



IMPACT OF THE MISTAKES IN THE LAND AND BUILDINGS REGISTRY ON REAL ESTATE TRANSACTIONS

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Summary

Land and buildings record is a public register of figures and descriptive data containing information about the real estate properties, their owners or people who manage those properties. One of the many tasks of the district governor is to keep the registers of land, as well as the periodic verification of the registry data. The purpose of the article is to present examples of mistakes that occurred when making changes to cadastral data, the analysis of these mistakes, and the impact thereof on real estate transactions. The stages of creating a unified land cadastre as well as land cadastre history on Polish territory during the partitions will be explored.

Keywords

land records • consequences of mistakes • cadastre history

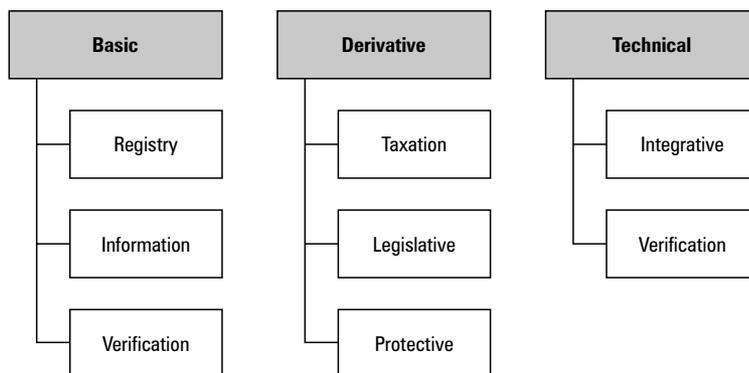
1. Introduction

Land and buildings records (further: EGiB) constitute a register of data containing information concerning properties, their owners, or people who manage those properties [Ustawa 1989, Rozporządzenie 2001]. EGiB consists of both a computer database and a cartographic part, i.e. paper-based registry maps. Currently, it occurs increasingly often that the paper maps are not up to date; instead they are developed and updated in information systems. The purpose of keeping records of land and buildings is to provide data for water management needs, taxation, land management, spatial planning, property designation in land and mortgage registers, public statistics, as well as assuring legal and factual interests (property interests of owners and holders of real estate) [Ustawa 1989]. The functions of EGiB are shown in Figure 1.

All land registry functions can be divided into 3 categories:

- *Basic* – including those functions which are the result of the established standards defining the rules of EGiB's operation as a legal institution, and which include direct effects resulting from the entry into the records,

- *Derivative* – which are intended to perform basic functions or directly derive from the basic functions,
- *Technical* – seen as those that serve the realization of basic and derivative functions and are related to ensuring the integrity and timeliness of databases stored in the records [Felcenloben 2009].



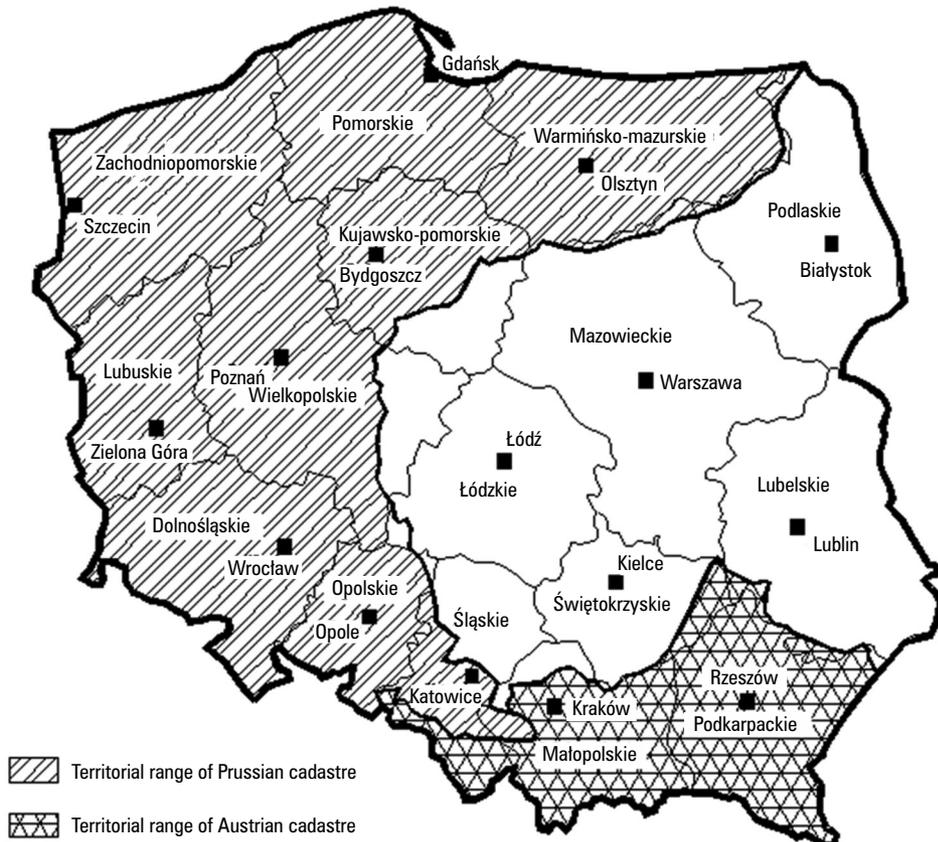
Source: Authors' study based on [Felcenloben 2009]

Fig. 1. Functions of the real estate cadastre

This present article is intended to provide examples of mistakes made when making changes to the registry data, to present the analysis of those mistakes, and their impact on the real estate transactions. The presented examples will show how significant such errors are in real estate transactions, among others prolonging and stopping the donations, inheritance proceedings etc.

2. History of land registry creation over the years

At the turn of the eighteenth and nineteenth centuries, the economic situation of the population living in rural areas deteriorated considerably. In order to improve the welfare of the poorest people, the land tax reform was carried out, the serfdom was liquidated, and the peasants were given ownership of the land they had used. The amount of the tax was determined, inter alia, by the size of the farm, the quality of existing soils, and the income earned from particular farms. For precise calculation of the tax, land survey measurements were conducted, and situation maps and land ledgers were established [Fedorowski 1974]. These actions also had an impact on the legal arrangements with regard to the ownership relations in Polish lands, which took various forms and types, and occurred in different periods in each of the Partitions (areas of Poland occupied by foreign powers: Austria, Prussia, and Russia respectively) [Mika 2010].



Source: http://gps.put.mielec.pl/new_page_1.htm [accessed: 01.02.2017]

Fig. 2. Territorial range of Austrian and Prussian cadastrals in Poland

After the end of World War I, legal proceedings were instituted to establish a uniform land tax rate throughout the Polish territory, whereas the provisions of the Land Tax Act and the land tax cadastre that had been in force during the Partitions were taken into account [Kopyścińska 2016]. At that time, work also continued on a uniform land cadastre system, which was to cover the entire territory of the country. The main reason behind the drive to create one uniform system lied in the significant differences between cadastral documentations, which remained from the Partitions [Fedorowski 1974]. The Land Taxation Act of 1935 initiated the organization of a uniform cadastre. The work was interrupted in September 1939 by the outbreak of World War II. In 1945, the National Surveying Office, by the decree law, resumed activities related to the creation of a uniform land cadastre. The result of intensive efforts was the introduction of the regulation implementing decree of 1950, i.e. the Regulation of the Minister of Construction on the proceedings by creating and running land and buildings cadastre.

Creation of a uniform land cadastre in Poland was finally formulated in a decree on land and buildings records of 2 February 1955, and also in the implementing rules [Mika 2010]. The result of the implementation of this decree was the replacement of the term “land cadastre” with the new notion of “land and buildings records”. Henceforth, the information about the real estate that served as the basis for economic planning, the tax and benefits assessment, the entries made in land and mortgage registers as well as the satisfying of economic needs, could only be obtained from land and buildings records [Dekret 1955, Mika et al. 2015]. According to Article 2 of the Decree of 1955, these were the records of the owner of the given land or building, or the persons managing the property entered in the records. During the preparation of registry maps, all existing maps and statistical information were used. In Article 5, the content of the registry map, which was to cover the area of one registration unit, was defined [Dekret 1955]. The owners and the persons managing the property were under the obligation to report any changes in the registration data no later than 4 weeks after the changes had been made. [Dekret 1955, Mika et al. 2015]. There was the lack of information in the Decree on the need to keep the data contained in the land and buildings records in compliance with the land and mortgage registers, which led to a discussion about the redundancy of records [Mika et al. 2015]. Taking into account the assumptions of the Decree, in April 1955 an appropriate instruction of the Minister of Agriculture was issued, followed by the instruction of the Minister of Municipal Economy in September 1956. In the instruction of 21 April 1955, information was provided on the creation and maintenance of land records, rules for drawing up land lists and fees charged for issuing copies of maps and documents from the records’ documentation [Instrukcja 1955, Mika et al. 2015]. The later instruction, issued by the Minister of Municipal Economy, was more elaborate and clearer than that of 1955. That is why, in 1969, a decision was issued by the Ministers of Agriculture and Municipal Economy, repealing the validity of earlier instructions. The new regulation clearly defined the rules for creation of a registry report (descriptive part and graphic part), procedures for making changes, and the methods of providing information in copies of maps, and extracts or copies from the registry reports [Mika et al. 2015]. The Geodetic and Cartographic Law was created on 17 May 1989 and entered into force on 1 July 1989. Chapter 4 governs the matters of recording information, defining, among other things, the data covered by land and buildings records. Attention should be given to Article 53a of the Geodetic and Cartographic Law Act, which contains the provision that a real estate cadastre is equated with land and buildings records [Ustawa 1989, Noszczyk and Hernik 2016]. Geodetic and cartographic law has been amended several times in connection with intensive work on the creation of a uniform records system. 8 years after the date of entry into force of the aforementioned Act, and in accordance with Article 26 (2) of the Act, the Regulation of the Ministers of Spatial Management and Construction and of Agriculture and Food Economy on the records of land and buildings was issued. The regulation was in force until 30 September 1999, and it was replaced by the Regulation of the Minister of Regional Development and Construction of 29 March 2001 on the land and buildings records. This legislative act was the basis for a compre-

hensive modernization of land records, as well as the creation of a registry of buildings and premises from scratch [Mika et al. 2015]. Since the entry into force of this regulation, the process of registry data sets consolidation was initiated, with the view to their compatibility with other IT systems. On 11 January 2016, the Regulation of the Minister of Administration and Digitalization of 6 November 2015 amending the Land and Building Records Regulation entered into force. The purpose of the amendment was, *inter alia*, to adjust the provisions of the amended regulation to the Geodetic and Cartographic Law Act and to clarify some provisions of the Regulation in order to resolve doubts in the interpretation of certain provisions. On 10 June 2016, the Minister of Infrastructure and Construction issued an announcement, publicising the unified text of the Regulation by the Minister of Regional Development and Construction on the land and buildings records, which remains in force until this day.

3. Characteristics of mistakes found in the EGİB

Beginning in the nineteenth century, the real estate cadastre has undergone numerous transformations, mainly targeted at effectively solving local and regional problems of spatial management, including rational management of real estate assets [Kopyściańska 2016]. After analysing the history of the formation of the records on Polish territory, without a doubt it is possible to distinguish several stages of work on developing a uniform cadastral system. Initially, an inventory of the geodetic and cartographic documentation of the Austrian and Prussian cadastre, materials resulting from land consolidation works in the interwar period, as well as the documentation created as a result of socio-political changes was collated. The second stage was the creation of the cadastral system, uniform in both technical and legal terms. Then the digitalisation of the system began, afforded by the Integrated Information System on Real Estate, which was started at the time, and has been developing until now. [Wilkowski 2005, Kopyściańska 2016]. Despite the fact that the functioning of the land and buildings records system is further improved, and subsequent amendments to existing legal regulations are being introduced, the errors that had arisen in previous years are still visible in the system. Below we present some examples of mistakes, which arose while making changes, and which have been corrected since.

Example 1. Correction of land use on a plot (parcel of land) after division

Example 1 shows how during the introduction of the division of plot 405/4 into the old written records, land use on the newly created plot No. 405/5 located within Sieciechowice precinct was entered erroneously. According to the extract from the land records on the newly created plot 405/5, land use was entered as B / RII within the area of 0.0699 ha, and as S / RIIIa within the area 0.0056 ha (Figure 3).

In the surveying documentation adopted for the State Geodetic and Cartographic Resources on 14 February 1992, the land was divided as follows: B / RII-0.0690 ha, B / RIIIa-0.0009 ha, S / RII-0.0010 ha and S / RIIIa 0.0046 ha (Figure 4). This erroneous change in the old written records led to a miscalculation of the tax assessment, and

caused the discrepancies between the descriptive part and the graphical part of the land and buildings records documentation. Correction of the aforementioned mistake in the records was entered 20 years later, exactly on 23 November 2012.

Kraków 2012.11.28								
Voivodship: małopolskie District: krakowski Village: Sieciechowice Registry unit: 12603_2, Iwanowice Registry unit: 0015, Sieciechowice								
Extract from land registry for a parcel								
Registry unit number:								
Owner and user:								

Co-owner	Barbara (Piotr, Pelagia)					Share 4/6	Reg. gr. 7.2	
	32-095 Iwanowice, village: Sieciechowice							

Co-owner	Katarzyna (Jan, Barbara)					Share 1/6	Reg. gr. 7.2	
	32-095 Iwanowice, village: Sieciechowice							

Co-owner	Małgorzata (Jan, Barbara)					Share 1/6	Reg. gr. 7.2	
	32-095 Iwanowice, village: Sieciechowice							

Land:								
Sheet	Parcel number	Mark on map	Area of the parcel [ha]	Land use and Soil Classifications			Location	Legal basis No of The Land and Mortgage Register
				Description	Mark	Area		
	405/5	3	0.0755	Agricultural land built-up	B-RII	0.0699		KW3
				Orchards	S-RIIIa	0.0056		AN39
Id								
Total area of the parcel: 0.0755 ha In words: seven hundred and fifty-five m ² Done according to the state on the day: 2012.11.28								

Source: District Office in Kraków

Fig. 3. Extract from the land records for plot (parcel of land) No. 405/5, in the Sieciechowice precinct

No.	Previous state										Determination of the made changes, date of documentation
	Land register number, property sheet	Identification of the land mortgage register Rep. Kw. Tom, card	User (name of institution, or name, first name, parent's name, address)	Number of		Buildings registry	Determination of the property location	Type of use or purpose of the building	Class	Area	
				Map sheet	Parcels					ha	
1	2	3	4	5	6	7	8	9	10	11	12
1	271	KW3	Jan s. Bolesława 1/2 Elżbieta d. Bolesława 1/2	3	405/4			R R R S/R S/R S/R B/R	II IIIa IIIb II IIIa IIIb II	0.1140 0.2900 0.1720 0.0010 0.0290 0.0210 0.0690	
								Total		0.6960	

Source: District Office in Kraków

Fig. 4. The list of changes in the division of land plot No. 405/4, in the Sietciechowice precinct

New State											
Map sheet	Number of		Buildings registry	Determination of the property location	Type of use or purpose of the building	Class	Area [ha]	Land register number, property sheet	Identification of the land mortgage register Rep. Kw. Tom, card	User (name of institution, or name, first name, parent's name, address)	Date of making changes to the land and buildings registry
	Parcels										
13	14	15	16	17	18	19	20	21	22	23	
	405/5			S/R B/R B/R Total	II IIa II IIa Total	0.0010 0.0046 0.0690 0.0009 0.0755			(previous)		
	405/6			R R R Total	II IIa IIb Total	0.1140 0.2538 0.0600 0.4278			(previous)		
	405/7			R R S/R S/R Total	IIa IIb IIa IIb Total	0.0316 0.1120 0.0281 0.0210 0.1927			Zbigniew and wife Czesława		
				Overall		0.6960					

Fig. 4. cont.

Example 2. Correction of the property owner's mother's name

The second example deals with the correction of the name of the property owner's mother. On 8 March 2013, the change 4/1994 consisting of incorrect entry of the mother's name (Bronisława instead of Barbara) was corrected. The change was entered in an old notarized records from the sale contract dated 13 December 1993 (Figure 5).

Extract from land registry – the list of changes			
Registry unit number: G			
Registry data before change			
Owners	Bolesław (Stanisław, Barbara)		
Married couple	Trzebinia		
	Barbara (Walter, Dorota)	Share 1/1	Reg. gr. 7.2
	Trzebinia		
	Register Markings.:		
Marking of the parcel			
Mark / area of agricultural land in ha			
No of parcel	No of map	Area [ha]	
and other land in this registry unit			
Total area of parcels	0.0000 ha		
Area of registry unit	0.0600 ha		
Registry data after change			
Owners	Bolesław (Stanisław, Bronisława)		
Married couple	Trzebinia		
	Barbara (Walter, Dorota)	Share 1/1	Reg. gr. 7.2
	Trzebinia		
	Register Markings.:		
Marking of the parcel			
Mark / area of agricultural land in ha			
No of parcel	No of map	Area [ha]	
and other land in this registry unit			
Total area of parcels	0.0000 ha		
Area of registry unit	0.0600 ha		
List of agricultural land in the registry unit			
Marking of the use	Class	Area [ha] Before the change	Area [ha] After the change
	RIVb	0.0600	0.0600
Total		0.0600	0.0600

Source: District Office in Kraków

Fig. 5. Fragment of notification about changes in the data records of land and buildings, in the Trzebinia precinct

Extract from land registry – the list of changes					
Registry unit number: G					
Registry data before change					
Owners		Józef (Władysław, Maria)		Share 1/1 Reg. gr. 7.1	
Authorisation, other remarks: Irena (Władysław, Maria), 32-017 Czernichów					
Marking of the parcel			Mark / area of agricultural land in ha		
No of parcel	No of map	Area [ha]			
1351	11	0,55	LzIV/0.21	RIVb/0.27	ŁIV/0.07
and other land in this registry unit					
Total area of parcels	0.5500 ha				
Area of registry unit	1.2600 ha				
Registry data after change					
Owners		Józef (Władysław, Maria)		Share 1/1 Reg. gr. 7.1	
Authorisation, other remarks: Irena (Władysław, Maria), 32-017 Czernichów					
Marking of the parcel			Mark / area of agricultural land in ha		
No of parcel	No of map	Area [ha]			
1351	11	0,55	LsIV/0.17	LzIVb/0.04	RIVb/0.27
			ŁIV/0.07		
and other land in this registry unit					
Total area of parcels	0.5500 ha				
Area of registry unit	1.2600 ha				
List of agricultural land in the registry unit					
Marking of the use	Class	Area [ha] Before the change	Area [ha] After the change		
Ls	LsIV		0.1700		
Lz	LzIV		0.0400		
Ł	ŁIV		0.0700		
R	RIVb		0.2700		
Wp		0.0100	0.0100		
	LsIV	0.0500	0.0500		
	LzIV	0.2100			
	ŁIV	0.3500	0.2800		
	RIVa	0.3700	0.3700		
	RIVb	0.2700			
Total		1.2600	1.2600		

Source: District Office in Kraków

Fig. 6. Fragment of notification about changes in the data of land and buildings records, in the Czernichów precinct

Introduction of a wrong mother's name results in the discrepancy between the data disclosed in the land and buildings records and the land and mortgage register. Furthermore, new owners might have trouble creating another notarized deed for donation or sale.

Example 3. Correction of land use designation

Another example is the correction of land use designation on plot No. 1351 located in Czernichów village in the Czernichów municipality. This error was committed when completing data in a computer system, while rewriting old records to create a digital database. The mistake was to disclose on the plot the following land use designations: LzIV – 0.21 ha, RIVb – 0.27ha and ŁIV – 0.07 ha, although in the old written records on the plot the following land uses had been indicated: LsIV – of area 0.17 ha, Lz IV – of area 0.04 ha, RIVb – of area 0.27 ha and ŁIV – of area 0.07 ha (Figure 6). The above error was corrected on 4 October 2012.

4. Conclusions

Land records still do not constitute a uniform system, and they are constantly undergoing modernization. There are many errors in the resource that have not been detected and corrected as yet. However, these errors are not repeated systematically. Their detection is not automatic; instead, it often occurs during real estate management operations or when updating other data in the official records. The presented examples of errors have serious consequences and they cause incompatibility of data with the factual state. Incorrectly entered data concerning the subject may cause discrepancies between the data contained in the land and buildings records and the land and mortgage registers. Entering into the records, the owners as the holders of real estate, change of cadastral parcels markings to plots in land records, or leaving in the land and mortgage registers the obsolete markings are just some examples of errors that create more and greater discrepancies, preventing real estate turnover, sale and donations, or causing difficulties in carrying out the inheritance decisions of the deceased owner. The impact of the presented errors on, among other things, real estate turnover, is presented in Table 1. Also presented in the same table are other types of errors, which can play a significant role in the real estate trade, among others prolonging the procedure of donation, prescription or succession proceedings.

Table 1. Examples of mistakes in EGiB and their possible consequences

Example of mistake	Possible consequences
Mistakes concerning land use designations	<ul style="list-style-type: none"> • incompatibility with cartographic elaborations content • wrongly accrued taxes
Mistakes concerning personal data	<ul style="list-style-type: none"> • the lack of possibility of delivering correspondence to proper address, to the right person • the lack of possibility to write a notarial deed (first the data correction must be introduced) • incompatibility between the data in the land records and in the land and mortgage registers
Wrongly assigned legal basis	<ul style="list-style-type: none"> • the lack of evidence of changes for adjustment • wrong information concerning e.g. number of the land and mortgage registers
Wrong assignment of a building or premises to a plot of land	<ul style="list-style-type: none"> • sending a notification of the change to the owner of the mistakenly entered plot • calculation of the amount of tax on the building to the owner of the mistakenly entered plot

Source: authors' study

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Legal acts and regulations

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- Dekret z dnia 2 lutego 1955 r. ewidencji gruntów i budynków (Dz. U. z 1955 r. Nr 6, poz. 32).
- Instrukcja Ministra Rolnictwa z dnia 21 kwietnia 1955 r. w sprawie zakładania i prowadzenia ewidencji gruntów, zasad sporządzania wykazów gruntów oraz opłat za odrisy z map i za odpisy oraz wyciągi z rejestrów i dokumentów stanowiących część składową operatu ewidencyjnego na obszarze gromad, osiedli i miast niestanowiących powiatów (M. P. z 1955 r. Nr 38, poz. 379).

- Instrukcja Ministra Gospodarki Komunalnej z dnia 8 września 1956 r. w sprawie zakładania i prowadzenia ewidencji gruntów, zasad sporządzania wykazów gruntów oraz opłat za odrysy z map i za odpisy i wyciągi z rejestrów i dokumentów stanowiących część operatu ewidencyjnego na obszarze m. st. Warszawy, m. Łodzi i miast stanowiących powiaty (M. P. z 1956 r. Nr 98, poz. 1135).
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