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Adapting rights in rem

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European Judicial Network
(in civil and commercial
matters)

 Poland

1 Which are the rights in rem that could arise from a succession under the law of this Member State?

Rights in rem from inheritance include rights of ownership in movable and immovable property, perpetual usufruct, limited rights in rem, such as real servitudes (including the right of ownership in the dominant estate), mortgages and liens (including the liabilities secured by them), cooperative members' rights of ownership in a housing cooperative, rights and obligations of neighbours, actions for recovery and actions to deny (servitudes), claims for purchase under Article 231 of the Civil Code (i.e. claims for the purchase of land against a person who has erected a building or other facility on another's land).

Rights of use and personal servitudes are not inherited.

2 Are these rights in rem recorded in a register of rights in immovable or movable property and, if so, is such recording compulsory? In which register(s) are they recorded and what are the registration requirements and procedure?

As a rule, rights in rem are recorded in the land registers kept by competent district courts (land register courts) (*sądy wieczystościowe*). Such entry, however, is not always compulsory and not always constitutive in effect, for example, a cooperative member's right of ownership may be inherited in respect of a housing cooperative for which no land register has been established.

Rights of ownership acquired through succession in immovable property for which a land register has been established is subject to entry in the land register on the basis of an appropriate document showing the legal succession in respect of the owner (testator) entered in the land register. The entry of the ownership by succession is not constitutive in effect.

An entry in a land register is required in order to create a mortgage. Such entry is constitutive in effect, which means that the right arises upon its entry in the land register.

An entry in the land register in which a limited right in rem has already been entered is constitutive in effect and is a condition for the validity of the transfer of a right.

Such rights are entered in a land register either at the request of the owner of immovable property (rights of way, acquisitive prescription) or *ex officio*, for example, in the case of an administrative decision.

An application for entry is submitted in writing to the land register court on an official form [KW-WPIS](#). The forms are available on the website of the Ministry of Justice and from the District Courts' Land Register Departments.

In order to enter a limited right in rem to immovable property, it is sufficient for the owner to declare that such

right has been created.

Unless otherwise stipulated by a specific regulation, a fixed fee of PLN 200 is charged for an application for entry of the ownership, perpetual usufruct or limited right in rem in the land register. As far as shared ownership is concerned, a part of the fixed fee is charged in proportion to the share held, but no less than PLN 100.

With regard to the ownership, perpetual usufruct or a cooperative member's right of ownership arising from a succession, bequest, or division of inheritance or dissolution of joint ownership, a single fixed fee of PLN 150 is charged for an application for entry in the land register, regardless of the number of shares held in such rights. The fee must be paid together with the application. An application subject to a fixed fee which is not duly paid will be returned with no request for such payment to be made.

3 Which effects are linked to the registration of the rights in rem?

Limited rights in rem entered in the land register are protected by the principle of the public credibility of land registers. If not entered, they expire in the event of an acquisition taking place under conditions of public credibility. Furthermore, a limited right in rem to immovable property which has been entered in the land register will prevail over such right not entered in the register.

4 Are there specific rules and procedures in place for the adaptation of a right in rem to which a person is entitled under the law applicable to the successions in case the law of the Member State in which the right is invoked does not know such right in rem?

There are no specific procedures.

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