

THE REAL ESTATE INFORMATION: A WAY TO STANDARDIZATION

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ABSTRACT

The availability of exact information on real estate property assets is necessary for several reasons:

a) The spatial location of real estate properties leads to the fragmentation of the real estate sector into an aggregate of markets. In such markets, the lack of exact information, on the real properties composing them, acts as a barrier to entry that may have negative effects on demand. In this respect, the adoption of common criteria for the description and valuation of the real estate properties would play an essential role in order to overcome the barriers stemming from the geographical location of real estate properties.

b) The standardisation of information on real estate properties is also necessary for the globalisation and mobility of demand within the real estate sector, as a result of the increasing geographical disconnection between the property required and the residence of the property seeker. We can clearly see this situation in areas of strong supply/demand for properties, of a tourist nature or for elder people, who choose countries different from their countries of origin to reside in.

In any case, information on real estate properties ought to meet the following requirements:

1. Content. Information on each property ought to refer to basic aspects, such as:
 - Description of the property using a graphic base;
 - Valuation of the property;
 - Reference permitting its localisation in legal Registries in order to ascertain the current owner and encumbrances thereof;
 - The urban location.
2. Standardization. The use of standard conventions is necessary for the description and valuation of the properties.
3. Institutionalisation. Information must move away from the interested information used for advertising purposes or for promoting the development of tourism in particular areas.
4. Public nature. The information must be accessible to any person interested in knowing the situation and features of the property.

The study analyses the different description and identification systems of real estate properties in different countries, looking for the necessary connections in order to achieve a unification of criteria. In that respect, the creation of *an international property record*, which allows a quick exchange of information on real estate properties, is suggested.

A) INTRODUCTION.

1. Real Estate Information

Real estate is basically characterised by its special fixed and permanent location. LIBCHABER centres the criteria for differentiating between movable goods and real

estate on the idea of how the space is occupied. If the space is permanently occupied, we have an immovable item whereas if the space is temporarily or provisionally occupied, we have a movable item.

The spatial permanent location of immovable property constitutes a specific characteristic of such property, which delimits a particular legal-economic regimen. The information mechanisms concerning real estate have special characteristics, primarily because of the lack of immediateness between the property to which the information refers and the requester of the information. This situation causes the information on the property to become extremely important since it constitutes the nexus between the information and the different operators working the real estate market.

Information is a factor, which plays a very significant role in an economic market. Information is the principal internal relationship between buyers and sellers in the heart of a market. If this relationship is direct, to the extent that each and every one of the players may know the response of the others and consequently choose the most favourable option, the market is considered to be transparent. If the buyer-seller relationship does not exist or is deficient, the market becomes deteriorated and loses its efficiency in terms of the balance between supply and demand. Real estate markets are not transparent. In other words, they are more or less obscure to different extents, the obscurity on the demand side being greater than on the supply side.

Market efficiency depends on transparency. One assumption of the competitive model is that the economic agents are fully informed, but the truth is that the market lacks complete information. While the fact that consumers do not have all of the information on the goods and services offered is not a sufficiently decisive piece of data to be critical of the competitive model, it has obliged economists to include the uncertainty variable in order to obtain a greater convergence between their analyses and the real world. The uncertainty generated by the lack of information cannot help but to have an effect: high information costs impair the market's usefulness as an instrument for correcting the insufficient assignment of resources. This situation is equally harmful to buyers and sellers and to the economy in general. The existence of uncertainty means that the information becomes a commodity and, as such, uncertainty is included as one more variable in the analysis business and consumer habits. These considerations are perfectly applicable to the real estate market. On the basis of the principle of the free movement of goods and services which characterises the unified economic space, since the free movement of real estate products is obviously impossible due to their very nature, this is replaced by the information provided on them.

This matter is closely connected with the notion of 'Land Administration'. Peter Dale defines it as *the term adopted by the UN Economic Commission for Europe to describe the processes of recording and disseminating information about the ownership, value and use of land and its associated resources. Such processes include the determination (sometimes known as the 'adjudication') of rights and other attributes of the land, the survey and description of these, their detailed documentation and the provision of relevant information about the land and any property attached to it (Dale, 2000).*

Furthermore, effective real estate information must cover two aspects:

The economic or market value of the property in question so that one is able to get as exact an idea as possible as to the property's value. This information is crucial not only to determine the exchange value of the property or the price-quality ratio, but also to establish the value of the property as a guarantee when the property is used, either directly or through its incorporation in a title or securitization.

Along with the economic appraisal, the information should provide a series of data which affect the legal status of the property and which enable one to know whether it is suitable for being traded on the real estate market. The legal information on the property is divided into the following aspects:

- The circumstances relative to its ownership so that the information available enables one to discern the true identity of the person who has the power to dispose of the property.
- Proof of the owner's rights to the property and any limitations affecting the owner's right to use or dispose of the property.
- Information on the status of the financial encumbrances, which provide exact information on the suitability of the property in question to be used as a guarantee.

In both cases, the information must necessarily be based on a physical description of the property, which allows it to be clearly identified. The physical identification of real estate is a fundamental part of the real estate information mechanism since it delimits the property physically and differentiates it from the rest. This need to individualise the property is even more compelling when one considers the special characteristics of the real estate market and the legal status of immovable goods.

2. The Land Markets. -

The fact that real estate is located in a fixed location in space without the possibility of being moved is a circumstance which takes on special meaning in the exchange of these types of goods. From an economic point of view, since the free movement of these goods is impossible, the economic movements takes place through local markets.

On this basis, the Land Market is divided in three sectors:

- Real estate production understood as the economic activity or sector, which places real estate products on the market for the transmission of use or ownership. This phase culminates with the placement of real estate utilities on the market.
- The exchange of the possession of real estate utilities, whether on an ownership or usage basis. This exchange activity in turn generates two categories of markets: a primary and a secondary market. The primary market refers to the real estate products suitable for use on a first occupancy basis. In this market, the relationship between the agents will generally take place between the developer and the buyer or user. This sector is heavily influenced by legislation geared toward protecting the consumer. The secondary market deals with second-hand or used property, when the subjective functional obsolescence causes the owners to move to another property in search of the utility which the former property provided at one time but no longer provides. The

use of the initial property is then transferred to someone else whose usage needs are satisfied by the property.

- Another significant real estate sector is represented by the financing of the two categories mentioned above, providing financial resources to the real estate operation in the case of businesses and to buyers in the case of the end users of the real estate product. The financial sector of the real estate market is in turn composed of a primary and secondary market. The primary market is composed of the real estate financing operations and the secondary market is composed of the refinancing operations of credit entities designed to palliate the lack of liquidity produced by the placement of its resources on the primary market. Each mortgage market has its own particular features depending on diverse circumstances such as the financing systems used, housing demand or the size of the primary and secondary markets.

The fact that real estate products must remain in one place, irrevocably linked to a specific location, leads to a situation in which there are as many primary markets in the real estate sector as there are local areas of demand. In this regard, it can be affirmed that there is no single primary real estate market but rather a group of different ones. Real estate products are not interchangeable outside of the market, they are the products of one market rather than several different ones, contrary to what occurs with other types of goods. There is therefore a structural difference between real estate markets and other markets, between the companies operating in the real estate sector and those operating in other sectors of activity. Good and bad decisions are linked not only to the products and how they are administered but also and in particular to the location of the products.

This circumstance is also significant from a legal point of view, as we will see below, since the specific location of a piece of property in a particular location makes it subject to the legal regulations of that particular area. The ever-increasing cross-border mobility of buyers-users means that the identification mechanisms and the information systems relative to real estate must move inexorably towards a standardisation which permits the end users of such products to obtain a clear and precise vision of the products. In the current socio-economic environment dominated by globalisation, real estate supply remains rigid and set apart from this phenomenon due to the fact that the products cannot be physically moved from one geographic location to another.

As a consequence, it is difficult for buyers to see the quality of the property at the time of purchase. It is only subsequent to the acquisition and after a long period of time has gone by that the buyer is verify the true quality of the product acquired. This circumstance makes it difficult for the real estate market to expel the strategic behaviour of opportunists who offer products of seemingly good quality which in reality are of very poor quality. Sellers who knowingly offer poor quality are usually not penalised in any way because, while they operate habitually on the market, each client usually buys from a particular seller only once. This situation is aggravated by the lack of guarantees concerning the seriousness and veracity of the seller. Furthermore, the dynamic of the real estate market hinders consumer education since real estate exchanges usually materialise in isolated operations. While it is possible for consumers to participate in

several real estate operations during their lifetime, it would be unusual for such operations to take place between the same parties.

The foregoing highlights the crucially important role played by information in the real estate market due, to a large extent, on the special characteristics of this market.

3. The Legal Status of Real Estate

From a legal perspective, real estate regulations are defined by the application of the legislation in the country where the property is located and on the transnational relations affecting real estate. The existence of different legal systems, each one with specific real estate laws, introduces a note of insecurity into transactions affecting real estate when all of the parties involved do not reside in the country where the property is located. This situation is particularly striking in countries where real estate investment by non-nationals represents a large portion of the real estate activity.

Article 16, 1, a) of the Brussels Convention and the Lugano Convention refers to real estate rights and attributes the exclusive authority over such rights to the courts in the country where the real estate is located. Some authors point out that the public interest which justifies this forum collapses on a criteria of historical territoriality which, since the time of feudalism, has been part of the concept of a nation's territorial sovereignty, which extends to real estate as an accessory part of the nation's territory. An outdated concept far removed from the current opening up of real estate traffic, the nature of which has precious little to do with real indices of wealth, power or sovereignty.

Legal information on real estate is closely linked to the idea of publication. Publication plays a very important role in legal traffic, particularly on the subject of real estate ownership rights. These rights may be contemplated not only from a static perspective, as the scope of person's power over a particular item, but rather from a dynamic perspective as well to the extent that the item is the object of trade which is formed, modified, transformed or extinguished. It is within this dynamic perspective of real property rights that one must attend to two demands: on the one hand, establishing the sufficient guarantees to ensure that no one is deprived of their rights without their consent or, at least, without their knowledge; and on the other hand, implementing regulations which prevent the buyer of a right acting in good faith and with reasonable diligence from being deprived of his/her acquisition, regardless of the seller's validity.

The Article 1 of the First Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that:

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or

other contributions or penalties.

Article 1 has been held by the European Court of Human Rights in *Sporrong and Lönnroth v Sweden* to comprise three distinct rules. The first enounces *the principle of peaceful enjoyment of property*. The second *covers deprivation of possessions and subjects it to certain conditions*. The third *recognises that States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose*

Publication consists of a set of systems, which enable the community to determine the identity and legal status of the property owners. The property registration system emerged as a separate publication system at the service of those rights which are basic to the development of real estate trade and which lack possession as a primary form of publication. Possession is the quintessential form of externalising the real rights and only those, which are not susceptible to possession, must be organised under other publication systems. But only one, the mortgage, is economically important enough for the state to justify the creation of an infrastructure designed to organise such advertisement.

The different Land Registration systems organised within the legal systems of each country, which are, in turn, products of their own historical evolution. As Jose Simeón Rodríguez pointed out *the reasons calling for this solution are of different nature. They are practical and refer to the possibility of the application of the judicial resolutions; constitutional and refer to the relationship of the land and its uses to the economic constitution and also juridical: the superposition of the romanist juridical tradition on feudal juridical techniques has given place to a multiplicity of formulations of property and real estate rights especially related to the place of situation of the immovable what demands its particular regulation (Jose Simeón Rodríguez, 1999)*

This circumstance leads to differences between the different systems, which act as barriers, impeding the cross-border movement of efficient information on the legal status of real estate.

4. Consequences of the diversity of real estate information mechanisms.

As a consequence of the existence of diverse real estate information mechanisms from one country to the next, there are certain implications when the possession of such access crosses transnational borders. The lack of uniformity in the content of the information is going to create tension between the agents who produce the information and those who receive it, due to the fact that there is a conceptual distortion of the information. In other words, some terms which might appear to be similar do not have the same semantic content. This phenomenon invariably causes a situation of imprecision regarding the physical, economic and legal status of the real estate. The uncertainty caused by the heterogeneity of the circulating information affects the fluidity of the exchange of real estate assets due to a lack of knowledge of the relationship of equivalency between the products offered/demanded and the resources assigned to them. This uncertainty concerning the real situation of the products on the real estate market causes insecurity

which in turn has a negative impact on the construction and stabilisation of economic spaces where such real estate assets may be freely moved. The lack of connection between real estate information systems also affects attempts to put guarantee mechanisms into place to provide security to the real estate transmissions. At this level, the uncertainty not only affects the real estates assets themselves but also the scope of the guarantees which must be established. In this sense, the scope refers not only to the effect of the guarantee itself but also the mechanisms foreseen to implement it.

B) CORRECTIVE MECHANISMS OF THE PRESENT SITUATION.

1. Possible corrective mechanisms.

In order to overcome the obstacles aforesaid, there is the need to establish co-ordination systems enabling to obtain equivalence in the content of the information, independently of the source such information comes from. This equivalence ought to come about at two levels:

- Formal equivalence: by creating and using a common vocabulary on the different aspects of the real assets.
- Material equivalence: the semantic content of the terminology used shall be the same.

On the other hand, the co-ordination of a system may be obtained by using two types of mechanisms:

- Harmonisation, which consists in the establishment of a system of equivalencies enabling to fix a relationship, in terms of certitude, between information coming from different systems.
- Standardisation, through the creation of a single system of elements integrating information, that shall be used in the same way by all the agents producing of the aforementioned information.

Finally, one needs to bear in mind that the information on real estate assets may be structured at the following different levels:

- a) The physical situation of the assets. At this level, information shall provide reliable data on the material aspects of the real assets, avoiding confusion with other assets and allowing to obtain precise information on its physical reality.
- b) The economic aspects of the real assets. At this level of information, data shall be produced by using common references enabling to establish a relationship, in terms of certainty, between products and resources that may be allocated.
- c) The legal information. At this level, information shall provide the elements related to ownership, content and situation of the charges that may allow to previously establish the appropriate guidelines in the legal traffic of real assets.

2. Requirements that information on real estate assets must meet.

- a) Firstly, information on real estate assets shall meet the coherence conditions, so that the obtained data may be unitarily used, without existing antinomies or internal contradictions between the integrating data. The internal coherence requires harmonisation of the data obtained in order to be univocally interpreted. In addition, coherence shall be referred to the information stipulated overall, so that the data that make it up, shall be integrated in a system of organisation that enables its efficient interrelation.
- b) Information shall be guaranteed in order to provide the needed security for the land market. The guarantee shall be supported by a system of responsibilities in order to play an efficient role. Among the eventual guarantee proceedings, the most advisable at present are those assumed by the intervention of the public authorities, so that information shall meet the condition of official information. The guarantee shall be multiple. Information shall be guaranteed and shall provide security in its origin, as well as in its storage and release. Security shall be aimed, firstly at the mechanisms that obtain information, in such a way that it is filed in the data base under conditions of absolute reliability. In addition, security is required in the arrangement and treatment of the same, so that the organisation shall enable the coherent release of it. Finally, security shall also be involved in the transmission of the stored data, between the centres where one can obtain it and those of storage, as well as between the centres of storage and those requiring such information.
- c) Access to information shall be public so that, any agent or operator of the real estate market may have free access to it. Thus, the existence of closed units with access to preferential or privileged information shall be avoided and consequently, the distortions that this may produce in the real estate market. Free access to information on real estate assets is a basic element in order to transparently carry out the exchange of real estate products. In all cases, free access to this information shall be co-ordinated under the right to privacy of persons, establishing the needed mechanisms in order to identify those who require the information, when this latter is referred to that levels of the same, that may come into conflict with the aforementioned right to privacy.
- d) Information shall be centralised. The fixed and stable location of real estate assets and the local character of the real estate markets leads to the information being produced in a fragmented and fragmentary way. This situation gives rise to the need to turn to local sources of information with the subsequent detriment to the fluidity of the real estate assets exchange. At the same time, these local sources of information are not unified within the local field of action. It is usual, mainly by historic reasons and due to the superposition of legal different systems, that information on real estate assets is divided between different organisms and institutions (usually between the Property Registry and Cadastre) according to the level of information with which they are dealing and that have, depending on the country, different grades of co-ordination between them. The fragmentation of information on real estate assets is also due to obstacles of technical nature, that at

present may be overcome thanks to the new technologies in the field of communications and data transmission.

C) PHASES OF THE LAND INFORMATION HARMONISATION PROCESS

The need to harmonise real estate information requires a gradual co-ordination process involving successive phases in order to attain an efficient level of informational uniformity. The harmonisation task must take place gradually to avoid tensions between the different legal systems affected.

The harmonisation process must begin with a system, which uses common terms to describe the real estate physically. This involves the creation and adoption of some common systems for the physical individualisation of each piece of property. This technique permits fast access to the information and would be particularly useful in situations of ownership in which there were no immediate contact with the property in question.

1. The first phase.

The first phase would cover two aspects:

1. The adoption of common standards or conventions for describing the physical appearance of the property. These common conventions must necessarily refer to the following aspects and be accompanied by the corresponding planimetry:
 - a) The exact location of the property. This requires the establishment of common criteria of both a technical nature (geographic references, coordinates, etc.) and of an administrative nature (street, number, city/town, etc.).
 - b) The size of the property, likewise expressed using common parameters.
2. The creation of a common basic vocabulary to refer to real estate in such a way that it is possible to deal with equal concepts in both form and content.

The common vocabulary should be drafted through the establishment of a series of equivalencies which make it possible to unify the information available on each property. The creation of the common vocabulary should extend to two different levels.

- a) Common terms relative to the physical characteristics of the property. This level would not pose excessive difficulties due primarily to the rising technical unification in this area.
- b) Common terms relative to the legal status of each property. This level poses more difficulties due to the differences between the different legal systems. The creation of common vocabulary on this subject must begin by establishing some points of references which make it possible to establish the basic circumstances which immediately affect the circulation

of property on the real estate market. To obtain this information efficiently, it will be necessary to establish a terminology of equivalence based on a binary system such as a YES/NO system. This would enable effective access to basic information on the property.

The following types of information could be obtained:

1. Ownership: identification of the owner or owners of each property.
2. Ownership content: information on the owner's ability to act upon the property. On this point, a distinction would have to be made between:
 - a) Full ownership: in which case the owners is free to do what he/she wishes with the property, without limitation.
 - b) Limited ownership: in which case there are different types of limitations which might include:
 - ?? Time limitations: the owner's rights are effective for a limited period of time.
 - ?? Material limitations: this refers to the way in which the property may be used by the owners. These limitations may refer to:
 - o The use of the property
 - o The possibility of transferring the use of the property
 - o The possibility of transferring the ownership of the property
 - ?? Financial limitations: these refer to the fact the property has been used as collateral to constitute a guarantee.

This information could be used to ascertain one thing with certainty: whether or not the owner owns the property outright. If there were any type of limitation affecting the ownership, one would have to resort to the information mechanisms of each different legal system in order to ascertain the extent of the limitations and their repercussions on the economic value of the property.

2. The second phase.

Once the basic tools needed to create and maintain a unified information system are available, the second phase of the process would commence, the object of which would be the effective procurement of the information.

At this point, the objectives of the process would be as follows:

1. The designation of specific procedures for obtaining the data as well as the determination of the operators who will perform the function. There are several options available concerning the specific way in which to obtain the information:

- a) Census procedures which provide information on real estate assets by public initiative and regardless of changes in the ownership of the property.
- b) Basic procedures for the notifications made by legal agents at the time of their intervention in a real estate transaction.

For the information relative to the physical situation of the property, it would appear to be advisable to adopt the first procedure. Through a cadastral or similar system existing in each country, which are periodically updated by public authorities, it is possible to obtain information in this area.

For aspects relative to the legal situation of each piece of property, the second system would be recommendable. First of all because it would save private individuals an expense which could demotivate them, unless public powers were to assume the costs. Secondly, because the notification system could be entrusted to the legal agents in charge of formalising the transmissions, which would be an additional means of guaranteeing the information.

3. Homologation of the data.

The establishment of a homologation mechanism which could be used to contrast the information received and to verify that it met all of the formal requirements needed for homologation.

The homologation of the data received should refer to two aspects:

- ?? Homologation of source: the information must be obtained from authentic sources. In the transmission of the data, advanced electronic signatures would play an important role.
- ?? Homologation of contents: once the certainty of the source has been established, it must be verified that the contents of the information transmitted meet the requirements for the data supplied. If the transmitted information fails to meet any of these requirements, it must be rejected.

Finally, a system would be created for the centralised storage of the information obtained to be made available efficiently as required.

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