

New register of public law restrictions on land ownership

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Introduction

The cadastre of public law restrictions on land ownership (PLR cadastre) is being developed by the federal government and the cantons. It is one of the three cornerstones of the Swiss cadastral system, besides the land register and cadastral surveying.

Whereas information on private law restrictions (eg, easements and mortgages) can be obtained from the land register, the PLR cadastre provides information about the most important public law restrictions on land ownership. Public law restrictions concern, among other things:

- the allowed use of land;
- certain consequences of site contaminations; and
- the protection of groundwater.

Legal framework

The PLR cadastre is based on the Federal Act on Geo-information,⁽¹⁾ the Federal Ordinance on Geo-information⁽²⁾ and the Federal Ordinance on the Cadastre of Public Law Restrictions on Land Ownership.⁽³⁾

Under the act, the PLR cadastre is governed by Articles 16 to 18 regulating its subject matter, its form and the validity and liability of register information. Further provisions concern the competences and tasks of federal and cantonal authorities and the financing of the register.

On the level of the ordinances, the PLR cadastre is governed mainly by the Ordinance on the Cadastre of Public Law Restrictions on Land Ownership. To the extent that this ordinance does not contain specific rules, the Ordinance on Geo-information applies.

Content and organisation

PLR cadastre contains public law restrictions on land ownership which are not part of the land register.

During the initial phase of development, at the federal level the PLR cadastre contains the 17 important public law restrictions on land ownership covering eight different sectors:

- spatial planning;

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- motorways;
- railways;
- airports;
- noise;
- contaminated sites;
- groundwater protection; and
- forests.

Cantons and municipalities may add further public law restrictions to the cadastre.

The PLR cadastre is organised and managed by a cantonal authority, which is also responsible for access to the cadastre. The strategic orientation and overall supervision of the PLR cadastre are vested with a federal authority.

Legal effects

Pursuant to the law, the content of the PLR cadastre is deemed to be public knowledge. Accordingly, it is not possible to argue in good faith that certain information published in the cadastre was unknown to a party. For instance, not consulting the PLR cadastre is incompatible with the assessment of a property by a diligent investor.

However, the legal effect of the PLR cadastre is not as strong as the legal effect of the land register. In particular, entries in the PLR cadastre do not by operation of federal law create new rights or obligations. Thus, such entries have no constitutive effect.⁽⁴⁾ Rather, the creation of public law restrictions requires formal legislation and decisions by the competent authorities.

Further, contrary to the land register, the PLR cadastre has neither positive nor negative legal effect. Accordingly, there is no legal fiction that the content of the PLR cadastre is correct and complete. The registration of a certain restriction in the PLR cadastre destroys only the good faith in the non-existence of the concerned restriction.⁽⁵⁾

The PLR cadastre merely shows certain restrictions created by legislation and decisions of authorities. It may happen that the information in the PLR cadastre is incomplete or incorrect. Because the PLR cadastre has no constitutive effect, the underlying legislation or authority decision remains in full effect and overrules the cadastre information. Should damage occur due to incomplete or incorrect cadastre information, government liability remains reserved, as in the case of damages resulting from land register keeping.

Access

The PLR cadastre offers public access to a broad variety of data, such as plans, legal provisions and regulations. Register data may be obtained by online requests via the cantonal geo-information site. Further, it is possible to obtain extracts in electronic or paper form.

Implementation status

The PLR cadastre went online in 2014 in the cantons of Bern, Geneva, Jura, Neuchatel, Nidwalden, Obwalden, Thurgau and Zurich. The remaining cantons are scheduled to introduce the PLR cadastre between 2016 and 2020.

Relevance for daily practice

The PLR cadastre is a substantial improvement for those who need comprehensive information about a property (eg, in view of a change of ownership or for a construction project). If no PLR cadastre is available for the concerned property, public law-based information must be obtained from a number of different authorities and registers, which can be a costly and time-consuming process.

The PLR cadastre not only facilitates the obtaining of relevant information, but also leads to a higher degree of legal certainty, even though its legal effect is not as strong as that of the land register.

Nevertheless, the user should consider that in the initial phase, the PLR cadastre does not list all public law restrictions, but only the 17 most important ones on land ownership covering eight different sectors. Depending on the reason for which the information is required, it may be advisable to check with specific authorities and registers whether further restrictions apply, which are not listed in the PLR cadastre.

For further information on this topic please contact [Anne-C Imhoff](#) or [Michael Lips](#) at Pestalozzi Attorneys at Law by telephone (+41 44 217 91 11) or email (anne-c.imhoff@pestalozzilaw.com or michael.lips@pestalozzilaw.com). The Pestalozzi Attorneys at Law website can be accessed at www.pestalozzilaw.com.

Endnotes

(1) Federal Act on Geo-information, SR 510.62.

(2) Federal Ordinance on Geo-information, SR 510.620.

(3) Federal Ordinance on the Cadastre of Public Law Restrictions on Land Ownership, SR 510.622.4.

(4) Cantonal laws may determine that the PLR cadastre is the official publication medium of a canton. To the extent that cantonal laws may determine the constitutive effect of certain rights and obligations, it may also determine that the entries in the PLR cadastre have constitutive effect. For further details please see Meinrad Huser, *Publikation von Eigentumsbeschränkungen – neue Regeln*: BR 2010, pages 169 and following.

(5) For further details please see Daniela Ivanov, *Le cadastre RDPPF – entre réalité et utopie*: *Jusletter* March 21 2016.

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