

Access to land register information

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Introduction

The Civil Code⁽¹⁾ and the Federal Ordinance on the Land Register⁽²⁾ govern formal and substantive land register matters, including:

- the different parts of the land register (eg, the main register, plans, property directories, supporting documents, property descriptions and the journal);
- land register organisation and management;
- access to land register information; and
- the legal effect of register entries.

An electronic real property information system called eGris is being introduced in the 26 cantons, with the goal of harmonising and improving registers and obtaining a centralised electronic information system for land register data.

Even though land register matters are mainly governed by federal laws,⁽³⁾ the registers are kept by cantonal authorities. Thus, land register information should be requested from the cantonal authority at the place of the relevant property.

Legal framework

Regarding access to land register information, the law distinguishes between accessing certain information, which does not require a legitimate interest, and consulting the register and obtaining an excerpt therefrom, which does require a legitimate interest.

The following information is accessible without showing a legitimate interest:

- the name and description of a specific real property;
- the name and identity of its owner;
- the type of ownership; and
- the date of acquisition.

In addition, information on easements and land charges and certain notices in the register are also generally accessible.

A legitimate interest is required to consult the land register and to obtain an excerpt about other information (eg, mortgages encumbering a specific property). Curiosity is not a legitimate interest. Rather, an interest is considered to be legitimate if it meets one of the following thresholds:

- In the case of a legal interest, there must be a close connection between the interest claimed and the information required. This applies, for instance, to a person who is entitled under an easement and who enquires about the content of other priority-ranked easements on the

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concerned property.

- In the case of a factual interest, there must be a close connection between the enquirer and the information requested for disclosure so that the enquirer gains a personal, contemporary and specific advantage from the requested information. The factual interest can be of a commercial, scientific, personal or family-related nature. This applies, for instance, to a worker who might require a worker's lien and who enquires about other priority-ranked liens on the concerned property (commercial interest).

A legitimate interest is sufficiently shown if *prima facie* evidence is furnished. The enquirer's interest must be balanced against the interests of those who are directly or indirectly affected by the disclosure of data, in particular the property owner.

If a legitimate interest is shown, the scope of access covers all parts of the land register. In practice, the main register, the journal, the plans and the supporting documents are of particular interest. Regarding the supporting documents, it is not yet clear to what extent these may be inspected. It is therefore important to demonstrate that the supporting documents are relevant to determine the *in rem* right of the enquirer.

In any case, and irrespective of whether a legitimate interest is required, land register information is available only on a case-by-case basis relating to specific properties. Collective inquiries about several properties – for instance, about the property owners in an entire road or village – are not allowed. Inquiries about all real estate owned by a certain person or company are not allowed either. In some cantons, the accessible information is available online; in other cantons, the land registrar must be contacted by telephone, email, letter or online form.

Regarding access to the electronic land register, special rules apply to certain institutions and professionals, generally exempting them from the requirement to show a legitimate interest. These institutions and professionals include notaries, land surveyors, tax and other authorities, banks, pension funds, insurers and lawyers. The exemption does not apply generally, but requires a contractual arrangement with either a cantonal authority or a supporting organisation. Based on such a contractual arrangement, the concerned institutions and professionals have online access to the main register, the journal and the supporting registers.

Case law

Whether an interest in land register information is legitimate can be controversial, and is left to the courts to decide.

In a March 2014 decision the Federal Supreme Court⁽⁴⁾ declined an enquiry to disclose the recent sales price of a real property. The court held that the enquirer had failed to provide sufficient proof of his claim to a portion of the profits resulting from the sale. Therefore, he did not have a legitimate interest to obtain the requested information.

In a February 2015 decision the Federal Supreme Court⁽⁵⁾ approved an enquiry to disclose the price and other terms of a property sales agreement. The court held that the enquirer had provided sufficient proof of a direct connection between the information requested and his potential inheritance claim. In particular, the sales price and other circumstances of the sale were considered essential for the enquirer to assess an inheritance division contract to which he was a party.

Recent motions

As to the exemption of certain institutions and professionals from showing a legitimate interest in obtaining land register information, concerns have been raised that the group of authorised persons is too big and that sensitive information (eg, the value of mortgages) could be misused.

These concerns have arisen even though the contractual arrangements require data protection issues to be addressed. It seems questionable whether these arrangements are sufficient, given that the number and frequency of enquiries are unlimited and that the data retrieved can be exported, processed and saved in the electronic system of an enquirer.

Against this background, two motions were filed in the federal Parliament in 2015 aiming to limit the risk of possible misuses of land register data.

The first of these motions(6) was accepted by both the National Council and the Council of States. This motion would allow property owners to inspect the electronic land register records on all information enquiries relating to their property. As the retention period for the concerned records is two years, the inspection right is limited to this period. The inspection right will allow property owners to check on enquiries and report possible misuses to the authorities. Since this motion has been accepted, the federal government will have to amend the Land Register Ordinance accordingly.

The second motion(7) is still pending. It would limit the group of persons that are exempt from showing a legitimate interest. In particular, the motion would restrict the exemption to intensive users and exclude lawyers and all other professionals who require land register information only from time to time.

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Endnotes

- (1) Civil Code, SR 210.
- (2) Federal Ordinance on the Land Register, SR 211.432.1.
- (3) Not so the fees and charges relating to the land register, which are governed by cantonal laws.
- (4) BGer 5A_152/2014, March 18 2014.
- (5) BGer 5A_502/2014, February 2 2015.
- (6) Motion 15.3323, March 20 2015.
- (7) Motion 15.3319, March 20 2015.

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