of leasehold and a sub-unit of a land property unit and is held by virtue of a leasehold agreement, in the eyes of the law it counts as real property.

In Sweden things are a little different. Land can be leased for residential purposes, but the mortgage rules for real property do not apply. Nor is there any free right of transfer, and the leasehold is granted for a certain number of years, though with the option of renewal. Because mortgageable usufructuary rights are needed in urban settlement, the institute of site leasehold (tomträtt) has been introduced whereby the site lessee has all the rights which he would have had as owner of the land, except that a ground rent is payable to the landowner. In other words, he can mortgage his title and dispose of it freely. Only public bodies, normally municipalities, are entitled to grant site leaseholds.

In all the Nordic countries, personal usufructuary rights can be of limited duration, as for example with the lease of agricultural land and of land for buildings. Others can in principle be perpetual, e.g. a gas pipeline easement in Denmark, anleggseiendom in Norway and site leasehold in Sweden.

Further to the concept of real property, one could go on to consider such phenomena as ownership of minerals and of water. But instead, for present purposes, suffice is to say, on the basis of the brief summary above, that land ownership in the Nordic countries is more nuanced and complicated than the "absolute" ownership of a con theoretically extending from the centre of the earth out into space and conferring a complete right of disposal on the owner.

Differences in the view taken of real property can make comparisons between countries seem pointless without delving deeply into the concepts and in this way arriving at an understanding of the entire complex of the law. The present text, however, sets out, not to compare real property as such but to compare processes for the purchase/sale of real property and subdivision (avstyckning, styckning, udstyckning).⁵ Situations of change, then, will be our primary concern. It should be made clear that it is the main outlines which will be highlighted, in search of basic principles.

3 Transfer of property (basic principles)

3.1 Process comparison

The first comparison concerns the simplest possible property purchase, in which the parties trust each other implicitly. This, then, will bring out the minimum statutory requirements. Since the country descriptions in Kort & Matrikelstyrelsen (2006) have not focused purely on descriptions of the principles for the simplest possible purchases but in certain cases have described what can be termed something midway between the simplest possible and normal purchases, a number of further simplifications and elucidations will be made in order to arrive at the minimum principles.

First of all we may note that the formal requirements regarding purchase and sale differ between all the Nordic countries (figure 1). There is, however, one point of similarity. In all five countries the transaction has to be put down in writing and, in order to qualify for registration, must include the seller's signature and the signatures of witnesses to it. The buyer's attested signature, on the other hand, is not needed in all five countries. The purchase price has to be stated in all countries, but in Finland and Iceland it need not be paid before a final deed of sale is signed, nor before the transaction is registered. Registration of the sale is not stipulated in Denmark, Iceland or Norway but is in Finland and Sweden. Non-registration, however, does not void the transaction in any of the five countries. Forms of agreement and consequences of registration, on the other hand, are very similar, apart from verbal agreements being valid in Denmark and Norway (figure 2).

⁵ The concept of real property in the Nordic countries can be studied more closely in Julstad, 2003

Comparison

	Denmark	Finland	Iceland	Norway	Sweden
Requirement for written deed of purchase	√	√	√	√	√
Requirement for seller's signature	√	√	√	√	√
Requirement for attest by witnesses of seller's signature	√	√	√	√	√
Requirement for purchaser's signature	√	√			√
Requirement for attest by witnesses of purchaser's signature		√			
Requirement for paid purchase sum before signing of deed of purchase	√			√	√
Requirement for stated purchase sum in the deed of purchase	√	√	√	√	√
Requirement for paid purchase sum before registration of ownership	√			√	√
Mandatory registration of ownership		√			√

Figure 1: Deed of sale criteria for ownership registration.⁶

⁶ In Sweden the unattested signature of a seller on a deed of sale can be registered following a special procedure.

	Denmark	Finland	Iceland	Norway	Sweden
Valid contract	Verbal agreement	Written contract of sale	Written contract of sale	Verbal agreement	Written contract of sale
Contract form for registration of ownership	Written	Written	Written	Written	Written
Possibility to secure preliminary contract	Dormant registration	Registration	Dormant registration	Dormant registration	Dormant registration
Fulfilled purchase	Deed of purchase	Deed of purchase	Deed of purchase	Deed of purchase	Deed of purchase
Transfer secured relative third party	Ownership registration	Ownership registration	Ownership registration	Ownership registration	Ownership registration
Total legal control over property	Ownership registration	Ownership registration	Ownership registration	Ownership registration	Ownership registration

Figure 2: Forms of contract and legal consequences.⁷

⁷ Conditions of deferment and dissolution are not dealt with in this figure.

The actual process of purchase and sale differs somewhat between the Nordic countries (figure 3). To highlight the differences, the process has been divided into the following phases:

- *Pre-contracting*, during which the parties find each other and negotiate conditions of sale.
- *Contracting*, in which the parties draw up a binding contract.
- *Registration*, when the purchaser applies for registration of the purchase to protect it from third parties.
- *Supplementary work*, when sales profit tax, if any, becomes payable.

Major differences between purchase-and-sale processes in the various countries will be commented on with reference to figure 3. Items which are not necessarily included in the process but can be put off till later are specially marked “not necessary”. These have been included because they are nonetheless fundamental to an understanding of the matter.

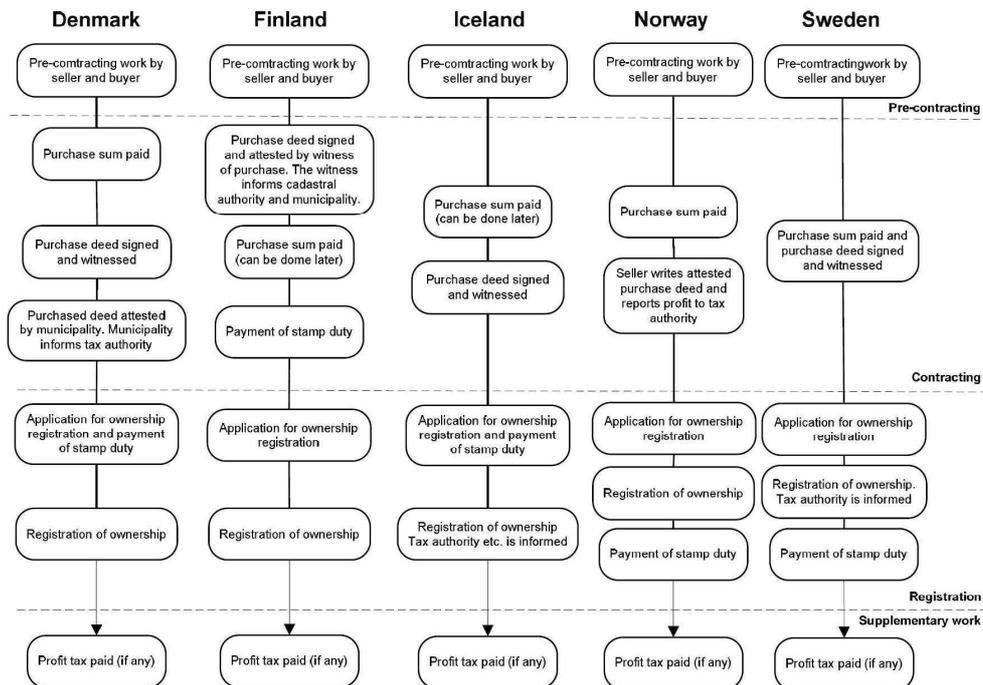


Figure 3: Simple purchase.

Concerning *pre-contracting* there is little that needs to be said. This is only an introductory part of the process and it is for the parties to decide what is to be done, e.g. the extent of archive searches and investigations on the spot, how much the prospective purchaser is willing to pay, what the contract is to look like. This is an informal process leading to a contract situation.

In the *contracting phase*, the contract is drawn up and signed. The basic principles are the same everywhere insofar as a deed of sale (*köp/skøde*) is signed and the purchase money paid. In all five countries the seller's signature has to be attested by witnesses (figure 1). But, as we have already seen, the purchaser's signature is not needed in Iceland and Norway. Neither in Finland, Iceland nor Norway does the purchase money need to be paid in order for the purchase to be complete and registrable. There is no stipulation of a particular professional category or organisational representative as witness to the seller's signature, except in Finland, where the signature has to be witnessed by a "public witness of purchase" (*köpvittne*).

Finland, then, presents idiosyncratic features where the contracting phase is concerned. In the first place, with its stipulation of a witness to the purchase it has opted for something midway between the Scandinavian principle of no special criteria for witnesses to signatures and the continental stipulation of attestation by a notary. Finnish witnesses to purchase are specially appointed persons acting in an official capacity. They also have the task of informing the contracting parties of the consequences of the transaction. They have to inform the municipality of the sale and also the cadastral authority, which in turn informs the tax authority. But there are two other deviant points involved. The purchase money can be paid after the deed of sale has been signed and title registration is obtainable even if the property has not been paid for. Furthermore, the transfer tax or stamp duty (*stämpelskatt*) has to be paid in advance to the tax authority and a receipt for it appended to the application for ownership registration (*lagfart*) to the land registration authority.

Conditions in Denmark are very much the same as in other countries, but with one exception. The municipality has to endorse the contract of sale and at the same time inform the tax authority of the purchase. Thus Denmark has inserted a local government transaction which is handled by the purchase witnesses in Finland and by the registration authorities in the other three countries.

Registration means the purchaser sending the deed of sale to the registration authority for registration of title (*lagfart, tinglysning*). In Denmark and Iceland,

stamp duty is payable with the application, whereas in Norway and Sweden the registration authority presents a bill afterwards. In Finland, as already stated, the charge is payable in advance.

In Iceland and Sweden it is the registration authority that informs the tax authority of the sale. In Denmark it is the municipality, in Norway the seller, and in Finland the information is conveyed through the purchase witness.

The form of *supplementary work* entailed by the payment of capital gains tax on the profit from a sale can occur in all five countries, but, the rules on this point being beyond the scope of the present work, we will not go into this aspect any further.

3.2 Evaluation

Viewing these processes from an efficiency viewpoint, one may ask why the municipality needs to be involved through endorsement of the contract (*skødepåtegning*) in Denmark while other countries manage without. This naturally delays the purchase-and-sale process. One may also ask why public purchase witnesses are necessary in Finland when the other countries can manage without. This seems all the more strange considering how many impulses Finnish legislation has absorbed from the other Nordic countries.

In computerised societies the most rational arrangement seems to be for the registration authority and no one else to inform other authorities of purchases, which is the Icelandic and the Swedish principle. Finally, the Norwegian and Swedish principle of billing stamp duty after the purchase seems to be a smoother proposition than various forms of payment in advance.

It can also be seen as an oddity that ownership registration (*tinglysning*) is not obligatory in Denmark, Iceland and Norway. True, most people register their purchases anyway, to secure them against third parties and also in order to take out mortgages, but the absence of obligatory registration impairs the reliability of the registers, to the detriment of the property market's long-term efficiency.

Finally we may note that in all five countries, when profit tax is due it is paid subsequently without jeopardising the purchase. That is to say, the purchaser's standing is not affected.

The question is which processes are smoothest from the point of view of parties in the market. Judging from the process descriptions, Iceland and Sweden have the smoothest processes. Norway has the additional stipulation of early declaration of

profit to the tax authority, but this is unlikely to affect the time taken by the process, because no documentation is required for the ownership registration. In Finland the process is complicated by the stipulation of a purchase witness and by the procedure for payment of transfer tax. In Denmark the process is delayed by the stipulation of municipal processing of the documents of sale prior to ownership registration.

We can now turn to consider purchases involving more stages than are absolutely necessary for the accomplishment of a valid transaction. These purchases can be regarded as normal purchase, i.e. they are the form of purchase usually applied in the real estate market. They will be instanced with the purchase of a residential property.

4 Normal purchase of a residential property

4.1 Process comparison

When describing a normal house purchase, we will assume that estate agents are involved, as well as a bank or some other financial institute. Here the purchase process can be divided into the same phases as earlier, but the supplementary work in the form of payment of tax on sales profit has been removed, having already been mentioned in connection with the simplest possible purchase. This leaves:

- *Pre-contracting*, during which the parties find each other and negotiate conditions of sale.
- *Contracting*, in which the parties draw up a binding contract.
- *Registration*, when the purchaser applies for registration of the purchase to protect it from third parties.

Since we are dealing with normal purchases, we will not concern ourselves with situations where public permits are required, nor with pre-emption situations. Nor are the comparisons complicated by indicating the timing of a binding agreement, change of ownership and taking of possession.

The *pre-contracting* of a normal purchase can be pretty complicated, because estate agents are engaged and the purchaser's possibilities of obtaining credits have to be investigated. Both the purchaser's creditworthiness and the mortgageable value of the property have to be assessed.

The *contracting* phase comes when purchaser and seller have settled on a transaction. At least five parties have to be taken into account in a way which

guarantees the security of all of them, namely seller, purchaser, the respective banks or other credit institutes of the parties and estate agents. A contract has to be written. This is often done in two stages, with an introductory contract of sale to settle the conditions of sale and then a deed of sale to confirm that the necessary conditions have been satisfied and the transaction can be registered. Parallel to this, mortgage rights and credits have to be managed in such a way that the seller is discharged from his borrowing and the purchaser assumes responsibility for his.

To secure ownership title against third parties and to secure the mortgage for the credit-provider, the sale/purchase has to be registered and the property mortgaged. This takes place during the *registration* phase.

The co-ordination of all these activities has been differently organised in the different Nordic countries and in order to make them comparable the activities will be described systematically and briefly, country by country. The description will be based on the descriptions in the country reports (Kort & Matrikelstyrelsen 2006) but has been further simplified in order to highlight principles. Figures 4 – 6 have therefore been drawn to elucidate similarities and dissimilarities. The first figure shows Denmark, the second Norway and Iceland, the third Finland and Sweden, the various countries being taken partly in diminishing order of complexity.

In *Denmark* (figure 4) a seller can engage an estate agent to assist with the sale. The important point is that the estate agent is the seller's representative and has no duty of balancing the interests of seller and purchaser. The estate agent inspects the property and draws up other information of importance. The party who has shown interest in purchasing the property for his part contacts a bank for assessment of his creditworthiness. There are usually also special financial institutes (*realkreditinstitut*) involved in financing the transaction. The estate agent often works together with such an institute and asks it to offer what is called a *realkreditlån*. The purchaser then decides whether he is interested in going through with the purchase. In this connection an energy consultant inspects the building and a structural inspection can also be carried out. The purchaser is advised of the possibility of taking out insurance for hidden defects, since he will not be able to plead them if the inspections now mentioned take place.

The estate agent draws up a contract of sale for the purchaser to sign. This usually entitles the purchaser to cancel the purchase within six days. The purchaser takes this opportunity of getting a lawyer to vet the agreement and of discussing any contractual problems with the estate agent. After any adjustments have been made to the agreement, the estate agent obtains the seller's signature. In this

connection an advance payment is made to the estate agent. The lawyer is then tasked with drawing up the definitive deed of sale (*endeligt skøde*).

With reference to the offer of credit, the purchaser signs an agreement with the *realkreditinstitut*. The institute draws up a mortgage deed which the purchaser signs. The purchaser's bank (separate from the credit institute) then remits the purchase money to the seller's bank, whereupon seller and purchaser can sign the deed of sale. The municipality then receives the deed of sale for endorsement, after which the lawyer sends it to the registration authority, which registers the sale and the mortgage deed. The authority returns the mortgage deed to the lawyer. The seller's bank can now release the remainder of the purchase money for transfer to the seller.

Comparison

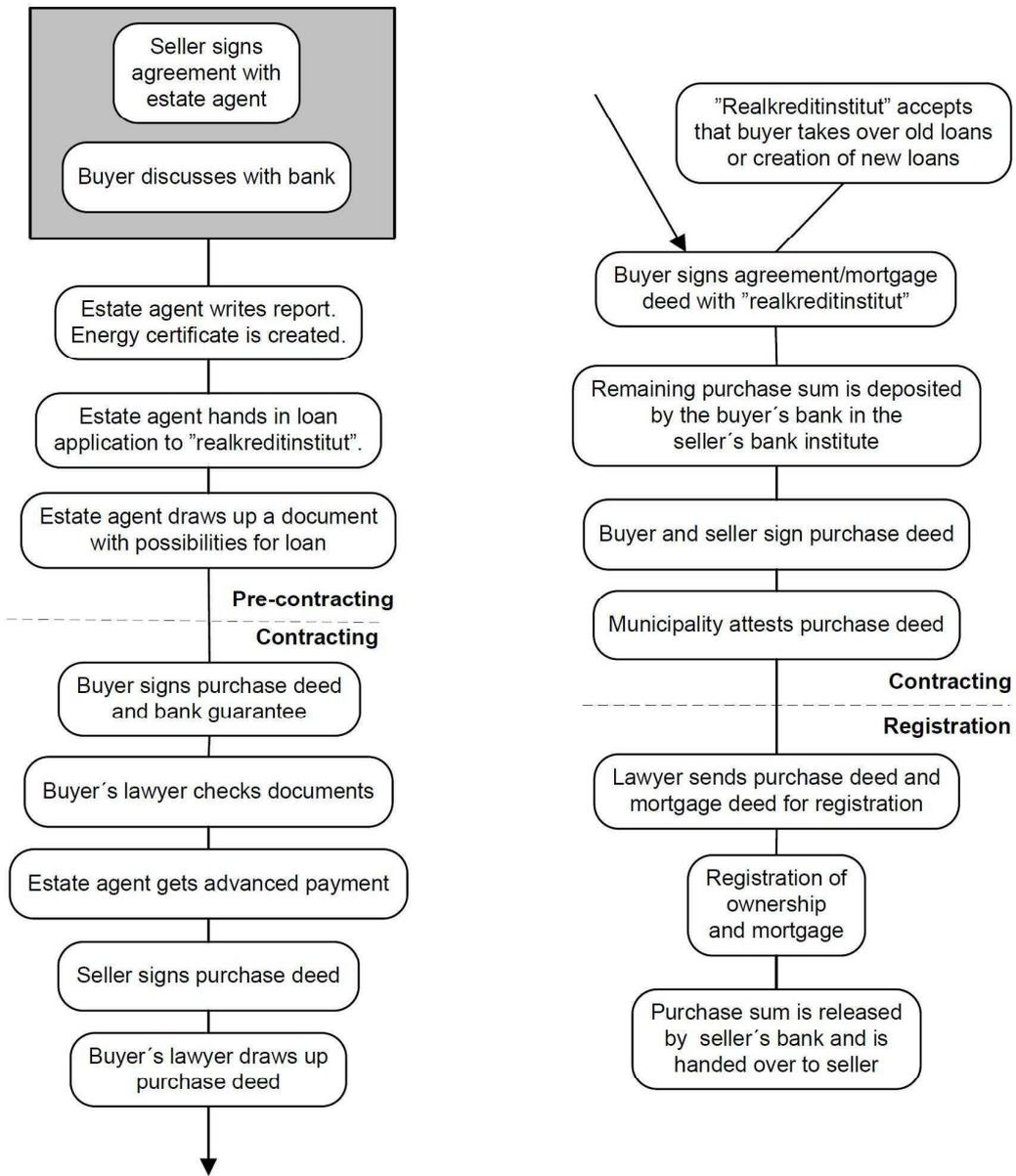


Figure 4: Normal purchase in Denmark.

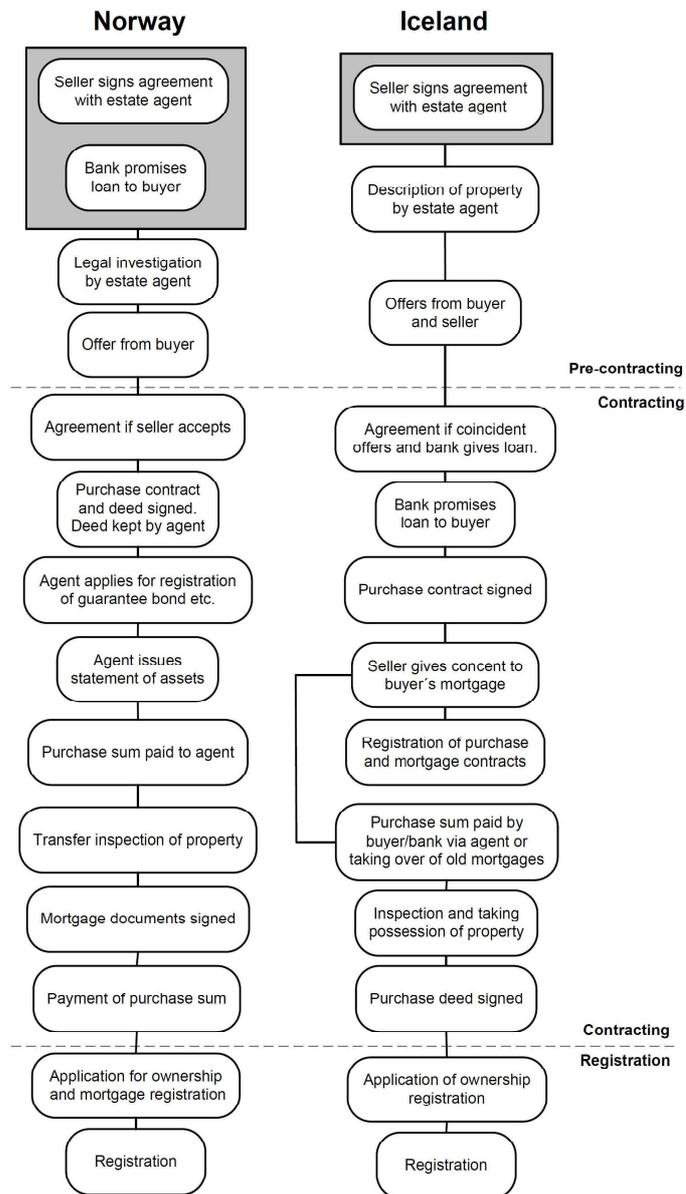


Figure 5: Normal purchase in Norway and Iceland.

In Norway (figure 5) the seller contacts a chartered estate agent and commissions him to sell the property. A contract is drawn up. The estate agent investigates the legal position by consulting public registers. It is important for all charges and appurtenant rights to be clarified, all the more so as they may not be readily traceable, or may not even have been entered, in the public registers. The seller is advised of his obligation to declare any defects in the property. It is common practice for the seller to take out insurance for hidden defects. On the basis of observations, documents and the particulars furnished by the seller, the estate agent prepares an inspection report. Usually the property is also valued by a valuer in order to arrive at a basis for the selling price and mortgage value (referred to as *takst*). The estate agent then puts the property on the market. It should be noted that the estate agent is liable to both seller and purchaser.

A potential buyer makes an offer (as a rule in writing) which is normally kept open for 24 hours. It is binding on the prospective buyer but not on the seller. The offer normally includes a finance plan as evidence of its realism. For this the buyer needs a guarantee from a credit-provider of his ability to mortgage the property. The bank normally carries out a creditworthiness assessment of the person and property concerned before furnishing any such guarantee. A buyer can also take over the seller's mortgage, but this is uncommon and is subject to the credit provider's consent. If the seller accepts the offer, a binding agreement has been entered into.

Contract-signing normally takes place shortly after the offer has been accepted. Seller, purchaser and estate agent meet to go over the contract and sign it. Often an advance is paid at the time of signing the contract. A deed of sale (*endeligt skøde*) is usually already signed in this connection, but if so it is retained by the estate agent until all the formalities have been completed and the transaction can be registered.

To secure the financial transition, the estate agent registers a guarantee bond (*sikringsobligasjon*) together with a declaration of non-disposal (*urådighetserklæring*), which prevents the seller from selling the property to a bona fide third party immediately after the contract of sale has been signed. The guarantee bond makes payment to the seller invalid as purchase money unless the purchase money outstanding covers the seller's pledge by a generous margin. Before taking over the property the estate agent issues a statement of assets (*inneståelseerklæring med pantpantråttsgaranti*) which is intended to furnish the financier with a guarantee of the loan having the agreed priority before the loan itself is disbursed, the point being that the new pledge has not yet been registered.

The purchase money is paid into the estate agent's account, and the estate agent then forwards the money to the seller's mortgagee and the surplus to the seller. A transfer inspection then takes place, with the seller, buyer and – usually – the estate agent present. A report is drawn up. When the purchaser has taken over the property, the estate agent must see to it that a final deed of sale is drawn up and signed, i.e. if this has not been done already. The seller's credit provider receives payment for earlier loans and a new security is established. Only then is the remainder of the purchase price paid to the seller. The estate agent sends the deed of sale and mortgage deed for registration.

In *Iceland* (figure 5) the seller contacts a chartered estate agent and draws up an agreement for the sale of the property. The estate agent, however, has to safeguard the interests of both seller and purchaser. The estate agent draws up a description of the property and is responsible for its accuracy. The seller, however, need not declare defects in the property. The description is shown to a prospective purchaser, who signs it to show that he has read it. On the other hand he need not inspect the property. The purchaser must also contact a financier to investigate the possibility of obtaining credit. The financier prepares a valuation to establish the amount of credit possible. The purchaser can then make an offer for the property and the seller can make a counter-offer. When the parties have put their names to the offers, a binding agreement has come into being between them. After the offer has been accepted, a contract of sale is drawn up and normally an advance payment is made at the same time. The purchaser may take over existing loans if existing mortgagees consent, otherwise a new mortgagee has to be brought in. To secure a new pledge of this kind, the seller consents to a mortgage, and this is effected conjointly with or after registration of the contract of sale. Already at this point the registration official notifies the authority *Styrelsen for registrering og vurdering* of the change of ownership. When all the conditions of the contract of sale have been satisfied, the property is usually transferred, but the transfer can also take place at a different point in time. The property is inspected in this connection, to ensure that there are no defects. When the purchaser has rendered payment in full and taken over liability for mortgages, he is entitled to obtain a deed of sale (*skøde*). This can be made out quickly, but the normal procedure is for it to be drawn up a year after the conclusion of the contract of sale. After this the purchaser applies for registration of the purchase. New loans can be registered at any time if the seller consents.

Comparison

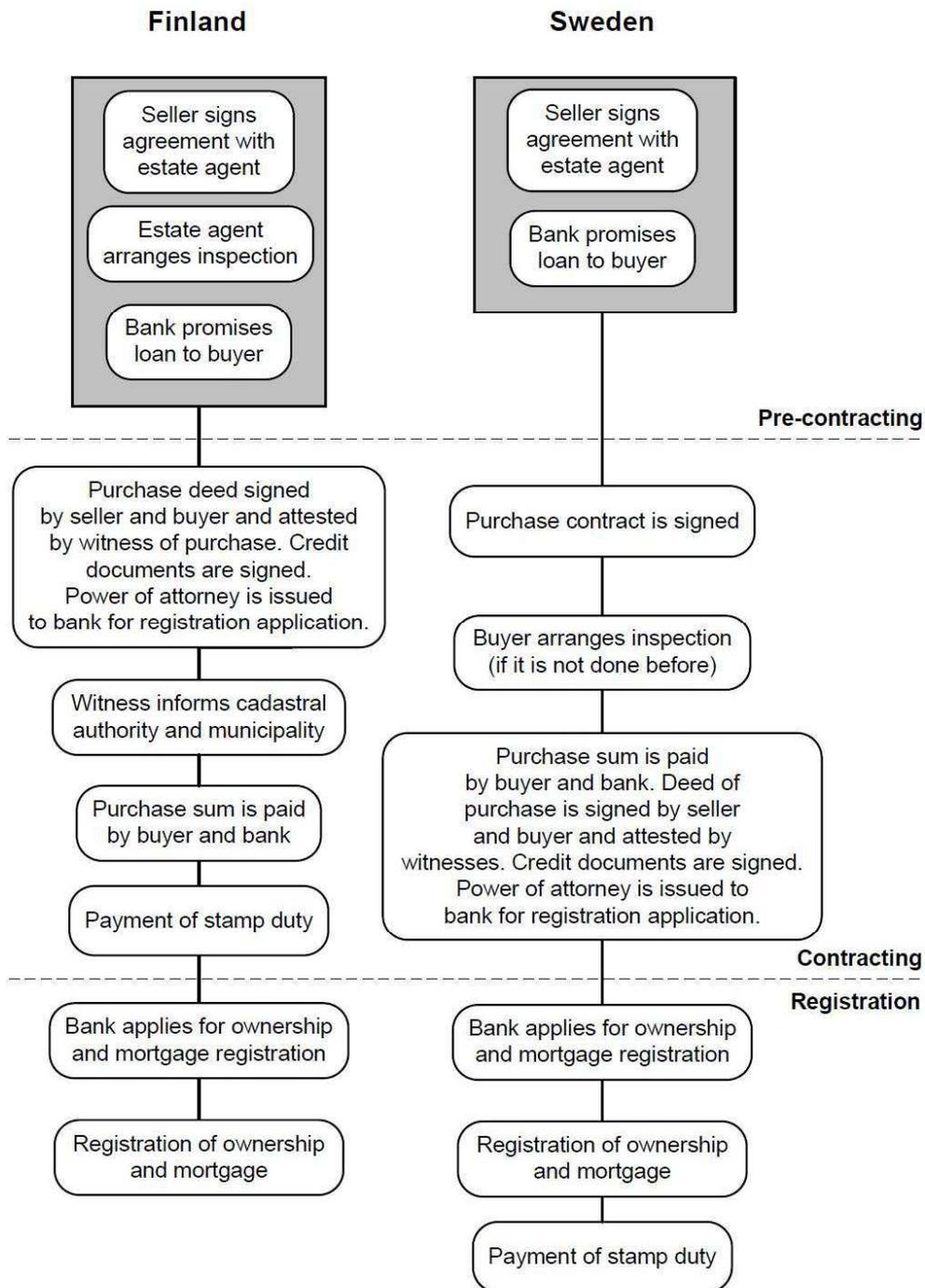


Figure 6: Normal purchase in Finland and Sweden.

Before describing of purchases in Finland and Sweden, it should be mentioned that the loan contract (credit document) is separated from the security document (mortgage deed) in those countries. The loan contract stipulates the loan conditions (interest, payments etc.) and the deed is used as security (security amount of money registered on the property), if the property owner fails to fulfil the obligations in the loan contract. Every property can, due to this, be burdened by many mortgage deeds, and the security order is then decided by date of registration of the mortgage deed.

In *Finland* the seller contacts an estate agent and signs a contract with him (figure 6). It is to be noted that the estate agent is also duty bound to safeguard the purchaser's interests. The purchaser for his part contacts a bank to obtain a grant of credit approving the property as security. The purchaser can have the property inspected by an inspector, but this is neither stipulated nor necessary, because the seller is liable for defects which could not have been discovered by the purchaser. To guard against hidden defects, the seller usually gets an inspector to go over the property and write a report which is shown to the purchaser.

Usually only one document (*köpebrev*) is used for the sale, although preliminary agreements do occur. As a result, the same model applies to the contracting phase as for the simplest possible purchase, apart from the added factor of credit processing. This too is very easily managed. Credit documents are signed with the bank simultaneously with the deed of purchase. Often an advance is paid. The bank obtains power of attorney from the purchaser, empowering the credit-providing bank to apply for title registration and registration of mortgage deeds later on in the purchaser's stead. The power of attorney is transmitted to the bank disbursing the purchase money to the seller's bank, which in turn collects the portion of the amount covering the seller's loan before remitting the remainder to the seller. Existing mortgage deeds are sent to the purchaser's bank. The purchaser can also make a cash payment to the seller or his bank. If the old mortgage deeds do not cover the purchaser's debt to his bank, the bank will have the task of obtaining new mortgage deeds from the land registration authority, simultaneously with title registration being applied for. As has already been made clear, transfer tax has to be paid before the purchase can be registered.

In *Sweden* (figure 6) a seller usually contacts an estate agent and a contract is signed setting forth the terms of the assignment. Although engaged by the seller, the estate agent is duty bound to safeguard the interests of both seller and purchaser. The estate agent advertises the property. An interested purchaser contacts his bank to investigate the possibility of obtaining credit and, all being

well, obtains the promise of a loan. It is not uncommon for the estate agent to arrange contact with a bank. Seller and purchaser negotiate the conditions of the sale together with the estate agent. The purchaser must be given an opportunity of inspecting the property. He has an extensive duty of investigation, and because so much depends on the investigation a special inspector is often engaged for the purpose. The seller, however, remains liable 10 years after the sale for hidden defects which could not have been discovered. He can insure himself against hidden defects, but policies of this kind are severely limited. The estate agent also drafts a contract of sale, which is signed by the parties. Often an advance payment is made at the same time.

Once signed the contract of sale cannot be repudiated unless includes a special clause to this effect. Sometimes the first contract of sale is used for applying for a dormant registration of ownership, which has the effect of making it public. If the property inspection has not already taken place it is carried out now (which is not unusual). This can create problems if serious defects are discovered, because the parties are already bound by contract. The purchaser, therefore, may have included in the contract a proviso for discovery of defects. The conditions of getting the property mortgaged for the purchaser are also cleared up, if this has not been done already. One very common condition in the contract of sale is that the sale is only to be completed if the purchaser is granted credit.

When all the formalities have been completed, the seller, estate agent and purchaser usually meet at the purchaser's bank while keeping in touch with the seller's bank by telephone. The deed of sale has to be signed and witnessed, credit documents signed and necessary powers of attorney issued. The purchase money is paid over in this connection, even though in reality the banks may settle this between themselves afterwards.

The deed of sale confirms that the purchase price has been paid and that title to the property has been transferred. The deed of sale may refer to the terms of the contract of sale, but not necessarily. The basic principles for the processing of pledge and loan are the same as in Finland. The purchaser contracts a loan from his bank and the purchase price can be paid by the purchaser and his bank. The seller's credit provider obtains payment for his credits and the remainder of the purchase money passes to the seller. The purchaser's bank then takes over existing mortgage deeds from the seller or his bank (in reality this is an electronic transaction which takes place after the event) and the mortgage deeds provide the purchaser's bank with security. If new mortgage deeds need to be obtained as security (due to the amounts of the old ones not covering the debt which the purchaser is incurring), the purchaser's bank receives power of attorney to apply

for a new registration of new mortgage deeds. This, however, requires the purchaser to be registered owner, and so the purchaser's bank is granted power of attorney to apply for both registration of ownership and registration of mortgage deeds on the purchaser's behalf. With the bank handling contacts with the land registration authority, its interests are secured. If the seller's bank approves and the purchaser is interested, the purchaser can take over the seller's loans instead. The reason for the signing of contracts usually taking place at the purchaser's bank and for all transactions passing through that bank is that this bank is the principal interested party and also the risk-taker in the process of sale and purchase, responsible as it is for disbursement of all or part of the purchase price. As has already been shown, the bank must have both old and new mortgage deeds as security for loans.

4.2 Evaluation

In all countries the basics of a normal house sale are essentially the same. Purchaser and seller draw up a contract between themselves. The marketing is attended to an estate agent. The seller's loans are paid off, while the purchaser obtains new ones. And yet the processes evolved in the five countries under consideration still differ to a greater or lesser extent, the extremes being Denmark on the one hand and Finland/Sweden on the other. This is probably an accident of history, but the question is whether the existing processes are truly necessary in their entirety in each of the countries concerned or whether possibilities of efficiency improvement are discernible. True, one can argue that the rule of law demands complexity, but every country is likely to claim that its particular process exists for the security of all parties. So the rule of law does not go very far towards explaining why the processes have to look the way they do today. To address this problem, certain factors will be highlighted and a "pattern model" will then be sketched.⁸

Clearly, the stipulation in all countries except Denmark that the estate agent must safeguard the interests of both seller and purchaser means that they do not both need to have legal representatives. A change of legislation in Denmark would presumably eliminate the need for a lawyer. If a purchaser still feels constrained to retain one, there is nothing to prevent him from doing so.

Inspection is another factor, but, not being systematically treated in the reports on the different countries (Kort & Matrikelstyrelsen 2006), does not come out all that clearly in the comparisons. The question will be addressed here all the same. We

⁸ In all five countries the process can be swiftly completed if all parties want it to be, but the evaluation here concerns normal situations.

can begin by noting that in Denmark, Iceland and Norway the estate agent is duty bound to prepare a report on the property. In Finland, where the seller has been made liable for defects in the property, it is in his own best interests to order an inspection of the building in order to inform to the purchaser of any defects. In Sweden the seller is only liable for those defects which the purchaser cannot reasonably discover for himself, and so it is normally the purchaser who arranges the inspection. This is expensive, and in the meantime there is the risk of someone else stepping in and buying the property, since a verbal agreement is not binding on the parties. To avoid this problem, the inspection often comes in between the contract of sale (*köpekontrakt*) and the deed of sale (*köpebrev*), and the conditions of sale made contingent on the outcome of the inspection. Iceland and Norway too have placed the inspection in between contract of sale and deed of sale, but these are possession inspections. Denmark alone stipulates energy inspection, but Finland and Sweden are going to do the same, by reason of EU directives.

A special comparison between Finland and Sweden shows it to be more economical for the seller, rather than the purchaser, to pay for and be responsible for inspection (i.e. draw up a “declaration of contents”). The present order of things in Sweden can in the ultimate analysis result in the same property being inspected several times over.

In all countries but Finland, two contracts are normally used. The first of these ties the parties to each other for a transitional period. Credit issues, inspections, and the sale or purchase of another property can take time. The second contract confirms the change of ownership. Since the first contract shows the parties’ intent, it is common for an advance payment to be made to the seller as a form of confirmation of the purchaser being in earnest. The fact of only one contract being used in Finland, despite the possibility of having two, suggests that the existing in Finland process is found secure and efficient.

Credit issues complicate the processes, particularly in Denmark, which has a system of two credit-providers. A bank takes care of short-term loans, while a *realkreditinstitut* handles long-term ones. It is hard for an outsider to understand why the system has not been changed into long-term credits at a fixed rate of interest. The process figure (figure 4) shows how complicated the present system makes things for all concerned.

Looking at the process of sale and purchase in Norway, one also finds the process to be complicated by the way in which mortgage deeds are handled. Why have a system which insists on *sikringsobligasjon*, *urådighetsförklaring*, *inneståelseförklaring* and *panträttsgaranti* (earlier mentioned Norwegian concepts

are used here as they are difficult to translate)? A simple transfer of mortgage deeds (see Finland, Iceland and Sweden) would do a great deal to streamline the process without jeopardising legal security in practice. However, the changes which are being introduced in Norway, separating mortgage deeds (*pantedokument*) from loan contracts (*gjeldsbrev*), are likely to rationalise the purchasing process in the long term, rendering it more or less identical to Sweden's.

The management of credits naturally affects the payment of the purchase money. It is a good hypothesis that smooth processes for the management of the collateral lead to a smooth procedure for paying the purchase money. The use of mortgage deeds separated from credit documents (Finland, Iceland, Sweden and, in future, Norway) simplifies matters, especially in cases where banks are credit institutes and can transfer the mortgage deeds between themselves after the event. Banks ought reasonably to be able to rely on each other sufficiently for no mistakes to occur.⁹

One may ask why a sale does not go faster in Iceland (12 months being a normal length of time), because there is nothing about the process to suggest that it needs to take so long. A tradition of slow purchase money transfer could be the reason

There are two more factors which impair the efficiency of the processes, namely municipal involvement in Denmark and payment of transfer tax in Finland. It should be possible for both activities to come after registration (*tinglysning*) of the sale. The registration authority can be given the task of informing other bodies (municipality, tax authority, price register etc.). Nowadays information transfers of this kind are easily accomplished electronically.

One may also ask whether obligatory registration of property sales would not ensure the dependability of registers in those countries where it is not obligatory. Unregistered sales occur in all five countries, but the actual proportion of them in each country is not clear. No country has gone so far as to say that a sale is invalid until registered.

⁹ It should also be mentioned that segregation of mortgage deed and credit document makes it very easy to change banks and in this way put downward pressure on interest rates. This construction, then, provides opportunities for competition in the credit market.

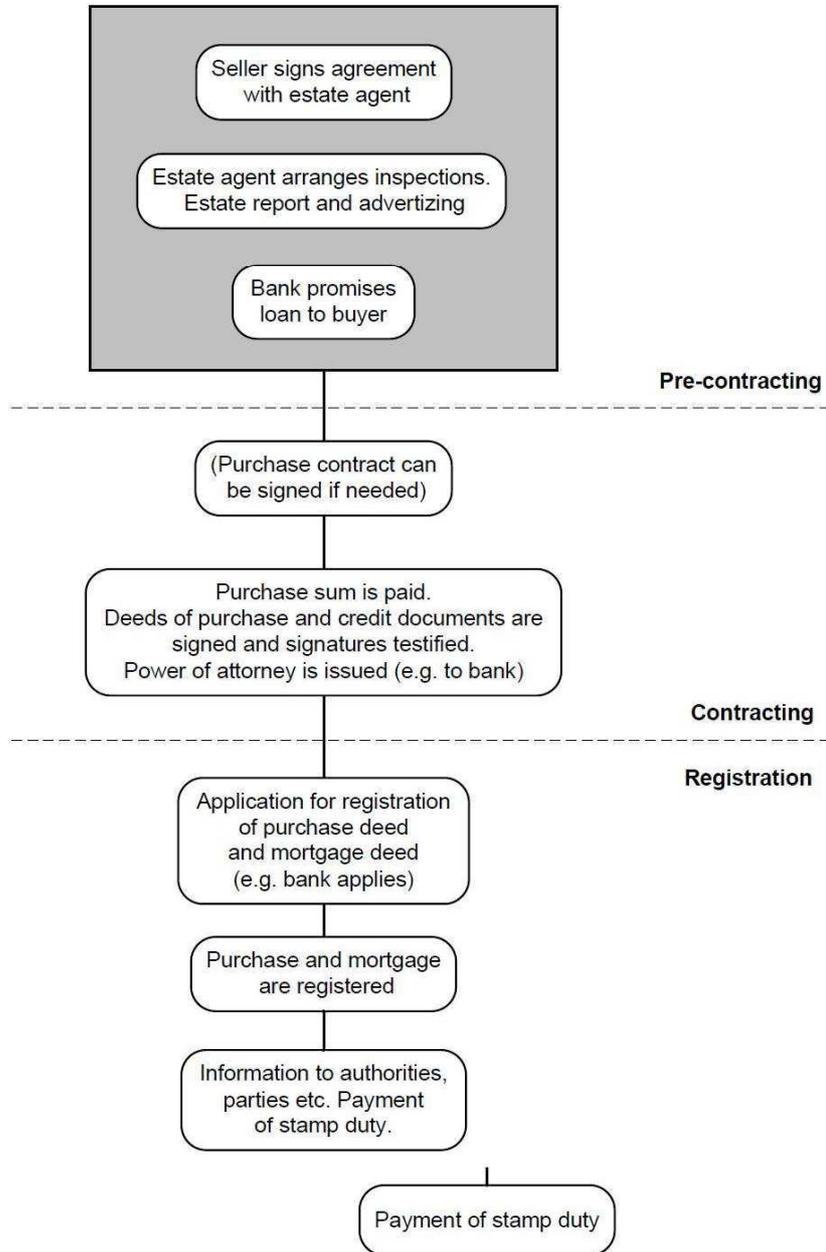


Figure 7: Pattern model for normal purchase.

Finally a model process will be expounded for the benefit of those contemplating possible legislative changes (figure 7). This process has been constructed by taking obviously workable ideas from the countries examined (identified in parenthesis). Properly constructed, they should be viable in a new context. The model is based on mortgage deed and loan contract being two separate documents, as in Finland and Sweden.

The model turns out as follows. The seller engages an estate agent who is responsible for the description of the property (this is the case more or less in all five countries). To assist him he has an inspector (Denmark) to draw up a “declaration of contents” (Denmark, Finland). The estate agent engages the inspector. The estate agent is also made responsible for safeguarding the interests of seller and purchaser alike (all countries but Denmark). The purchaser or estate agent contacts banks for an assessment of the credits available (all countries).

All parties, i.e. seller, purchaser, estate agent, the purchaser’s credit-provider and with phone contact to the seller’s bank, hold a meeting at which they sign the deed of sale (witnessed), loan contract, and powers of attorney for applying for registration of ownership and registration of security. The purchase money should be paid over at the same time, at least formally, so as to make the purchase complete (Sweden). Any amount outstanding can be turned into a loan secured with a mortgage deed (Sweden).

The party given power of attorney applies for ownership registration and mortgage registration. Registration should be obligatory, in order for the Real Property Register to mirror actual conditions (Finland, Sweden). Once the purchase is registered, the land registration authority or its equivalent informs other public authorities, preferably by electronic means (Sweden). It also sends the documents to the parties, together with invoices for administrative processing and stamp duty (Norway, Sweden).

The model process which has now been proposed applies to a normal purchase and in simplified form is also feasible for what was previously termed the simplest possible purchase, in which the parties all rely on each other and can manage everything by themselves (Sweden). If legislation and routines are constructed in accordance with the pattern model proposed, then of course it will also have to be modified for coping with more complex situations, but both Finnish and Swedish experience suggests that this is perfectly possible.

It should also be mentioned that time is sometimes needed between the parties committing themselves and all the formalities being completed. If so, it must be made possible for the process to be supplemented by the signing of a registrable contract of sale (*föreltal, köpekontrakt*), to be superseded by a deed of sale once all the formalities have been completed (all countries).

There are a number of aspects which deserve closer study. The methods of describing and inspecting a property are one of them. The role and impartiality of estate agents are another and the forms of bidding a third. Interesting aspects of solutions would presumably emerge.

5 Subdivision

5.1 Process comparison

Subdivision processes will be analysed on the same lines as sale and purchase. To structure the comparisons, the process has been divided into the following phases (see also figures 8 – 11):

- Initial preparation and land policy control
- Continued preparation
- Cadastral decision
- Registration
- Supplementary work

First, though, a few brief remarks on this subdivision into phases.

Initial preparation and land policy control. In addition to the inspection of basic legal documents, e.g. verification that the right owner is applying for subdivision, in all five countries a land policy check is carried out when the processing of a subdivision transaction begins. This stands for clarification of the basic preconditions for the permissibility of the process.

Continued preparation. When the surveyor (or equivalent) has a degree of assurance that the transaction is compatible with land policy stipulations, preparations begin for subdividing the area concerned. Boundary survey is a natural activity, but questions concerning rights may also have to be addressed.

Cadastral decision. This refers to the point in time when it is decided that a new property unit is to be formed. As will be made clear further on, this decision can mark the conclusion of the handling process or else be an integral part of registration. The decision may be appealable, in which case it will acquire force of law when the appeal deadline has been passed.

Registration. This phase refers to entry of the new subdivision in the Real Property Register (or equivalent) and the allocation of a new register designation. This done, the subdivision is complete. In addition, the owner must be registered for the newly formed property.

Supplementary work. Conclusion in the form of registration of ownership, final information to landowners and authorities occurs in all five countries but it is not far-reaching in Iceland.

Analysis of the processes reveals clear differences of responsibility between Denmark on the one hand and Finland and Sweden on the other. Norway has evolved something midway between the two, while Iceland differs from all the other countries and will be separately commented on.

In *Denmark* (figure 8) the practical work of subdivision (*udstykning*) from a parent property is done by a surveyor in private practice (*landinspektør*). He has to investigate the permissibility of the subdivision and if necessary create a right-of-way easement out to a public highway. He also has to suggest how existing easements are to be apportioned between the parent property and the subdivided lot. He is not entitled to form new easements over and above the right of way, nor can he order the release of the subdivided lot from charges (*pantehæftelser*) on the parent property.

Briefly, the process runs as follows. The landowner turns to the surveyor for a subdivision. The surveyor consults the land register (*tingbok*) for encumbrances of different kinds, such as local development plans and easements. Information is procured concerning water and drainage mains. If there is any doubt concerning the possibility of the subdivision, he consults the appropriate authorities. The surveyor then meets the landowner on the scene and the subdivision is marked out, together with any new rights of way. At the same time the landowner empowers the surveyor to refer the matter to the cadastre authority Kort- og Matrikelstyrelsen (KMS). The surveyor then consults the municipality and possibly other authorities too, in a purely formal manner, in writing, concerning the permissibility of the subdivision. When everything is settled, a map and other

documents are sent to KMS for examination and registration. KMS informs the land registration authority (*tinglysningsdomare*) and the municipality, both of whom have to register the transaction. The land registration authority updates the land register.

The documents are returned by KMS to the surveyor with a record of decision concerning registration, and he in turn contacts the land registration authority to have existing easements apportioned between parent property and subdivided lot in the land register. This apportionment of easements is based on the surveyor's attestation of easements.

The landowner receives a subdivision map (*utstykningskort*) and registration notice from the surveyor. With the support of the mortgagee the landowner can also request the land registration authority to delete mortgages on the newly formed property.

In Norway (figure 8) the formal process of subdivision starts with the landowner sending a subdivision application to the municipality. This application has to be accompanied by a document showing neighbours to have been informed of the matter. Subdivision procedure can be applied for at the same time, because in principle subdivision application and subdivision procedure are two different things (permit and effectuation respectively). The municipality consults other bodies and authorities which may have views on the matter. The outcome of the permit application is communicated to the applicant. If subdivision procedure has also been applied for, the municipality refers the matter to the municipality survey office for effectuation. Instead of attending to the matter itself, however, the municipality may contract private surveyors (*landmåler*) for the task.

The surveyor calls the landowner, neighbours and other right-holders to a cadastral procedure. The new property is surveyed and old rights clarified as well as the need for new ones. When the procedure is complete the surveyor sends a request for registration (*matrikkelføring*) to the competent body in the municipality. The municipality registers the new property and allots it a register designation. It then sends a report of the subdivision, together with the examination of rights, for land registration authority (*tinglysning*).

The land registration authority registers the property with owner and rights as per the description of rights, whereupon the municipality is informed. The municipality then sends *matrikelbrev* (the subdivision documents) to the landowner. If mortgage securities are to be deleted, the landowner will have to raise this matter separately with mortgagees and land registration authority.

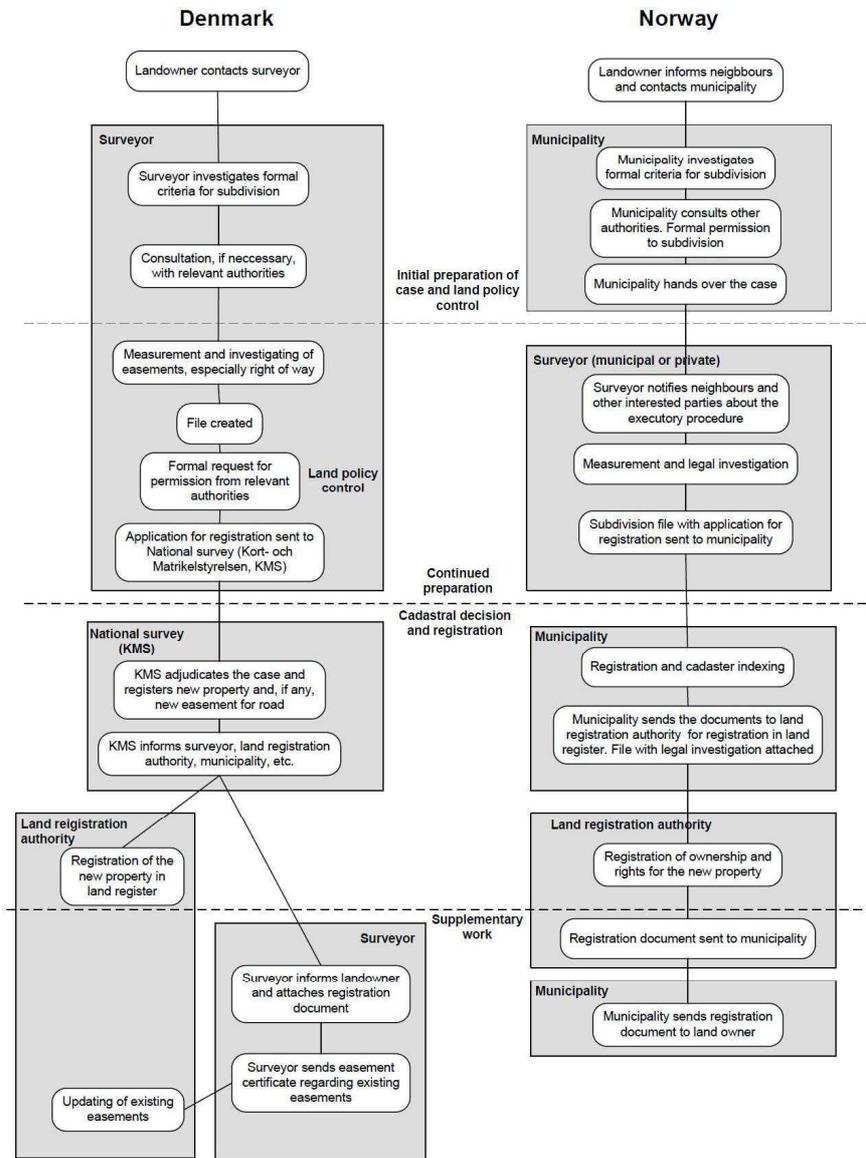


Figure 8: Subdivision in Denmark and Norway.

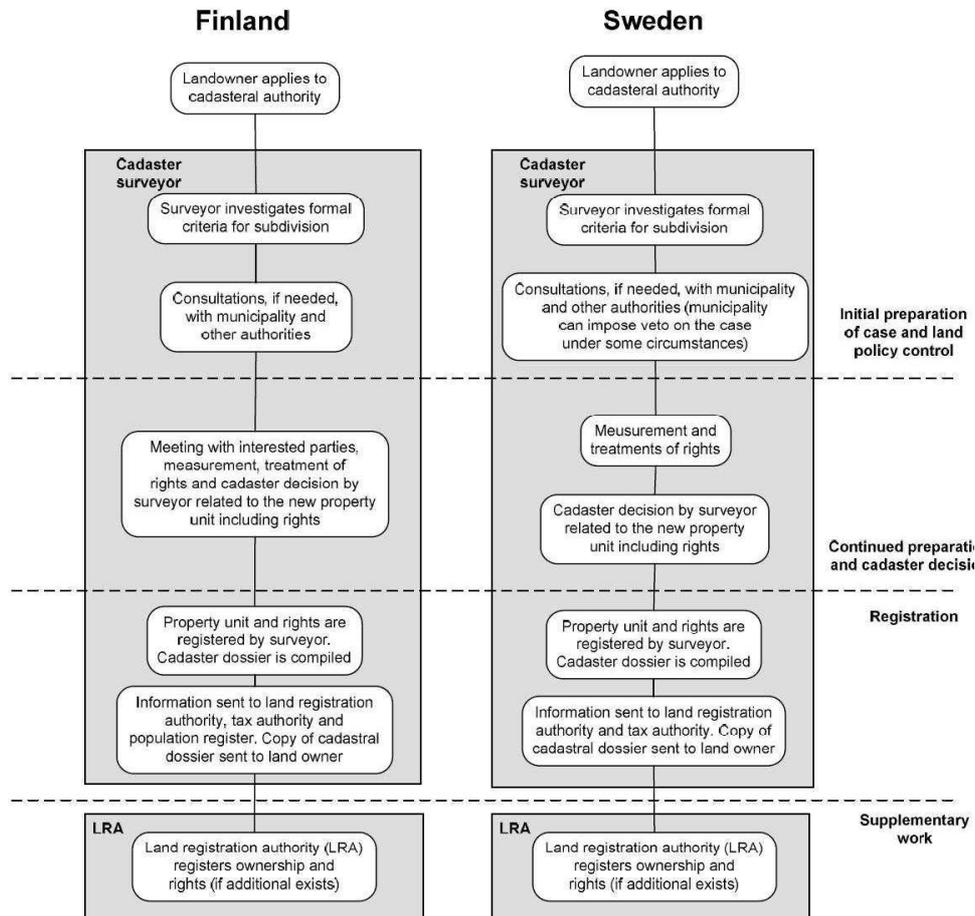


Figure 9: Subdivision in Finland and Sweden.

Finland (figure 9) is distinguished by the surveyor being responsible for practically the whole of the subdivision process and also for the handling of rights encumbering the property as well as for the creation of new rights. A subdivision application is addressed to the property formation authority. The surveyor (*lantmätariingenjören*) assesses the formal prerequisites for a subdivision and if necessary - mainly in densely built-up areas – consults the appropriate authorities. He then convenes a meeting of landowners and any other right-holders affected to survey the subdivided lot and if necessary apportion existing easements, as well as creating new ones. If the value of the parent property still covers existing mortgages after the subdivision, the surveyor issues a certificate eliminating the

charge on the subdivided lot. In this way the landowner will not subsequently need to take the initiative for the land registration authority to remove the mortgage encumbrance. The surveyor also makes a subdivision order, and after the appeal deadline has passed he registers the new property. Information concerning the subdivision is sent to the land registration authority, which enters particulars of ownership and certain rights for the new property. The tax authority and population register are informed by the surveyor and cadastral procedure documents are sent to the landowner. It should be mentioned that if the property is heavily mortgaged the surveyor cannot eliminate the mortgages by certification. Instead the landowner has to deal with this matter afterwards, as the practice in Denmark and Norway.

The subdivision process in *Sweden* (figure 9) is essentially the same as Finland's, and so the description will not be repeated. One difference, however, is that no meeting needs to be held. Another is that the surveyor must immediately send his decision to the landowner so that the latter can judge whether the matter has been concluded as he intended or whether he is to appeal the decision. Here it should be added that legislation has been passed whereby the land registration authority and county cadastral authority are to be amalgamated. It is unclear how this amalgamation will affect the process.

The *Icelandic* process (figure 10) is evidently informed by a history of little competition for land. For example, boundaries do not have to be surveyed unless the municipality so requests. The landowner is responsible for the preparation of a map and if necessary enlists the aid of a suitable person. A landowner wishing to partition his land makes a request to the municipality, which can then ask for a map showing co-ordinates. The municipality decides the street name and registration name. A permit is granted and information sent to *Styret för vurdering og registrering* (SVR), which allots a registration designation and sees to it that the property is entered in the property register. The owner then draws up a subdivision document (*stammedokument*) which he sends for registration (*tinglysning*). The authority in turn informs SVR.

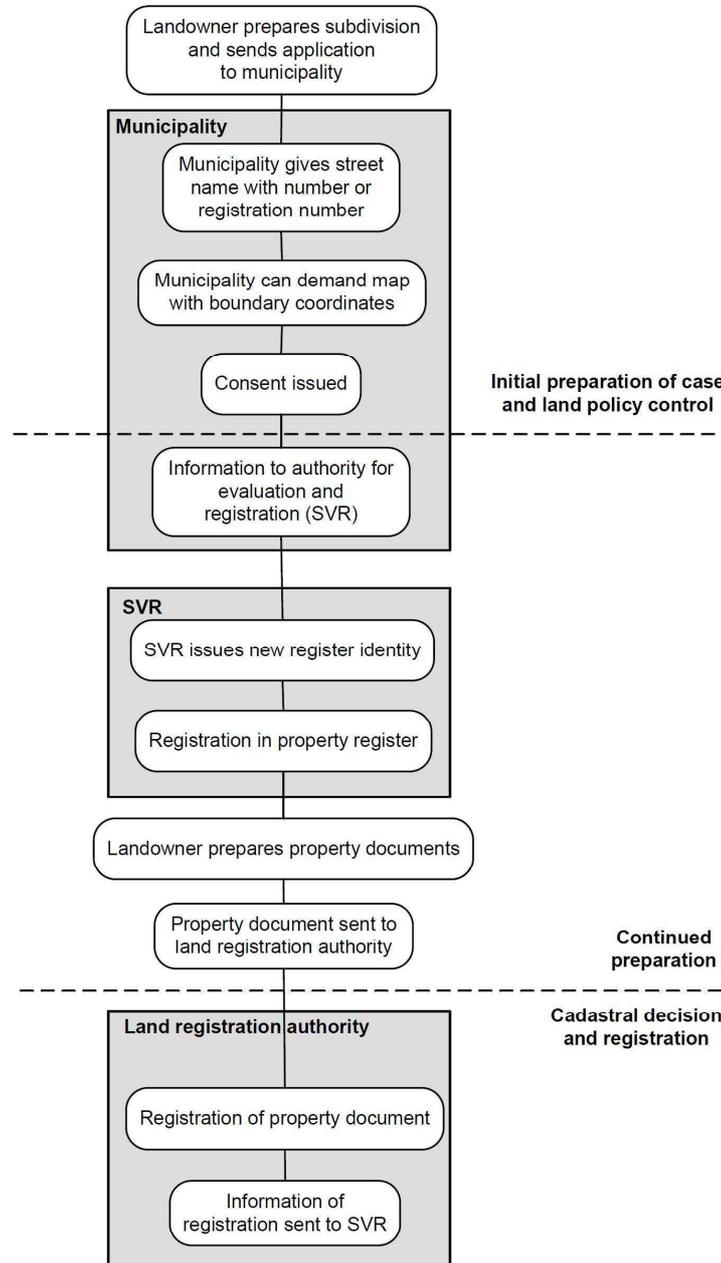


Figure 10: Subdivision in Iceland.

5.2 Evaluation

Comparisons between the five countries reveal three main structures, the first featuring publicly employed surveyors (Finland and Sweden), the second private surveyors (Denmark).

Norway has evolved something midway between mentioned two main structures, in that the municipality can opt for having a surveyor of its own (the process is entirely the responsibility of one party) or outsourcing a private surveyor who in that case carries out the cadastral procedure on the municipality's behalf. The process is in such a case conducted partly by a private surveyor. The handling of rights in Norway, and the extent of what can be handled, have much in common with the situation in Finland/Sweden, while the registration of rights resembles Denmark's.

In the third main structure surveyors do not occur as a professional category (Iceland), probably because the number of surveying operations is very limited and there is little competition for land except in urban areas, where in principle all land is owned by and leased from the municipality. Subdivision, therefore, does not need to take place very often. Conditions in Iceland, therefore, will not be commented on any further.

Conditions in Finland and Sweden show that a very great responsibility can be put on publicly employed surveyors and, over and above surveying tasks, can in principle include all legal issues, such as the management of consultations for land policy control. Surveyors are also tasked with registration, but not to the extent of being able to register particulars of ownership. That remains the task of the land registration authorities. Efficiency prevails in the sense of one person being basically responsible for the entire process, so that the transaction is not shunted to and fro between different agencies. Land policy control is exercised by other bodies, the municipalities especially, but the surveyor is responsible for ensuring that it takes place.

Denmark has opted for private surveyors. Just as in Finland and Sweden, they are responsible for organising land policy control by consulting authorities. In Denmark the surveyor can draft a right-of-way easement and the apportionment of pre-existing easements, but surveyors cannot handle legal aspects to the same extent as in Finland and Sweden. The surveyor concludes the transaction by sending what may be termed a form of report to KMS and, later, an easement report to the land registration authority. In Finland and Sweden the surveyor registers the

subdivided lot as well as other changes of rights. In all five countries, registration of ownership is a separate operation performed by a special authority.

In Norway the conduct of land policy control is a municipal responsibility. After this the municipal survey organisation can take over the transaction, or else a private surveyor can be tasked with it. Thus a choice exists between a Finnish/Swedish and a Danish model. The surveyor in charge can, however, handle rights in a completely different way by preparing more exhaustive easement reports – a rapprochement with the Finnish/Swedish model. Registration of the subdivision transaction and of rights in Norway is exclusively Danish in structure.

One idea prompting the choice of private surveyors may be for competition between them to reduce the cost to the customers (the landowners), but in Denmark the use of private surveyors is probably due mainly to historical causes, and the question of changing to public surveyors has never been broached. South Jylland (Jutland) has quite logically switched from public servants to private practitioners. But a system of private surveyors seems to result in their not being given the same investigative responsibility as has been incurred by the publicly employed surveyors in Finland and Sweden (though Norway has gone one step further than Denmark). Nor have the private surveyors acquired powers of decision making. This is made even clearer by an examination of compulsory purchase procedures, e.g. for creation of an easement over a third property against the wish of the owner. In this connection Finnish and Swedish surveyors have decision-making responsibilities which have no real counterpart in the other Nordic countries.

It is an intermittently moot point in professional circles, at least in Sweden, whether private or public surveyors are the more efficient arrangement, but penetrating studies of the subject would seem to be lacking. In any case, perhaps the question is wrongly formulated and the real topic of enquiry should be how a process is to be designed and what responsibility can be imposed on the person handling different activities within it. Taking figures 8 and 9 as our starting point, the tasks handled in the different countries are relatively similar, even though the processes are differently organised, viz:

- initial checking of the authorisation of landowner applicants,
- land policy control,
- management of surveying and any boundary definition (not commented on any further in our comparison),
- settlement of easement issues,
- removal of mortgage/lien on the subdivided property,
- other legal issues,
- registration of a new property unit,
- registration of the owner of the new property,
- information to other authorities concerning registration,
- information to the landowner concerning the conclusion of the transaction.

In Finland and Sweden, nearly everything included in the above enumeration, except for registration of the owner of a new property unit, can be handled by surveyors. In Denmark most of the legal issues have to be made part of a land registration process which comes after the subdivision transaction has been concluded. Norway occupies an intermediate position.

The question is whether all tasks can be included in a process for which as few people as possible are made responsible. Since the Finnish/Swedish process has clearly gathered most of the responsibility under one hat, this process can be taken as the starting point for a pattern process. First, though, it has to be noted that the Finnish/Swedish process could presumably be made still smoother by the surveyor being enabled to register ownership data and other residual rights issues as well. Everything except land policy control could then be placed in the same hands. Land policy control, it is true, can also be placed under the surveyor (which is partly the case in Sweden, in that the surveyor has to strike a balance between public and private interests in a number of situations), but it is not very likely that too much can be imposed on him, land policy issues being outstandingly politicised and diversified in present-day societies. These policy issues are handled by a number of specialist authorities. Land policy control apart, other tasks in the process are more or less a matter of effectuating, in a manner consistent with the

rule of law, desires for changes of rights¹⁰ on the part of landowners and any other parties concerned and also of coping with the marking of uncertain boundaries (boundary and property definitions). Process management, consequently, is a matter of professional skill in handling transactions of varying extent and legal complexity but also a question of the formal spheres of competence conferred by the legislature.

A “pattern model” for subdivision transactions, disregarding the spheres of competence of surveyors and authorities, has been evolved in figure 11. The Finnish/Swedish system clearly comes close to being a model process, except that the tasks of the land registration authority can be performed simultaneously with registration of the new property. Decision and registration should, however, be kept separate in time to allow scope for appeal.

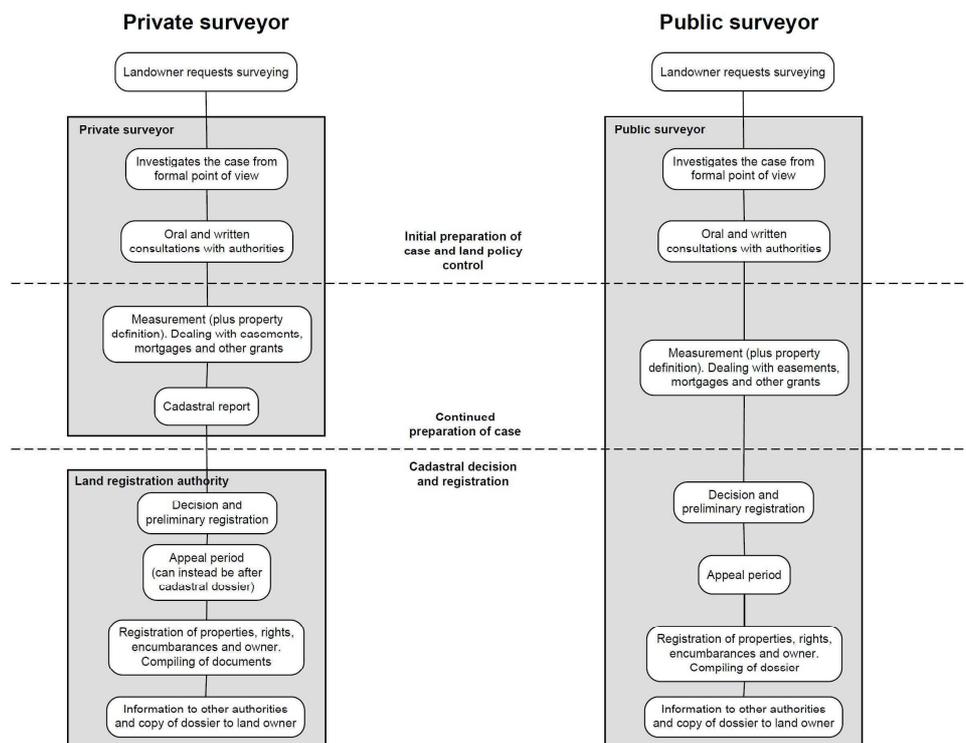


Figure 11: Pattern model for subdivision.

¹⁰ Subdivision is also a change of rights in that a new property unit is formed.

The pattern model can be handled in its entirety by a single public employee. It is also interesting to see that the process can retain its structure but be partly handled by private surveyors in a competitive market. In that case one must ponder the interface between the work of the private surveyor and the duties of the public authority. Judging from the handling of the processes in the various countries, the interface can be put between decision and registration (see figures 8 and 9). But the decision by a public employee can be replaced with an investigation report formally compiled at a certain point in time by a private surveyor. The report can include all cadastral issues but also proposed solutions to rights issues, including mortgage security and even disputes. If the report is not appealed, the transaction can be registered directly by the registration authority concerned, in that case with all changes of rights included.

The next step, improving the efficiency of registration, requires the authorities responsible for registration of the new properties and for registration of ownership data etc. to be amalgamated to form a single authority with comprehensive responsibility.

Still more radically, private surveyors could be commissioned to handle all issues, registration included. This would mean their being given precisely the same amount of responsibility as publicly employed surveyors. But privatisation of the register itself would mean the involvement of profit interests, which could prove troublesome in the long run, since a basic social service (i.e. the register) will be affected which is not purely of economic interest but also requires a high standard of legal security. Can essential public services be sustained over long periods of time by private organisations? Property-related registration issues are probably too vital for experimentation in this respect to be permissible.

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