

Regulation of the legal status of real estate – selected problems and challenges

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Summary

The article discusses key problems related to the regulation of the legal status of real estate in the context of the growing importance of the real estate market and investments. The authors propose the use of the case study analysis method to identify and solve problems in the regulation of this area. The main objective of the article is to conduct an analysis of legal regulations regarding the regulation of the legal status of real estate and to propose specific solutions aimed at improving the regulatory process in Poland.

As part of the proposed solutions, the authors propose introducing clearly formulated definitions, with an emphasis on the digitalisation of archival materials and the creation of an implementing act taking into account the regulation process. Additionally, they propose developing a uniform path for data analysis in the process of regulating the legal status of real estate. They also indicate the need to account for the solutions used in France and Germany, where the process of regulating real estate is more transparent and effective.

In conclusion, the authors emphasize the need for a comprehensive approach to improving the process of regulating the legal status of real estate, including introducing appropriate definitions, digitalizing documents, creating and implementing an appropriate regulations, and adapting solutions used in other countries. This is the only way to ensure effective and efficient management of the legal status of real estate in Poland.

Keywords

real estate • legal status • regulation of legal status • land register

1. Introduction

Nowadays, when the real estate market is becoming more and more dynamic and investments are gaining in importance, regulations concerning the legal status of real estate constitute an important area of interest for lawyers, real estate specialists and, above all, surveyors [Bieniek, Gdesz, Rudnicki 2013]. In the context of these challenges, this article proposes the use of the case study analysis method, based on the method of analysis and logical construction [Apanowicz 2002], to more thoroughly explore the issues of regulating the legal status of real estate [Budkowski 2021, Budkowski et al. 2022].

One of the main goals of this article is to conduct a short analysis of the most important legal provisions regarding the regulation of the legal status of real estate [Górski 2022, Hycner 2006, Jarzmik 2020, Jaworski et al. 2023]. The aim of this analysis is to identify significant gaps in the scope of basic concepts related to the regulation of the legal status of real estate, which may be particularly important for surveyors and specialists in the field of real estate management [Cieniła and Sobolewska-Mikulska 2017, Czech 2024, Durzyńska 2016, 2019].

In addition to identifying problems, it is also important to propose specific solutions to improve the regulatory process. The article will also focus on identifying potential areas that need to be addressed so that people involved in real estate management can perform their work reliably and professionally [Felcenloben 2022, 2023].

In addition, the article will propose a path of data analysis in the regulatory process, which aims to standardize procedures for regulating the legal status of real estate. However, it should be emphasized that the introduction of such a path will require changes in the law and the creation of an appropriate implementing act that will govern the process of regulating the legal status of real estate [Puch 2008, Przewięźlikowska 2005, Łuczyński 2009].

2. Research subject – signaling selected problems

The basic drawback of the process of regulating the legal status of real estate is that the legal regulations do not define the concept of the legal status of real estate. There is only an informal definition of the legal status of real estate, which is as follows: 'The legal status of real estate is all the rights that a given property is entitled to.' It can be found by entering the phrase 'legal status of real estate' in an internet search engine. This definition is very general and does not specify what rights a given property is entitled to, on what basis these rights are granted, and what should be understood by the legal status of real estate. This is a problem that must be solved first in order to be able to further improve subsequent aspects related to the process of regulating the legal status of real estate in subsequent steps [Kaczocho 2020, Klat-Górska 2024, Kuropatwiński 2021, Leń et al. 2016].

Another serious limitation in the regulation of the legal status of real estate is the lack of access for the surveyor to archival materials in digital form, which are attached to the notification of geodetic works. According to the OIT regulation [Regulation of the Minister of Development, Labor and Technology of April 2, 2021 on the organization and procedure for maintaining the state geodetic and cartographic resources – Journal of Laws 2021, item 820] §8 point 1, the body maintains the resource in electronic form, while according to §7 of the same regulation it is stated that materials accepted into the resource in non-electronic form are immediately processed into an electronic document. However, many materials, despite the imposed obligation, are not in the PZGiK (State Geodetic and Cartographic Resource) resource in electronic form. In the process of regulating the legal status of real estate, the surveyor often uses an approach known from other scientific fields as ‘reverse engineering’. From the initial number of the cadastral plot, located in the current EGiB (Land and Building Register) database, and based on the provided archival materials, the reverse engineering method ‘goes back in time’, documenting what happened to a given cadastral plot over time. A common case is when a surveyor, while ‘reconstructing’ the history of a property, finds a survey report or other documentation that has not been made available by the body, due to the fact that the survey report or other documentation has not been converted to electronic form. Only direct intervention with the body maintaining the resource is usually a solution to the problem, because the given survey report is found in the archive, as it has been accepted into the resource [Lang et al. 2018].

The law does not specify what types of documents can be considered evidence of ownership. According to the Resolution of the Civil Chamber of the Supreme Court No. 1 CO 39/56, documents confirming the right of ownership to real estate are those documents that, by virtue of the law, confirm the acquisition of ownership or constitute evidence that it took place, namely: extracts from land and mortgage registers, relevant court decisions or administrative decisions, extracts from notarial agreements on the transfer of ownership and extracts from liquidation tables. All of the above documents therefore constitute the basis for establishing a land and mortgage register, and consequently, regulating the legal status of the real estate [Wolanin 2011, 2021, Załucki 2023, Zieliński 2012].

Many processes in the field of geodesy and real estate management have their implementing acts, issued on the basis of appropriate acts, e.g. real estate divisions have their implementing act in the form of the implementing regulations regarding the division of real estate issued on the basis of the ugn act (Real Estate Management Act). On the other hand, the regulation of the legal status of real estate does not have its implementing act. Therefore, it was considered reasonable to create an implementing act in the form of the ‘Regulation of the Minister of Development and Technology (or another legislative body) on the regulation of the legal status of real estate’, which will be issued on the basis of the provisions of the ugn (Real Estate Management Act).

3. Proposed solutions to selected problems

After diagnosing selected problems in the field of regulation of the legal status of real estate, the article will propose solutions to selected problems. The methods below will not fully solve all the problems in the discussed scope, but they will improve the quality of the process, and only after introducing certain changes into practice, it will be possible to take further steps to further improve the quality of regulation of the legal status of real estate, and maybe even completely automate the process.

For this purpose, other countries were studied, such as France and Germany, where the problem of regulation is much acute than in Poland. Of course, one can argue that the history of the cadastre in Germany has no relation to the territories of Poland, where different cadastral systems existed. However, since it is generally believed that the Prussian cadastre was the best system in real estate matters in the former First Polish Republic, in the authors' opinion, it is worth introducing some solutions to the current system in Poland.

In France and Germany there are some similarities in the area of real estate with elements found in Poland. Germany has a very advanced system of real estate registration known as the Grundbuch. Every real estate must be registered in this register, which is maintained by the local district courts. Grundbuch contains detailed information on owners, mortgages, restrictions on the use of real estate, land easements, etc. According to Przewięźlikowska [2005], it can be stated that the cadastral systems in Poland and Germany are similar, however, our western neighbors have more transparent procedures for registering real estate, as well as a more effective court system for resolving disputes over real estate rights.

In terms of transparency in the process of registering real estate in the German Grundbuch system, it is worth mentioning the specific acts that fully regulate the principles of registering real estate, maintaining the Grundbuch, the procedure for registering real estate transactions, etc. These acts are called Bürgerliches Gesetzbuch, which is the equivalent of the Polish Civil Code Act, and also no less important: Grundbuchordnung (that specifies the principles of registering real estate, maintaining the Grundbuch, the procedure for registering real estate transactions) and Grundsteuergesetz (the act on real estate tax That specifies the principles for calculating and paying the tax on owning real estate). The above legal acts fully regulate the process of registering real estate, and consequently simplify the process of regulating the legal status of real estate. This gives a signal that changes in the law are needed to make it possible to streamline the process of regulating the legal status of real estate in Poland.

The methodology used in the article concerns two modules: application and logical constructions. It is possible to examine and introduce issues related to implementing regulations, which will be included in the specifications of the Polish legal system. This process requires additional steps:

1. **Collection of legal and attached documentation:** A set of materials, such as geodetic maps, administrative decisions, entries in land and mortgage registers, civil law contracts and other documents related to real estate. Analysis of the completeness and collected data in the context of the current legal status of real estate.

2. Identification of problems and gaps in documentation: Detecting missing data or documents that are crucial for full regulation of the legal status.

Therefore, it is considered reasonable to first introduce changes in the following areas:

- a. introduction of statutory definitions: 'regulation of the legal status of real estate' and 'legal status of real estate',
- b. preparation of an implementing act in the form of the 'Regulation on the regulation of the legal status of real estate' which will be issued on the basis of the ugn (Real Estate Management Act),
- c. development of a uniform path for data analysis in the process of regulating the legal status of real estate, based on the regulation on the regulation of the legal status of real estate.

Regarding point a), the authors propose that the definition of regulating the legal status of real estate should be as follows:

Regulation of the legal status of real estate – actions aimed at regulating ownership, use, lease, rental or other rights related to real estate and bringing the legal status of real estate into line with the actual state.

As regards the definition of the legal status of real estate, the following definition is proposed:

Legal status of real estate – a set of legal regulations, including ownership rights, encumbrances, third-party claims and any other legal attachments that affect the legal status of a given property at a given time.

The appropriate place to introduce the above definitions is the Act on the Protection of Personal Data in Part I, which deals with general provisions related to real estate.

The authors propose, in accordance with point c) of the proposal, changes in the regulatory process of the legal status of real estate to introduce a uniform path of data analysis in that process. However, it should be emphasized that without drawing up an implementing act to the appropriate act [mentioned in point b)], the above proposal will remain without factual and legal coverage.

1. Submitting an application to regulate the legal status of real estate

Step 1: The application should be submitted by an interested person (perpetual usufructuary, heir, sole proprietor) to the appropriate public administration body, formally initiating the entire process. This allows the responsible administrative body to begin analysis in accordance with legal requirements. This is a critical starting point for the procedure, as without a formal application, administrative authorities have no basis to take action.

2. Analysis of application documents

Step 2: After the interested party submits the application, the administrative authority begins the verification process. This involves checking that the application

contains all the required information. In the absence of a formal application, this is in addition to completing the application within the specified deadline.

Step 3: Checking document completeness: This includes reviewing deeds, lease agreements, and other relevant documents. This step ensures that all required documents are complete and compliant with regulations, helping to avoid delays and preventing any potential challenges to the decision in later stages.

3. Initial assessment of the legal status of the property

Step 4: Assessing the legal situation of the property: Based on the provided documents, the administrative body makes a preliminary assessment of the legal status.

Step 5: Identifying legal conflicts and encumbrances: This step checks for mortgages, easements, or other restrictions. It allows for early detection of potential conflicts and legal barriers that may require additional actions.

4. Any technical and legal expertise

Step 6: Commissioning an expert opinion: If necessary, technical or legal expertise is commissioned to obtain additional information, such as the building's technical condition.

Step 7: Analyzing the expert opinion: Evaluation of the findings in the expert report helps the authorities gain a precise understanding of the situation, especially when the documentation or the legal status of the property is complex.

5. Administrative procedure

Step 8: Carrying out the procedure: This stage involves continued document analysis and obtaining information from other authorities. Systematic action here helps ensure the decision will be in compliance with regulations.

Step 9: Discussions with interested parties: Dialogues allow clarification of any doubts or discrepancies, as well as the potential to reach agreements in case of disputes.

6. Administrative decision

Step 10: Issuing the decision: After completing the analysis, the authority issues a formal decision regarding the regulation of the legal status of the property.

Step 11: Communicating the decision: The decision is delivered to the applicant and other interested parties, ensuring transparency and providing an opportunity to appeal the decision within the administrative process.

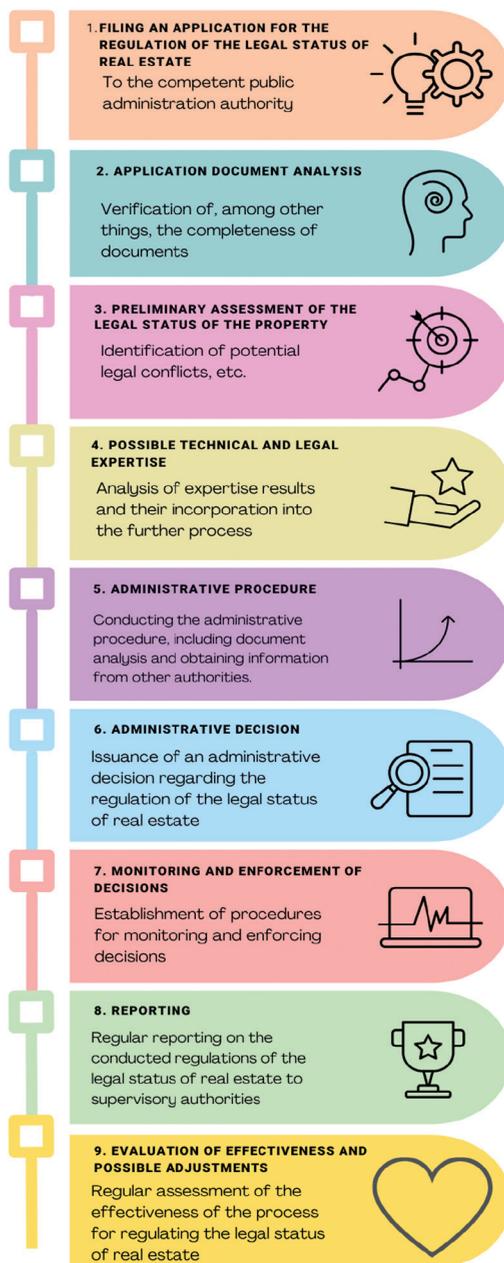
7. Monitoring and enforcing decisions

Step 12: This stage includes establishing monitoring procedures to enforce decisions and potential sanctions for non-compliance. This ensures that the regulations are effectively respected, which is essential for maintaining legal order.

8. Reporting

Step 13: Regular reporting to supervisory authorities enables the monitoring of progress and regulatory effectiveness. This feedback helps in identifying systemic issues and facilitates timely corrective action.

DATA ANALYSIS PATHWAY IN THE PROCESS OF REGULATING THE LEGAL STATUS OF REAL ESTATE



Source: Authors' own study

Fig. 1. Data analysis path in the process of regulating the legal status of real estate

9. Evaluation of effectiveness and possible adjustments

Step 14: Evaluating effectiveness: Regular analysis of the process's effectiveness allows areas for improvement to be identified.

Step 15: Adjusting the procedure: Based on the evaluation results, the procedure can be modified to improve its efficiency and suitability for changing needs (Fig. 1).

The data analysis path based on this plan aims to ensure transparency, efficiency, and compliance with the law in the process of regulating the legal status of real estate. It is also worth considering appropriate data security in this process to protect the privacy and confidentiality of information collected during the analysis.

This pathway was proposed to provide a structured approach to the regulation process by ensuring that each step addresses specific challenges and serves distinct purposes. Each step is logically ordered to allow for a smooth procedure and minimize the risk of errors, delays, or ambiguities, addressing the key needs for transparency, minimizing the risk of errors, increasing efficiency, and enabling adjustments to emerging needs.

The presented draft of the above path transfers the responsibility for the regulation process to the 'public administration body.' This decision was made due to the incomparably greater possibilities of the office in accessing archival materials and operational capacity within separate legal provisions (Fig. 2). However, it is necessary to ensure adequate funding for the body and provide proper training to personnel involved in the regulation process, such as employees of the Municipal Office.



Source: Authors' own study

Fig. 2. A detailed schematic illustrating the process of regulating the legal status of real estate in Poland

In the areas of the former Austrian partition, regulating the legal status of real estate often requires the analysis of incomplete documentation, reconstruction of plot boundaries using reverse engineering methods and the use of available archival materials. In the case of real estate lost as a result of population migration after World War II, the regulation process is based on the adverse possession procedure, supported by field and archival research, which enables the restoration of legal order.

Both administrative authorities and courts play a key role in the process of regulating the legal status of real estate. Administrative bodies, such as poviats, starostys or municipal offices, can effectively implement procedures in simple cases where there are no ownership disputes. In more complex situations, such as border conflicts or unclear claims, it is necessary to involve the courts to resolve disputes.

The application for regulation should include detailed data of the applicant, a description of the property and documents confirming ownership, such as extracts from land and mortgage registers or geodetic maps. The comprehensiveness of the application is crucial to the effectiveness of the process. Administrative decisions made on the basis of collected materials must be precise and consistent with applicable law. Monitoring their implementation can be improved thanks to modern tools, such as GIS systems, which allow ongoing tracking of changes in the land and building records, guaranteeing transparency and effectiveness of the entire process.

4. Conclusions and summary

In light of the presented analyses and discussions, it can be concluded that the process of regulating the legal status of real estate in Poland faces a number of significant challenges. The current lack of precise definitions and formal legal frameworks regarding the legal status of real estate leads to ambiguity of interpretation and hinders the effective implementation of the regulation process.

The first key step in improving this state of affairs is to introduce clearly formulated definitions regarding the regulation of the legal status of real estate and the legal status of real estate itself. Defining these concepts in the law would provide a clear and consistent understanding of the regulatory process and its goals.

Another important aspect that requires attention is the lack of access to archival materials in digital form for surveyors. It is necessary to focus efforts on the digitization of these documents and to implement effective procedures and responsibility for their management. This is the only way to ensure the smooth functioning of the process of regulating the legal status of real estate and avoid delays caused to the lack of access to the necessary documents (Table 1).

It is also extremely important to introduce an implementing act regulating the process of regulating the legal status of real estate. Creating a coherent and precise framework would make it possible to systematize the process and ensure its compliance with applicable legal regulations.

In summary, improving the process of regulating the legal status of real estate requires a comprehensive approach, including the introduction of appropriate definitions and

Table 1. Summary of the final steps of the legal status regulation process

Step	Description	Responsible Person	Documents and Procedures	Completion Deadline
1. Document Verification	Checking the completeness of documents related to the legal status of the property.	Surveyor, public official	Application for certificate, cadastral maps	Up to 2 weeks
2. Submission to the Land Registry	Submitting a request to the relevant land registry authority for data update.	Surveyor, perpetual usufructuary, heir, sole proprietor	Application, documents proving property rights	Up to 1 month
3. Legal Compliance Analysis	Verifying whether the property complies with formal and legal requirements.	Lawyer, notary	Documents proving ownership, administrative decisions	Up to 3 months
4. Conducting Survey Measurements	Performing field measurements to confirm property boundaries.	Surveyor	Site map, measurement protocol	As per schedule
5. Issuance of Administrative Decision	Making a decision on the regulation of the property's legal status.	Administrative body	Administrative decision, official documents	Up to 6 months
6. Entry into the Land and Mortgage Register	Submitting an application to enter changes into the land and mortgage register.	Notary, property owner, perpetual usufructuary, heir, sole proprietor	Application to the land registry court	Up to 1 month

legal acts, as well as the use of modern technologies. This is the only way to ensure effective, efficient and transparent management of the legal status of real estate in Poland.

By making a thorough analysis, it should be concluded that the subject of legal status regulation is complicated, which shows the potential for continued research in the future.

Financed by a subsidy from the Ministry of Education and Science for the University of Agriculture in Krakow for 2024.

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