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# Land registers in EU countries

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Spain



Spain

The Registro de la Propiedad (Land Register) is a register which comes under the Ministry of Justice, with its affairs coming under the responsibility of the Dirección General de los Registros y del Notariado (directorate general of registers and notaries). The Register is used to record and publish ownership of property and rights attached to property and any court or administrative decisions which may affect them.

## What does the Land Register in Spain offer?

Legal and economic security. And in the majority of cases this security is irrefutable.

Some of the most typical aspects of the Spanish Land Register system are described below.

### 1. Purpose of the Land Register

The purpose of the Land Register is to register ownership and other rights in rem in respect of immovable property.

#### 1.1. Rights in rem which can be registered

The rights in rem which can be registered are: ownership, usufruct, rights of use and abode, encumbrances, leases, mortgages, right of redemption, and other rights in rem.

The Spanish Land Register is not a closed list of rights in rem., but a "numerus opertus" system in which rem rights can be created. Nevertheless, in practice it is difficult to create new types of rights since they would have to meet the structural requirements of rights in rem such as immediacy and absoluteness.

#### 1.2. Other rights which can be registered

It is possible to enter other rights on the Land Register, although their true nature is not always clear. The following can be registered in this way: co-ownership statutes, leases, sub-leases, transfers and subrogations of leases concerning immovable property, recovery of rented property, administrative concessions and mortgages on them, acts related to compulsory purchase or administrative proceedings, bans on access allowed by law, or reasons for the termination of registered rights, among others.

And in the area of town planning: final planning implementing measures affecting existing buildings, sales to municipal authorities, transfer of urban land use rights, conditions for planning permission, proceedings instituted in the area of town planning, and appeals lodged and the court's decisions, among others.

#### 1.3. Other measures

Court decisions affecting the capacity of natural or legal persons and those arising from an arrangement with

creditors can also be registered whenever they concern the ownership of real estate or rights in rem thereof.

In addition, through provisional registration the Register can record provisional situations that affect rights in rem related to real estate. For example, proceedings concerning rights that can be registered, confiscation, non-final decisions, court orders banning access to property, inheritance law and similar measures.

## 2. Legal Certainty in the Spanish Land Register

The Spanish Register system is definitely one of the safest in the world.

It is a Register of rights. The rights entered in the Register are protected by the courts, which means that no-one can be deprived of these rights unless legal proceedings involving the registered owner decide the contrary.

In addition, the legal system ascribes a series of legal presumptions to the registered rights that are based on the principle of the authority of the Register.

In cases of conflict between the actual situation and that contained in the Register, the declarations in the Register are regarded as reliable because of the principle of publication.

The principle of publication has two core elements:

The procedural element whereby registered owners can defend their registered rights in the courts before which the matter is being challenged by means of a certificate from the Registrar attesting the validity of the relevant matter without contradiction. The burden of proof therefore falls on the person challenging the registered right.

The substantive element to which there are two distinct dimensions:

1. Negative- anything not registered does not affect those who enter into a contract, relying on the contents of the Register.
2. Positive - there is a double presumption in the content of the register:
  - Principle of Legitimacy - the presumption in the absence of evidence to the contrary that the information published in the Register is truthful.
  - Principle of the authority of the Register - the presumption *juris et de jure* that the information published in the Register is accurate and complete, i.e. if the following requirements are met:
    1. Registration of the owner who is transferring the property.
    2. Acquisition for valuable consideration.
    3. The purchaser is unaware of a circumstance that invalidates what is published in the Register (good faith is presumed in principle).
    4. Entry by the purchaser; produces the legal effect that the new owner is fully protected by the Spanish registration system, even if the registered owner who transferred the right to him is not the real owner of the right.

## 3.- Registration Procedure

The general principle is that public certification is required to make entries in the Land Register. Documents may be validated by notaries, the courts or administrative authorities. Private documents are admitted in exceptional cases, e.g. application to register the inheritance of a sole heir, to correct certain defects, or to provisionally register loans to construct or repair fixed assets.

The procedure must be requested. This means, other than in exceptional circumstances, it is initiated by the person who wishes to make the entry.

The document must be submitted to the Register and a presentation entry made in the journal, which is valid for sixty working days.

The document can be presented in one of five ways: electronically, in person, by post, by fax or through another Land Register. In the last two cases, the document must be presented in person within 10 working days.

The Registrar classifies the document, under his responsibility, within fifteen working days.

If he decides to register it, the entry is made. The document is then returned to the person submitting it, with a footnote, signed by the Registrar, stating that it has been processed.

If the Registrar notes any defect in the document he will decide not to register it. The Registrar's decision should indicate, in the Facts and Legal Principles, the reasons for not registering the document. The decision must be notified to the person submitting the document and the notary who authorised the deed, or the courts or administrative authority which issued the document. The presentation entry is automatically extended by the Registrar for sixty days from the last date of the above-mentioned notifications.

If the Registrar decides not to register a document, the person concerned can either correct the defect, if possible, or appeal against the Registrar's decision. Three different kinds of appeal are possible:

- Request a classification by another Registrar.
- Lodge an appeal against the registrar's decision with the Directorate-General of Registers and Notary Services. A decision on the appeal should be handed down within three months, otherwise the appeal will be deemed to have been dismissed. An appeal can be lodged with the courts against the decision or presumed decision.
- Lodge a request for an oral procedure before the Court of First Instance of the capital of the province in which the Land Register is located.

## Is access to the Business Register free of charge?

Access to the Business Register in Spain is not free of charge. This is laid down in the following legislative acts: third additional provision of Law 8/1989 on Fees; Article 294 of the Mortgage Law and Articles 589-619 of the Mortgage Regulation.

The Fees of Land Registrars were approved by Royal Decree 1427/1989. These fees are public, i.e. they are contained in an official legislative act published in the Official State Gazette. A complete copy of the fees is also available to the public in all Land Registers. [Fees of Land Registrars](#).

## How do I consult the Land Register in Spain?

### 1.- Legitimate interest

The Land Registers are public for those with a legitimate interest in investigating the state of recorded property or rights in rem.

Any authority, employee or public servant acting by reason of his office is presumed to have a legitimate interest.

### 2.- Abbreviated extract from the register

An abbreviated extract from the register ('nota simple') is of a purely informative nature and is not an authentic representation of the content of the entry, without prejudice to the Registrar's responsibility.

How to obtain an abbreviated extract. There are two methods:

- In writing. By requesting it in person from the relevant Land Register. Cost: €3.01 plus VAT for each property.
- By Internet. Via the first link at the bottom of this page. Cost: €9.02 plus VAT for each property.

### 3.- Certification

A certificate is a copy, transcription or transfer, either in full or in summary form, of the contents of the information held in the Register which, once it is processed by the Registrar, conveys the authentic nature of the mortgage situation of the properties and rights.

How to obtain a certificate?

Certificates can only be obtained by written request. You can make this request in person at the relevant Land Register. Cost: €30.01 plus VAT for each property.

However, the possibility is currently being introduced in some (but not all) Land Registers of applying for a certificate electronically, using an electronic signature recognised by the Registrar.

## 4.- Consulting the Land Register via the Internet

The procedure is very simple - just follow the instructions on the web page below:

Link: <https://opendata.registradores.org/en/>

- The website offers you the possibility of paying by credit card if you are not a subscriber or do not have a recognised certificate from the Association of Registrars:- "card payments". You must enter your credit card details and then click on 'Enter'.
- On this page you can choose between: the Land Register, the Business Register, the Movable Property Register or the Register of General Contract Conditions. You should select 'Public land records'.
- Then select your area of interest.

## History of the Land Register in Spain

### 1.- Antecedents

Historical antecedents of current mortgage legislation in Spain are:

- Decree of Juana I and Charles I of 1539, which introduced, though without much success, census and mortgage charges.
- Decree of Charles III of 1768. Liberal decree which created the mortgage listings. These were widely used but had two main drawbacks: they were merely a register of charges, not of ownership, and they were kept in chronological order.

### 2.- Current mortgage legislation

Economic changes in the 19<sup>th</sup> century made it urgently necessary to create a system that could provide certainty with regard to ownership and transfers of immovable property, promote regional reliability and prevent usury and lawsuits.

1861 Mortgage Law. This Law was passed as a special urgent legislative measure as a result of the failure of unitary codes. It was intended to be integrated in the future Civil Code. However, the 1888 Civil Code respected the substantive aspect of property law, much of which is still contained in the Mortgage Law.

Comprehensive reforms.- There were comprehensive reforms of the Mortgage Law in 1869, 1909 and 1944-46, in addition to several partial reforms.

Implementing provisions

- Mortgage Regulation. Decree of 14 February 1947, much of which has been amended.
- Royal Decree 1093/1997 of 4 July 1997 on registration of land-use planning documents.

### 3.- Organisation

In Spain the Land Registers come under the Ministry of Justice. All matters relating to them are referred to the Directorate-General of Registers and Notary Services.

Spain is divided into areas called mortgage districts (*Distritos Hipotecarios*). Each Mortgage District has a corresponding Land Register kept by a Land Registrar.

All Registrars in Spain are members of the Association of Land, Business and Movable Property Registrars of Spain.

The Registrars keep the following registers:

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### Useful links

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■ Last update: 26/02/2024

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