

How effective is the Romanian Land Book in safeguarding title and property rights?



With a streamlined system of real estate protection and a modern Civil Code, property interests and real estate investments in Romania have never been more secure. Increasing digitalisation and recent improvements in land registration go a long way to making the legal process of purchasing real estate more effective and efficient.

An essential source of information for any investor, the Land Book system is an indispensable tool for safeguarding present and future property rights. This article provides an analysis of the role and particularities of this instrument so that investors can know what to expect when buying and/or developing real estate in Romania.

Background

The National Cadastre and Land Book Agency has regional registry offices that compile and maintain local records and essential information on properties in their districts. All the information pertaining to an individual property is kept in a single file which, for historical reasons, is called a "Land Book".

Typically a Land Book contains details of present and historical ownership, a property's location and size as well as any third party rights or liens over the land (such as mortgages, option rights, easements, etc.). Any member of the public can apply for copies of the entries in any Land Book and can view associated documents.

In transition to full registration coverage

In 2015, Romania instigated the National Cadastre and Land Book Programme (Romanian: Programul National de Cadastru si Carte Funciara) funded from the public purse. Aimed at national standardisation and comprehensive registration of property [1] ownership, the programme establishes definitive property boundaries through cadastral measurements and drawings prepared and certified by recognised surveyors.

As of today, out of an estimated 40 million properties in Romania, only 38.8 % have been fully incorporated into the new system. [2] Although this statistic may initially cause some concern, it is mitigated by the fact that no land may be assigned or modified without it first being integrated into the Land Registry. This means that any property on the radar of real estate developers has long since been measured and registered. A large part of the properties that are not yet in the system are those located in more remote areas, with unchanged ownership going back many years.

An owner listed in the Land Book may not, in fact, be the owner

A legacy from the previous Romanian system is that, at present, property-titles are not formally transferred when registered in the Land Book. Rather, the transfer occurs either at the signing of the transfer deed or, indeed, on any

deferred date agreed by the parties.

This means that, currently, a transfer may be valid even if it was not subsequently registered in the Land Book. For instance, where land has been inherited it is not unusual to find the former (deceased) owner still shown in the Land Book. However, where this is the case, once the property is to be sold or if any rights are to be attached to the property, the law requires the current owner to bring the registration up to date.

Once all properties in Romania have been definitively registered, the Civil Code requires that this anomaly will no longer apply and, in common with other countries in Western Europe, title will pass on Land Book registration.

How to use the Land Book for securing property rights

The Land Book can also provide additional reassurance to investors in real estate by acting as legal evidence for a variety of flexible arrangements.

Under Romanian law, where a seller promises to sell a property to a prospective purchaser, they may conclude a preliminary sale agreement. In such a situation the prospective purchaser may request the Land Registry to enter the agreement in the Land Book, thereby ensuring that any third parties are aware of the existence of that agreement. In practice, such preliminary sale agreements include a prohibition on the seller transferring, or in any way encumbering the property against the purchaser's interests which will also be noted in the Land Book.

An agreement may also include an option to buy a certain property at some time in the future and this may also be recorded in and safeguarded by the Land Book. The buyer can exercise its option without any further reference to the seller (for example, no further signature from or negotiation involving the seller is necessary).

Indeed, where the transfer of ownership is subject to the fulfilment of conditions precedent, the parties may instruct a notary public to obtain a preliminary registration in the Land Book for a period of time necessary to fulfil those conditions. When and if the conditions precedent are satisfied, the preliminary registration can be applied retroactively to effect final registration.

Outlook

Recent measures have made Land Book records more reliable, consistent and easier to access, helping the Romanian real estate market to be even more appealing to prospective investors. While still imperfect, in the right hands, the Land Book system in Romania is a tool that can secure and guarantee real estate transactions providing maximum transparency and assurance for both sellers and buyers in even complex project structures.