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LAW OF REAL ESTATE CADASTRE (I)

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Objectives of the Law

As of 1 January 2003 Spain has a new Law of Cadastre (Law 48/2002 dated 23 December, of Real Estate Cadastre, hereinafter referred to as LREC), whose purpose is to formulate a new cadastral model in accordance with the demands of the society of information and knowledge characteristic of this new century.

This model rests on two basic pillars: the first – based on the enormous value of the information the Cadastre now possesses and the technological tools that exist to update, manage, exploit and diffuse this information – is to convert cadastral information into a tool that is genuinely useful to society as a whole, turning it into a factor of efficiency of the economy and thus taking it much further than its traditional and almost exclusively fiscal purpose (although this original purpose will by no means disappear), and the second, necessary to the first, is to guarantee that cadastral data undergoes continuous improvement and that it precisely matches the reality of real estate, in order to offer users a high level of reliability.

Its contribution to efficiency will be obtained mainly through the reduction and, in many cases, the elimination of transaction and co-ordination costs which until now existed in both the production and distribution of cadastral information, on both the supply side (national Administration) and the demand side (the users of cadastral information). This has resulted in the creation of the Cadastre National Database (CND) as a new product to integrate the cadastral data of any individual or entity nation-wide, and also of the Virtual Cadastral Office on Internet as a new global centre for the diffusion of cadastral information and the collection of the data necessary to keep it updated.

Thus, far from a possible cadastral model broken up into multiple provincial databases with different structural characteristics, the LREC model establishes a uniform design and the consequent standardisation of the processes for management, exploitation and distribution. The exclusivity of the State's competency in matters of Cadastre, established in article 1.4 of the Law and reconfirmed by the Constitutional Court in its sentence 233/1999, thus links up directly to the principle of economic efficiency, not just from the perspective of cadastral administration (it is evident that this configuration leverages on all the economies and the capacity for innovation that the national scale offers), but also – and this is a perspective that is often forgotten - from the viewpoint of the consumer: for example, this model shows, in a single process, the real estate owned by the applicants for public grants, not just in their place of residence, but nation-wide, in just a few seconds. Nobody can doubt the advantages of such a system to the Administration, responsible to supervise the fair adjudication of aid, and to the general public who are keen to see grants reaching those who really need them. The same can be said of any other example of the public or private use of cadastral information; while the opposite is the case with the fragmented or local model of cadastre rejected by the LREC.

In wider economic terms we might mention the example given by MILGROM and ROBERTS[1] regarding the co-ordination of decisions and the availability of information for efficient decision-making: if we are going to manufacture needles, it is probably not advisable to subcontract the different phases of manufacture to different companies, since a large part of the time (and cost) would be spent on negotiating and formalising supplier contracts and on co-ordinating the production processes at each of the companies. Perhaps even after all this, the needles will be produced, but there is no doubt that these will be fewer, and more expensive, than those manufactured by a single organisation, whose mission, as far as we are concerned, is precisely to eliminate or reduce those transaction costs. The quoted authors conclude by saying that, "transactions cost, and those transaction costs depend in turn on the nature of the transaction and how it is organised", and therefore "the trend is to adopt the organisational model that reduces these costs the most".

For the *production of cadastre* (note that the definition of *product* is given by the LREC itself, and thus in our context, no other cadastre exists except the one regulated by the Law) the selection by the legislator of the conceptual and organisational model has been driven, therefore, by the idea of efficiency, structured into principles of management, planning and central coordination of production and by free and easy access to the product.

This by no means represents a centralised organisation that precludes local problem solving and decision making at the different territorial levels best suited to the size and scope of the requirement and the characteristics of the supplier or the client. The LREC proclaims, together with the exclusive competency of the state, the decentralised management of a large part of the cadastral process by means of specific contracts – *communications, agreements and other forms of collaboration* – with the different administrations, entities and public corporations involved, either as data suppliers, as users, or both. In parallel, the General Directorate of Cadastre's own organisational structure is highly de-centralised for decision-making and production although, naturally, de-centralisation does not stretch to strategy. This situation recognises, on one

hand, the structural nature of inter-administrative co-operation in matters of cadastre – and this co-operation is essential both for the resources it contributes and for the need, in political terms, to make space for participation in the exercise of this state function by the other administrations interested in ensuring that the exercise is done properly – and on the other hand, it significantly improves the efficiency of the cadastral production process, ridding it of the rigidity and insufficiencies of the pure centralised model in which all decisions are taken at the highest level.

However, over and above the production process itself, whose configuration from the perspective of organisation can vary depending on many different factors (politics, technology, and budget, principally), the truly essential aspect of the cadastre in Spain is its single character, thus allowing inter-territorial comparison and aggregation, functional versatility and the fact that it is offered on the most general level possible, to the extent that the organisation of the distribution function is in itself an *ad extra* factor of efficiency.

The second pillar of the new model is relative to the commitment to the reliability or precision of cadastral data, directly affecting, for example, the function of reinforcement of the principles of legal security and traffic safety (2) inherent in the certainty of information relative to the physical reality of estates, in co-ordination and co-operation with the principal institutions responsible for the provision of that public service such as the Notary Public and the Property Register. With regard to this aspect, whose first manifestation – if we exclude more or less isolated examples of mortgage law or estate consolidation, among others – was Law 13/1996, the Cadastre had historically done very little, since its design, the evaluation of its data and above all, its procedures, were almost exclusively dedicated to the collection of the land tax in a satisfactory time and quantity.

In my opinion, that exclusive vocation is precisely one of the reasons why these concerns were excluded and in general, the reason for not pursuing the maximum veracity of data in the former Spanish cadastral model – and I am not referring exclusively to the 20th century. The lack of vocational versatility or the limitation of the mission of any organisation can only lead – for purely economic reasons – to a degree of specialisation that will not only end up producing only what is expected of it, but whose procedures will be strictly limited to that specific production requirement, resulting practically useless for other purposes and, most of the time, incapable of adapting to the changing conditions of an ever-changing environment, precisely due to the organisational inflexibility (structures, resources and processes) that it generates.

For the land tax, given the relatively low sensitivity (in absolute terms) of its amount or its effective collection, and of litigation, to variations in the quality of real estate descriptions, a more or less simple or more or less exact cadastre has historically proved sufficient. For example, both historically and in the present day, it is not infrequent that a house buyer pay without question the IBI, *even when it is still in the name of the seller*; or that an heir do the same with regard to an inherited property. This, doubtless an advantage from the point of view of the tax and firmly rooted in history (such was the sense of privacy in the French revolution that tax receipts at one time were totally lacking in any identification of the supposed taxpayer) for the Cadastre represents an obstacle, and has restricted its functionality for decades. The Cadastre is public property and as such, it is the duty of the public authorities to make it accessible to society.

In opposition to the utilitarian vision restricted to the aspect of the land tax, today's Cadastre is in a situation to contribute increased social value, and the Law has recognised this by extending the functional mission and consequently, the definition, the structure and the procedural resources of the institution.

From the legal perspective, for example, citizens (consumers) demand certainty from their institutions and the greater the scope of that certainty, the greater precision and rectitude must be demanded of those responsible for providing it. In the context of real estate law, the Spanish system of preventative legal security has proved to be far superior to the very different alternative, the indemnity security based on risk assurance, since this latter at best provides money for a property – the estate, that is what the buyer really wanted. In the end, the assurance system is merely a guarantee of financial indemnity, but not of the permanence of the acquired rights. On the contrary, certainty achieved *ab initio*, at the beginning of the operation when the wishes of the parties are expressed before the Notary – and checked against the legal truth published by the Property Register and protected by judges and courts, itself precludes risk right from the start.

The scope of objective certainty regarding the reality of real estate provided by the Property Register or the Notary is a matter that has traditionally attracted the attention of specialists and which the LREC has also wished to address, given the repeated doctrine of the Supreme Court that publication by the register does not extend to de facto data (3) and, in strong contrast, the overwhelming social and eco-

(1) MILGROM, P. and ROBERTS, J. (1992): Economics, organization and management. New Jersey. Prentice- Hall.

(2) EHRENBERG emphasises that "the first demand of legal security is that the existence and contents of the right can not be questioned. But both things – he adds – i.e., the existence and content of the right, depend on various factical and juridical suppositions, that the person wishing to affirm his right or make it prevail above another's, must in many cases prove. Anything that facilitates that proof to the holder – or even saves him the burden of proof, will contibute to his legal security". EHRENBERG, V. (2003): Seguridad jurídica, seguridad de tráfico. Madrid. Colegio de Registradores de la Propiedad Mercantil y de Bienes Inmuebles de España.

(3) As underlined by MORALES MORENO, "the Reigster publishes rights, but does not ugarantee that these rights are extendable to the estates in the way it describes". MORALES MORENO, A.M. (2000): Publicidad Registral y Datos de Hecho. Madrid. Colegio de Registradores de la Propiedad y Mercantiles de España.

nomic need that a buyer should be able to feel totally confident in this respect. In short, the protection of the right should be complemented by security regarding its object, and in this sense the institutional position of the Cadastre – an administrative register of real estate – offers a clear advantage over any other means of proof in terms of immediacy and accessibility, generality, technical rigour and independence from the parties.

The novelty of the LREC on this point, starting with the recognition of the contribution of Law 13/1996, in spite of being gradual and non-disruptive, is highly significant from the point of view of planning: the legislator has said, for the first time, that the Cadastre is at the service of registrars and notaries – logically, although not specified, to collaborate with these in reinforcing the security of the real estate traffic they are responsible for – such that this function, which is new for its breadth of vision, is on a par with other traditional functions of the institution and – this is the point I want to emphasise – must necessarily lead to a wide group of procedural changes directed at a greater guarantee of *data quality*, on which its effective use for these purposes should be based over an above any other consideration.

A similar situation exists, in this line of cadastral versatility, regarding the availability of cadastral information to the different public administrations. If personal income tax requires payment of a supposed yield deriving from the ownership of a given real estate, and the Cadastre is an administrative real estate register depending on the Finance Ministry, it would seem to be a logical duty for the cadastral institution to respond to the need for assistance and control. But to do this it must first broaden its horizons, widen its concepts and change its procedures to whatever extent necessary. The Cadastre defined by the new LREC is also geared for this, which is the reason why co-titlehold data must be included in the cadastral registration. Up to now these data were not necessary for local fiscal purposes, but they are now required so that, for example, the tax agency can better fulfill its future commitment to provide draft tax declarations to millions of taxpayers, who will thus be freed from preparing the declarations themselves, or from having to apply to the different help services or consultancy services.

LREC dedicates two related principles to the achievement of this instrumental objective of *cadastral data quality*: the right of the cadastral title holders, beyond any formal obstacle, to cadastral information that faithfully reflects reality – and to this effect titleholders are allowed to rectify possible discrepancies between the two, offset by the mandate to the cadastral administration to achieve the link between reality and cadastre – and the call to all public administrations and public registrars to collaborate in the process of permanent updating of cadastral real estate information, which translates into the duty to supply to the General Direcorate of Cadastre relevant information regarding urban planning, expropriation, parcel consolidation, new construction, segregation, division, aggregation and regrouping of estates, changes in ownership and in general, any alterations to real estate that should be registered in the cadastre in accordance with the law. Nothing so far-reaching existed in the previous law, nor in the reinforced penalty regulations – related to the common General Tax Law provided for by the law for cases of non-compliance, which equally expresses the firm will of the legislator to provide our country with a truly modern, useful and accessible cadastre.

Given the foregoing, and to the information I will refer to later, I will here hurry to underline the high degree of ambition that characterises this Law and the significant challenge of modernisation that it addresses. It is useful to remember, in order to judge this affirmation correctly, that the former Law of Topographical Parcellary Cadastre dates from 1906, and that the cadastral institution in Spain, following the latin model applied from its beginning, has historically only ever concerned itself with the collection of the land tax. This has implied, also historically, that the attention of the Cadastral Administration focused on the tax content applicable to the *land tax* (passive subject, tax base) to the detriment of other aspects of the information (precise legal titlehold, cartographic precision, versatility of use, etc.) that today, since the 1990s and in the arms of technological progress and the evolution of society, have become essential.

The cadastral project formulated by LREC, in spite of the appearance it offers in the regulation of the cadastral titleholder (per article 3, single owners, commonholders and spouses only need register voluntarily, and according to the transitory disposition this will only occur after 2005) is ambitious because it opens up a new horizon or more exactly, it has widened the existing horizon and has set its foot on the road to the new horizon, much more open to the full use of its information assets.

As described in the Mission Statement of the LREC, *together with its fiscal purpose, the Cadastre has in recent years seen the need for its information to be used for many other activities, both public and private, evolving into what it is today: a grand infrastructure of territorial information* (some figures describing the size of the Cadastre can be seen in the following graph) *available to public administrations, registrars and notaries, companies and the general public, whose presence in society and whose complexity demand the existence of a law of its own to regulate its configuration and activity.* The Cadastre is, truly and unequivocally, a fiscal institution, whose roots are embedded in the huge project for modernisation of the Treasury conceived by the first Marquis of Ensenada, don Zenón de Somodevilla, Minister of the Treasury, War, the Navy and the West Indies in the 18th century. And it is this, as emphasised by the Constitutional Court in its sentence 233/1999, simply because it is a *common and essential institution* for the management of varied and multiple state, autonomic and local taxes – such as personal income tax of residents and non-residents, property tax, property transfer tax and documented legal acts, real estate tax among others. On the other hand, the legislator has recognised that, without prejudice to this important function, the huge public capital accumulated, in terms of information, by the Cadastre, must be afforded its true value at the service of the national economy. This, therefore, is the principal message of the law. To make the law operational, it formulates or proclaims everything from the concept of cadastre itself, constitutional

principles (tax generality and justice, equitable assignment of public resources, inter-administrative co-operation, etc.) and legal principles governing its activity (rights of the title holder or user of cadastral information), up to the definition of its inputs and the configuration of processes and results, keeping in mind potential uses and new management capabilities generated by the current status of information technology.

From a fiscal cadastre to a multi-functional cadastre

The *Ensenada Cadastre* was a pioneer project in the modernisation of our 18th century Treasury, whose principal objective was to establish a Single Tax to replace the multitude of rights, fees and rents which, pertaining to various fiscal domains - the Crown, the Church, the nobility, royal leaseholders – prevented economic development: they hindered trade – with internal duties, they limited property trade – the principal source of wealth and value deposits in a rural Spain, which continued undisturbed well into the second half of the 20th century – and generated social inequalities that even then were seen as intolerable – *remedy of the needy, moth of the wealthy* , read the posters that circulated in advance of the Ensenada operation through towns and villages of the two Castilles undergoing verification.

It was soon seen, however, that the Single Tax would never be applied. If there were one cause, it was probably political difficulties, since the threat of change that the Ensenada project represented to such a strongly rooted traditional order of nobility and landowners ended with the banishment of his Majesty's faithful servant and the burial of his project, although the Cadastre was completed and over time has become the largest known statistical operation in 18th century Europe, and an endless source for the investigation of our economic history. Following this, the tax on harvests, real estate and cattle, the famous rustic tax, would be based on *amillaramiento* – a grand word which still forms part of forensic vocabulary even today, although nothing *amillarado* remains – a sort of declaration-manipulation whereby everybody who could, tricked the defenceless and perplexed tax collectors as much as they could.

The 19th century went by – the reader is kindly requested to allow me this simplifying jump, my intention is to avoid tiring you – with hardly any effect on the Cadastre. The only relevant item in the present context is that, despite everything, the *contribución* represented, on average, no less than twenty per cent of all taxes collected (4). Let's not forget that this Treasury was a product of the Old Regime, with no resemblance to the Treasury in today's welfare state where public budgets have represented between 40 and 60 per cent of nations' GDP. But the relative importance of the 19th century *contribución* deserves some attention. Think that, today, our Personal Income Tax represents 33% and V.A.T. 28% of the nation's non-financial revenue – this will give us an idea of the magnitude of the land tax in that century, reaching its peak between 1870 and 1874, with 29% weight.

Going back to the matter I wish to emphasise here, the Cadastre – *although not the tax* – went through the 19th century with much debate and little change. Its implication or involvement with the Mortgage Register – the Property Register – was discussed, long and learned declarations were given by important and well-intentioned eminences (that the cadastre give the Register what belongs to it, the physical substance, and that the register give the cadastre what belongs to it, the legal substance) but reality stubbornly continued to impose itself.

The new century brought the Law of the Parcellary Topographical Cadastre, in 1906, progressive but ingenuous. This law, beyond its essentially technical content, is a perfect example of excessive ambition, something that the legislator took into account for the 2002 law, in opposition to opinions that today, as then, demand greater audacity. The old law established that cadastral registration would equate to the titlehold of the property if it were not contested in a period of 10 years – here we have a glimpse of the urgent need to regulate the properties exchanged informally and without the legal protection of the Register, especially considering the impact of compulsory public sale of the catholic church´s real estates on the previous century. The Courts responded that such a situation would represent, at the most, merely the beginning of proof. Having thus blocked the way to the pretension to sanitise or convalidate cadastral registration, the objectives of the LPTC focused on the creation of a geometric – or at least cartographical – cadastre. However, for various reasons this work stretched over decades, thus giving time for Spain to begin its process of urban development, to change its economic structure, for the land to lose its relative importance as a refuge for savings and the focus of investment, and for the tax system to turn, albeit late in the day, to a model of personal and progressive taxation on income in the context of the afore-mentioned welfare state.

This brings us to the Stabilisation Plan of 1959, the abandonment of the policy of self-sufficiency and the subsequent gradual opening up of our economy to the exterior, internal migration to large cities and international emigration to the industrial centres of Europe and, in summary, to the afore-mentioned transformation of our economic structure, accelerated after Spain joined the European Economic Community in 1986. Driven by urban development, the *urban tax* took over from the *rural tax* and the latter lost practically all fiscal significance, to the extent that today it represents no more than 3% of the income from the urban real estate tax. This – the urban tax – is the brightest and most visible star surviving after the changes that have occurred over nearly 25 years since the 1978 reform, when it became the responsibility of the local authorities, surviving the challenges and experiments of the first twenty years of democracy to become the major figure – today more than ever, following the almost total withdraw-

(4) COMIN, F. (1996): Historia de la Hacienda Publica Española, vol. II. Barcelona. Crítica.

al from the scene of the Economic Activity Tax – of the local tax panorama. This relevance has constituted an excellent foundation on which to build subsequent decisions for investment in an urban cadastre which otherwise would not have been made since the loss of fiscal relevance, in a fiscal cadastre, is a guarantee of ageing and deterioration. This is the situation unless the new context generates new requirements that make it advisable to maintain current efforts or, as has happened in Spain with the rustic cadastre in the context of Common Agricultural Policy, to even increase it.

Returning to the present day, the irruption of these new requirements in an environment of unprecedented technological acceleration and therefore, with a feasibility that is also genuinely new and powerful, is at the heart of the general orientation of the LREC: *the cadastre is hereafter a public supplier of territorial information* (and a highly qualified one: the only one able to offer detailed literal and graphic information on 28,000,000 urban properties and 42,000,000 rural estates, with both legal and non-legal effectivity, in multiple areas of public and private activity). As such public supplier, it must organise itself and act in accordance with the demands of this general function. But before going into further detail on these requirements and how the LREC has addressed them, we must first go into further detail on the genesis of the new model.

The widening of the function: the example of the process of renovation of the rural cadastre

As mentioned earlier, in terms of the rural cadastre the CAP arose within the framework of a clearly decadent fiscal scenario: the heyday of the rural tax was long past and the priority given to the *urban tax* had shifted attention and efforts to this other side of the cadastre – and further, towards the bigger towns in order to maximise the fiscal performance of the updating operation. However, it would be wrong not to recognise that it was always the intention of the Finance Ministry – no matter how much historical and comparative examples would appear to contradict this – to pursue the renaissance of the defunct *rural tax*, to the extent that in the second half of the eighties a process to update this cadastre was initiated, for two reasons – firstly, in readiness for the arrival of Common Agricultural Policy and the demands that this would generate regarding cadastral information, generally out of date, needed to manage and control European aid. Secondly, in readiness for the new financial model for local authorities – repeatedly delayed and equally urgent, finally included in the law of Local Tax Regulation of 1988, for which it was essential that the cadastre be up to date.

Later, the effective incorporation into Common Agricultural Policy, the desirable reinforcement of the means to control real estate operations and public aid policies and subsidies in general, and the interest in promoting collaboration between the cadastre and notaries and property registrars because of the legal security that these provide, all represented a new and powerful stimulus, in itself sufficient to drive and even accelerate the renovation of the rural cadastre, and finally became part of E.U. common policy for regional development through various operational programmes presented by the Spanish Government to Commission authorities and approved by these in 1996 and 2001. In summary, in order to survive, the rural cadastre had to adapt to the new environment and recognise once and for all that the old refuge of territorial tax had become too small (no one doubts its extraordinary value today, due precisely to its capacity to modernise itself and satisfy new demands from both the public and private sectors, but if it were merely a question of the *rural tax*, the rural cadastre would have disappeared years ago) The logical outcome of this evolution is, in the regulatory area, the LREC, for a multi-purpose cadastre.

Thus, these objectives (of which the major one in the early years was doubtless that of collection) justified the beginning in 1988 of a process of renovation of the rural cadastre. The starting point was a non-computerised cadastre, cartographically diverse and outdated. Depending on the town, graphic documentation might consist of non-georeferenced parcellary maps, drawn up at different times (19 million hectares were in this state), aerial photographs in different scales taken at different times – mainly in the 1950s - equally lacking geograhic references (this was the case of 20 million hectares), and *cadastral drafts* (parcel maps based on sketches in which only the perimeter of the total of parcels was technically guaranteed by topographical measurements (8 million hectares). In these conditions, the first decision was to proceed to register on magnetic tape all existing literal information in order to create a list database, and to implement the first phases of what in time would become the complex cadastral management system, a group of programmes and applications that today manage all the Cadastre's alpha-numerical databases and the computer processing of more than 8 million cases handled annually by the provincial offices of the Cadastre.

The second step was to draw up a plan to update cadastral cartography. This signified the introduction of the first geo-referenced orthophotographs in UTM co-ordinates and their application to cadastral management and renewal. This photography, with the parcels marked over and subsequently digitalised, produced digital cartography. In parallel, the second main pillar of computerised cadastral management was developed, the *cadastral geographic information system* (SIGCA), whose evolution has recently resulted in the effecive integrated mangement of the two databases – graphic and alpha-numeric – into co-ordinated and inter-dependent processes. For reasons of budget, the process to obtain orthophotographic maps was not followed by that of massive renovation or review of the cadastral characteristics of the estates, and therefore many of the available orthophotos were not effective used for renovation of the cadastre, although they are used in ordinary management processes. In summary, up to 1995 the rural cadastres of 1,650 towns and 9 million hectares had been updated, equivalent to 20% of the territory under the responsibility of the General Directorate of Cadastre, while orthophotography in that period covered 4,600 towns and nearly 29 million hectares.

A new phase of the renovation plan began in

1996. The mirage of tax income was definitively banished at this stage. Now, under the auspices of the E.U., the cadastre would be updated explicitly for other purposes, particularly for the control and management of CAP whose volume, in terms of the amount of aid received by farmers, exceeded the total amount collected for urban and rural real estate tax in the entire country. October 1996 is the date of reference, marking the approval by the European Commission of the *operational programme for updating territorial data* presented formerly by the Spanish Government, whereby the modernisation of the Spanish cadastre became part of the E.U.'s regional development policy.

Approval of the programme, with a budget of more than 10,500 million pesetas for the rural cadastre alone and more than 13,000 million if we count the urban cadastre (note that 81% was dedicated to rural) has meant that cadastral renovation has represented a priority within the investment budget of the Ministry of Finance during its period of validity, something that would have been impossible otherwise (5).

The Law and the Merged Text of the Law of Real Estate Cadastre

Having reviewed the context and the terms in which the new idea of cadastre has progressively shaped the LREC together with its general and strategic objectives, we should now explain that this law, as established in its mission statement, is "partial", since it "does not address all the cadastral aspects that should be the subject of regulation" of a legal nature, " which are now covered by several different laws". This is the reason why, for a better view of the Spanish cadastral model, it is preferable to refer hereafter to the "*Project to merge the text of the Law of Real Estate Cadastre and other tax regulations*" (PLREC), *(6)* which, once approved, will replace the LREC, the LCTP and various other regulations merged by said project from the law of 26 september 1941 and laws 39/1988, 13/1996, 66/1997, 6/1998, 24/2001 and 53/2002.

The PLREC is organised into eight titles – 71 articles – and eight additional dispositions, both transitory and final, and represents an effort to cover all cadastral regulations with legal effect that are currently valid, providing a new systematic organisation and making the whole clearer and more harmonious as authorised by final disposition 2 of LREC, which gives the Govrnent one year in which to carry out the mandate for the merge operation.

Six main subject matters are addressed in the PLREC, listed here in the order in which I shall later discuss them: the first (articles 1 to 10, 22 to 24 and 33 to 35) includes the most substantial and conceptual aspects of the model –except the definition and classification of real state and of the juridical principles that guide the cadastral activity, questions that they will be for the following delivery of this article, together with the other five groups in those that I have divided the analysis that I offer to the reader and that they are the following ones: the one constituted for the articles 52 to 56, addressing the regulation on access to cadastral information; the group that contains the articles dedicated to what is referred to as documentary proof of the cadastral reference (articles 40 to 51 and transitory disposition 3); the group that covers cadastral procedures (articles 11 to 21, 25 to 32 and 36 to 37, plus the single additional disposition); the group that concerns cadastral fees (articles 57 to 71) and last, the group that contains the rules on offences and penalities (articles 38 and 39).

Thoroughness and precision

The concept of cadastre offered by the PLREC features two characteristic aspects: *the cadastre is an administrative register* (i) *whose mission is to describe real estate* (ii). In other words, it is an inventory of estates - and not of rights, although certain real estate rights appear in it – of a descriptive or analytical nature.

As an inventory it must be exhaustive and exact, and given its analytical nature, it must also contain information that is relevant and sufficient to adequately satisfy its descriptive function with regard to each registered estate.

The concepts of thoroughness and precision are supported in the PLREC by the principles of *obligatory registration* and *active inquiry*, whose presence can be seen, directly or indirectly, in numerous precepts. Article 2, for example, indicates that the Cadastre is at the service – among others – of the principle of general taxation, which clearly requires fulfillment of the conditons of thoroughness: a cadastre that cannot guarantee that its information is thorough would, in

(5) Following full execution, cadastral renovation has currently achieved 75% completion, both in terms of towns and in geographic surface. Orthophotographs are available for 97% of the territory, excluding the Basque Country and Navarre. Further, as of 1997 these orthophotographs are in colour - the following graph shows the degree of renovation by province.*The natural continuity of the operational programme as provided by the Plan for Regional Development 200-2006, within whose context the E.U. has approved different investment programmes for each of the autonomous Communities benefitting from the structural funds assigned to Number 1 Target Regions. The new operational programmes, now completely regionalised, include the state actions corresponding to completion of the renovation of the rural cadstre in those regions, such that by 2006, together with national investment forecast to complete the cadastral renovation in non-number 1 regions covered by structural funds, the project for modernisation of the cadastre will have been completed for the entire territory under the common regimen. At that time the rustic cadstre will be completely digital in all non-foral provinces, such that its potential for use will have reached, via difusión through Internet, its maximum consequences, in accordance with the objectives of the Law of Cadstre discussed .*

(6) Can be consulted in catastro.minhac.es

terms of real estate taxation, be in oposition to the constitutional rule that establishes that we must all contribute to sustain public spending. This is stated specifically in article 11: "the registration of real estate in the real estate cadastre, and of any alterations in the characteristics of said real estate ... is obligatory and may be extended to the modification of whatever data are necessary to achieve a realistic cadastral description of the given real estate."

Many other regulations of the PLREC support these principles of obligatory registration (thoroughness) and accordance with reality (precision), from those that establish the duty to collaborate, to those establishing penalties, including the article that regulates the preference of the Property Register in terms of legal titlehold of real estate. Articles 10 and 36 stipulate the duty of the cadastral titleholder and any other person to collaborate with the cadastre in furnishing whatever data, reports or information may be necessary for good cadastral management; Articles 13 and 14 establish, respectively, the obligation to declare of the individuals subject to become cadastral titleholders as owners of any of the rights that originate registration, and the obligation to communicate of notaries, property registrars, local authorities and other public institutions.

From the viewpoint of cadastral administration, the necessary pursuit of precision is aided by the faculty to inquire included in article 10 – the Cadastre may require the contribution of data or information from the registered cadastral titleholder, and non-collaboration by the latter shall negate the presumption of truth of the registration in respect of any aspects benefitting said titleholder; in article 13.2, collaboration may be required of holders of rights subject to appear in the cadastre, even before they become cadastral titleholders and even if they are not obligated to declare; in 16.1, whereby the requirement can be addressed to any party obligated to declare or communicate and therefore, not only the rights holder or the party conducting the transaction that originates cadastral registration, but also notaries, property registrars, local adminstrations and other public institutions responsible for communication; – and of course, by the rules regulating the procedures to correct discrepancies and cadastral inspection, where the faculty to act *de oficio* and the vocation for precision are essential to their objectives, which is also the case of the special procedure for renovation of the ruralc cadstre, regulated in the single additional disposition of the PLREC.

The rule regulating the preference of the Property Register (article 9.4 of PLREC) is also an instrument at the service of cadastral precision. "In the event of discrepancy between the cadastral titleholder and the corresponding rights holder registered in the Property Register regarding an estate whose cadastral reference is inscribed in said Property Register, to the effects of the cadastre the titleholder featured in said cadastral reference will be taken into account, unless cadastral registration occurs after registration of the property in the Property Register". In other words, if the estate is *co-ordinated* (7) and if registration in the Property Register occurred later than cadastral registration, cadastral registration may not differ from the Property Register; on the other hand, if a property presented for registration in the cadastre has not been registered previously in the Property Register, the pursuit of material and legal truth (precision) obligates the cadastre to accept it, even if it is in contradiction to what is published in the Property Register, without prejudice to the evaluation of proof.

The regulations addressing penalties close the circle as the logical consequence of the mission of the cadastral administration to achieve a complete and exact cadastre, and authorises penalisation of those responsible for hindering or impeding, by means at least of simple negligence as required in article 77.1 of the General Tax Law, the exercise of the adminstrative powers directed at achieving this objective.

Cadastral Description

The descriptive capacity of the Cadastre is addressed in article 3 of the PLREC in very general terms, as the content of the cadastral descriptions included in the regulation is a mere mention and clearly leaves the door open to future extensions. "Cadastral description of real estate shall include its physical, economic and legal characteristics, including location and cadastral reference, surface area, use, type of crop or harvest, construction quality, graphic representation, cadastral value and cadastral titleholder". In any case this would be the absolute minimum requirement of any cadastral registration, allowing the addition of other information as necessary for the correct fulfillment of the duties of the institution (8) within the framework of the mission defined in articles 1 and 2 of the Project.

The content of the cadastral decription of real estate is therefore *its physical, economic and legal characteristics*. Both the PLREC and the LREC mention only the few principal characteristics they have wished to distinguish above the rest and which can be considered as the *essential contents of cadastral registration*.

These characteristics can be separated into two groups – those that are merely listed, and the others that have been defined or established in more or less detail. The reasons for this different treament are both legal and practical in nature. On one hand, it is clear to everyone that a law cannot and should not invade the area of activity of the regulation; and on the other, the principle of legality or of legal reserve establishes that it is the General Courts that must decide on the most important issues due to their direct relationship to citizens' rights or, specifically in our case, to the obligation to declare, in accordance

(7) Understanding the term to mean co-ordinated estates are those identified in the Property Register with their cadastral reference, and not in the sense attributed to it by Royal Decree 1030/1980, of 3 May, on co-ordination of the Topographic Parcellary Cadastrel with the Real Estate Property Register.

(8) For example, certain environmental characteristics of the territory or the cadastral history of the estate.

with the principle of *no taxation without representation*; and lastly, the second group is subject to the rules of general legal practice that establish that it is not necessary to specify concepts whose meaning can be interpreted directly from the sense of the words employed by the legislator.

Thus, the characteristics that defer to the regulation are *surface area, use, type of crop or harvest,* and *quality of construction*, while the law develops, at least to the minimum extent necessary, the *cadastral reference, graphic representation, cadastral value* and *cadastral titleholder. Location* is the only one of the required charactertistics that, since its meaning is clear, merits no further clarification.

We will now go on to review the principal characteristics defined in the law itself.

Cadastral Reference

The cadastral reference is the cornerstone of the function of collaboration for reinforcement of legal security and the security of real estate traffic that the LREC – and previously Law 13/1996 and 24/2001, modified by Law 48/2002 – has entrusted to the Cadastre. It is the cornerstone because it is the encoded expression of the physical reality of the real estate, such that by means of the cadastral reference all other characteristics of the estate can be known. This concept is covered in the first paragraph of article 6.3 of the PLRC ("each estate will be assigned a *cadastral reference* for purposes of identification") which tells us that the relationship between the estate and its reference is unique and unrepeatable. Thus, identification is unequivocal and therefore, a *certitude*. The remainder of the regulation is dedicated to developing the foregoing: the cadastral reference is "an alpha-numerical code that allows unequivocal location of the estate in the official cartography of the cadastre".

Cadastral cartography

Said oficial cartography – not, therefore, just any cartography – is the means to knowledge of the physical reality it represents, expressed both in the cartography itself and in the literal information that completes the cadastral description of the estate.

To this effect, cartography has been awarded a specific title in the PLREC, which establishes (article 33.2) that "the geometric basis of the real estate cadastre consists of the *parcell cartography* prepared by the General Directorate of Cadastre", which is "thematic in nature" (article 35.1) in accordance with Law 7/1986 on Cartographical Regulation.

Thus, the *official cartography of the Cadastre* is a *parcell cartography* whose aim is to graphically represent real estate for purposes of cadastral description (article 33.1) with the legal repercussions that this implies, particularly that of the link with public deeds and the Property Register via the cadastral reference; and that of the descriptive and graphic certificates (Title VI of the PLREC and article 53 of Law 13/1996). No other cartography can fulfill this purpose, both for the reasons given above and also because, per article 4 of the PLREC, cadastral cartography is the exclusive competency of the state.

To guarantee the correct fulfillment of this function, article 34 of the PLREC establishes that cadastral cartography "*shall define* – among other characteristics considered relevant – *the shape, measurements, and location of the different estates* subject to registration in the Real Estate Cadastre". To this effect it will include, as well as *cadastral polygons*, "the *parcels* or portions of land that delimitate the real estate, the buildings located in same and, in the event, any *subparcels* or portions dedicated to different crops or uses".

A guarantee of quality and of co-ordination of this specific cartography with the national cartographic system is provided in the last paragraph of article 35 of the PLREC, whereby "cadastral topographic work will use suitable tecniques to ensure linkage of the *cadastral topographic network* with the national goedesic grid" which is the competency of the National Geographic Institute, in whose Central Map Register the *basic cartography* prepared by the General Directorate of Cadastre must be registered.

Notwithstanding the above, it should be noted that said basic cartography is not cadastral cartography *per se*, but rather the means necessary to obtain it, thus the principle of exclusivity of the competency of the Finance Ministry does not apply. This is, again, for reasons of co-ordination and economy, and of the need to respect the areas of competency of other administrations. Since basic cartography bears no special legal relevance (although it does bear practical relevance) from the point of view of the competencies of the cadastre, it would not make sense for the law to prevent the cadastre from using cartography drawn up by other administrations or entities or simply, that those other administrations could not obtain basic cartography for their own purposes. Both this rationale and the fact that basic cartography that must obligatorily be registered in the Central Cartographic Register is – to our purposes - only the cartography drawn up by the General Directorate of Cadastre, allow us to conclude that this cartography, as mentioned previously, remains outside the exclusive competency of the State.

Within this same instrumental category – which per paragraph 2 of article 35 of the PLREC is now called *auxiliary resources* of cadastral cartography – the project includes another group of cartographical tools that are equally necessary to perform the functions of the Cadastre, such as orthophotography, aerial photography, maps of municipal boundaries and maps of buildings, parcels and evaluation polygons, as well as "any other aspects subject to graphic representation *necessary* to correctly fulfill procedures" of cadastral evaluation.

Cadastral value

Cadastral value is the third of the four cadastral characteristics of real estate on which the law has specifically focused. Justification in this case is not merely a question of the legislator's preference, but of the principle of legal reserve established in article 10 of the General Tax Law, in attention to the fact that cadastral value is or forms part of the taxable base in numerous taxes.

What the LREC has done in this area is to reinforce the legality of the cadastral value. To achieve this, it first defines cadastral value (article 22 of the PLREC) as an "objectively determined" value – blocking the way to any consideration of subjective values in its calculation – "based on the data in possession of the cadastre" – thus excluding other objectively measurable or observable data or variables that, although these might influence the formation of market prices, are not taken into account due to the need to guarantee equality, certitude and publicity in the process of cadastral evaluation and also due to the informative constraints implicit in any model of real estate asset evaluation.

Objectivity is, therefore, the first distinctive aspect of cadastral evaluation. Is this objectivity desirable? The answer lays not so much in the theory of the value as in the use of this specific value, the cadastral value – and in the conditions in which said value should be obtained. From the viewpoint of fiscal equity, it is a question of measuring, in a reasonable and controllable fashion, the economic capacity of the taxpayer, understanding economic capacity in our context to be the real estate value. Further, the cadastral value is a legal characteristic of all the estates registered in the cadastre and, in order to properly fulfill its function of distribution of the tax load, would have to be established simultaneously for all these estates. This is incompatible with inquiry into the subjective variable that can, in certain cases, appear in a less restrictive concept of value.

Without going into detail here with regard to the *technically sub-optimal practice* followed by the Spanish Cadastre and other countries which have a similar institution to establish cadastral values over time – certainly an important question which, however, exceeds the purpose of this article - I would like to emphasize the massive nature of cadastral evaluation, which prevents, due to the informative restrictions of the market taken globally, the introduction of a subjective component in the value equatiom (9).

To conclude, cadastral value can only be objective. And here, the path of the law and that of the regulation is seen to be the best to satisfy fiscal needs and at the same time, respect the taxpayer's right not to be taxed arbitrarily, whereby objetivity is thus in the taxpayer's favour.

Following definition, the LREC and PLREC (article 23) go on to determine the *criteria and limits* of the cadastral value, which are merely a development of the principle of objectivity I have just mentioned. It can be said, and rightly so, that legalisation of the cadastral value is incomplete, both because criteria often appear in inexact terms (v.gr. "the location", "urbanistic circumstances", "productive capacity", "subcontract benefits", "other conditions of the buildings", "market circumstances and values") and also because, in its closing clause, it expressly removes itself from legality by submitting itself to "any other legally determined relevant factor" (letter (e) of paragraph 1 of article 23 of the PLREC). This is so much the case that the Constitutional Courts have repeatedly admitted (sentences 37/1981, 6/1983 and 79/1985, among others), that it is consitutional for the regulation to aid and complement the law where the latter does not reach (10). Since this law is, by a large margin in comparison to preceding laws, the one that has most thoroughly attempted to reserve itself from matters of cadastral value, and is the only currently valid tax law that has not limited itself to appealing to the "real value" or the "market value" to dispatch the establishment of the taxable base of any tax. Despite this, we must recognize that *legislation* is effectively incomplete – simply because it is neither necessary nor possible (11) – but at the same time it must also

(9) These restrictions also include the conduct of non-revelation of said component when the aim is to tax the estate.

(10)"It is aceptable for the regulation to collaborate whenever absolutely necessary for technical reasons ... and provided that said collaboration takes place in terms of subordination, development and complementarity"" (STC 233/1999, F.J. 9º).

(11) Regarding the reserve of the tax law in matters of cadastral evaluation, the Constitutional Court has stated, in the repeatedly quoted STS 233/1999 (F.J.24º), the following: "The Executive Committee of the Catalonian Autonomous Government claims that art. 68.2 Local Tax Law, upon submitting for determination of the tax base of the IBI to a future regulation, "leaves said determination of the free arbitration of the Executive" vulnerating the principle of tax legality: although "it must be remembered, once again, that the reserve of the tax law – especially when, as in this case, the matter is local taxes – is relative, such that whenever essential for technical reasons or to optimise fulfillment of the objectives proposed by the Constitution or the Law, the regulation may be used in aid, a collaboration that may be "especially intense in the establishment and modification of amounts. In this respect, in STC 221/1992, after advising that "the tax base is also an essential element of the tax and therefore, should be regulated by law, it points out, "it must be known, however, that in a modern tax system the tax base can be made up of multiple facts of very diverse nature whose establishment requires at times complex technical operations. This explains why the legislator refers to regulatory norms the concrete determination of some of the elements of the base (legal fundamentals). Therefore, as we have mentioned, there can be no doubt that the technical difficulty of evaluating rural estates is the reason why the legislator has opted for a system of capitalisation of real and potential revenues of the estates. This notwithstanding, it is evident that neither the technical complexity nor the flexibility of the reserve of the law in this specific element of tax payment allows the law to abdicate from all regulatory activity delegating the establishment of the amount to the free decision of the government but rather,as advised in STCC 185/1995, the ideal criteria and limits must be established to prevent the careless action of the law. And that is precisely the case, given that the Local Tax Law perfectly establishes the capacity of decision on the amount of the IBI in its art. 66.2 that for "determination of the tax base, the cadastral value of the real estate will be taken as its value, established with reference to the market value, and in no event in excess of said market value". It is therefore clear that the Law establishes a maximum that in no event the Govenrment may ignore; maximum limit of the tax basis – the market value – which, as we have mentioned when reviewing the regulation of public prices, since is constitutes the remission to technical critieria, must be understood as sufficient to respect the reserve of the tax law".

be accepted that what the law does not include can neither be present in the criteria of the authorities applying the law, but rather in the regulation.

In reinforcement of this goal of legalisation, the LREC dedicates a comparatively (12) large expanse to determining the *limits* of the cadastral value. Firstly, because to the traditional limit of the *market value* it adds a new one – applicable to estates whose sales price is administratively capped –that of the *official price*; secondly, because the LREC has not limited itself to recurring to the "market value", but rather offers a definition of what the market value is, thus focusing eventual legal debate on the procedures for impugnment of the cadastral value and therefore providing the taxpayer with the guidelines to activate that value, if necessary, and third, because to fully guarantee that the market value will not be exceeded in the estates where it is applied, the law forces the reduction in the value resulting from the *value proposals (13)* – the theoretic market value – by means of a *market reference co-efficient* established by Ministerial Order.

Cadastral titleholders

The legal statute of the cadastral titleholder is the subject of Chapter II of Title I of PLREC, and proceeds entirely from article 3 of the LREC. These dispositions dictate that cadastral titlehold is acquired in the *act of cadastral registration*, and that titlehold is either *natural or attributed*.

Natural cadastral titleholders are exclusively individuals, since only individuals can acquire property or the other rights subject to cadastral registration, while entities withaut legal personality are, for purposes of the LREC, *attributed* titleholders. These categories are treated differently in the PLREC, which regulates the first in part 1 of article 9 ("the physical and legal individuals registered in the cadastre *are* the cadastral titleholders ..." and the second in part 3 ("when a real estate or a right ... belongs *pro indiviso* to a group of people, cadastral titlehold will be *attributed* to the community constituted by all of them)".

This does not mean that the community itself is considered the owner of the estate, since the precept states that the estate belongs to *several people*. It is rather a practical way – rooted in the very specific article 33 of the General Tax Law – of tackling the difficulties that these collectives imply.

The last portion of part 3 of this PLREC article offers further practical solutions. The logical scheme of the rule is this: firstly, when there are several owners – and based on the fact that registration of all of them is voluntary, not obligatory, as we shall discuss later – the legal title pertaining to each in the estate is cadastrally condensed and symbolised by the name of the legally constituted community ("*community exists"* – says article 392 of the Civil Code – when the property of a thing or a right pertains *pro indiviso* to various people"). Secondly, given the fact that the obligation to register in the cadastre is tributary in nature, the community must have a Fiscal Identification Number (NIF) as described in article 1 of Royal Decree 338/1990, thus the name associated with the NIF is what will appear in the cadastre; and third, in the event that the obligation to obtain and use the NIF is not fulfilled by the community at the time of cadastral registration, cadastral titlehold will not remain vacant or undetermined but is *assigned*, by virtue of the law, "to any one of the commonholders, members or participants in the given community or entity." This last is the solution given by the legislator to incompliance – which does not preclude a penalty for the offense, typified in article 78.1.(e) of the General Tax Law – and should only be interpreted as such, since the cadastral titleholder *by assignment* is not a genuine titleholder - who must be *natural or attributed*, as we have already seen – (the former case would be contrary to the most elemental civil rules and in cadastral terms would deform the reality of the real estate that the Cadastre is intended to manifest and register with the maximum degree of fidelity), but rather a *legal and obligatory representative* – while non-fulfillment lasts – of the offending entity. The rule is therefore strictly practical, similar to article 43.4 of the General Tax Law.

Despite the above, the LREC has opened the door to a progressive incorporation into the cadastre of the true owners of the estate, the members or participants in the non-physical entity.

The voluntary option for reflection in the cadastre of the plurality of owners is contained in the second paragraph of part 3 of article 9 of the PLREC, and is governed by the principle of unanimous agreement of the parties, that can be expressed at the time of any of the registration procedures – except during the process of evaluation - used for the composition and maintenance of the Cadastre and regulated by Title II of the PLREC. Thus, access by co-titleholders to the cadastral registration is designed as a means to enhance the information that the cadastre provides without affecting or conditioning the title that corresponds to the non-physical entity formed by the co-titleholders. This reconciles the interest in obtaining this degree of detail of the information with the need to prevent situations of indeterminate titlehold that would occur if it were only possible for commonholders to register, in which case administrative costs would in many cases exceed the benefits of obtaining the information.

In line with the above, the option of voluntary and unanimous registration is exclusively based on reasons of efficiency, and can therefore be considered a first step on the road to an increasingly exact and thorough cadastre in this area. In other words, to the extent that it is possible to obtain information of co-titlehold in a less costly fashion – both for the parties and the Administration – and that its maintenance can be guaranteed without generating significant transaction costs, the conditions of voluntary and unanimous registration are destined to cede in favour of compulsoriness, which may in future cause the reform of the legal regimen of cadastral titlehold in order to overcome the transitory nature that vocationally characterises the precept we are discussing.

Actually, the transitional perspective is a good viewpoint from which to understand what for many is

(12) Article 66 of Law 39/1988, regulating Local Treasuries, limited itself to prohibiting cadastral value to excede the "market value".

(13)Vid. Articles 24 to 27 PLREC.

an excessively rigid rule from which spectacular results cannot be expected. Until now the cadastre did not feature co-titlehold in any form (14), since for purposes of the IBI it was sufficient (or rather, hypothetically, it *might be* sufficient) to have an *invoice in the name of the community of co-owners*, whereby it was also expected, hypothetically, that *somebody would make payment*. In recent years, however, we began to see that this simple rule was insufficient for *other purposes*, generating the need to annotate the co-titleholders in the cadastre for, e.g., management of CAP subsidies or to avoid deforming the patrimonial picture offered by the cadastre for grants or for Personal Income Tax. In these conditions, and given that we were starting practically from scratch, the legislator has been particularly cautious in the matter, allowing access of the co-titleholders to the cadastre, but demanding that they previously be made aware of the benefits that said access can provide and, further, that they commit to declare the subsequent changes that may occur in the future in the internal composition of the entity (article 16.2.f of the PLREC) since it would be useless to fully identify the commonholders at the start if later nothing is done to prevent the deterioration of that information.

Perhaps, effectively, the narrow limits of the precepts discussed above are incapable of producing spectacular results, but it is also true that the legislators intention at this time is to open the door to the progressive incorporation in the Cadastre of the true owners of the estate. The size of this door will depend on demand and, above all, on how easy it is to bring to its threshold those who have to cross it: clearly, when we solve the important management problem that these entities represent from the technical-cadastral viewpoint, (registration of all commonholders with their share of ownership; guaranteed communication of subsequent changes; coherence between share percentiles and cadastral evaluation procedures and partial rights; arithmetic match of the multiple possible combinations of rights and individuals, etc.) the need for reform of the law will be evident, but it is also true that, for the time being, the formula adopted as a *first stage* on this road is a reasonable way to break the mold of the traditional design of the cadastre deriving from its functional sufficiency in the past and, in summary, to start to define the legal features of the new multi-purpose model whose final aspect will, without a doubt, include exhaustive, exact and obligatory co-titlehold data. The legislator has simply not wanted to impose it now in order to prevent excessive cost to the citizen.

This same perspective of transition is equally applicable to the analysis of other aspects of article 9 of PLREC whose status or formulation can also be explained as a stage on the road to an increasingly complete cadastre. For example, registrable rights – that can confer cadastral titlehold via inscription – are limited and exclusive, and grant preference to each other due to their closer proximity to the effective use of the given estate.

The origin and explanation for the above obviously lies in the Real Estate Tax, whose regulation of taxpayers features this closely reconciled precept. That is, the individual who features as titleholder in the Cadastre is classified by the IBI as the taxpayers (cfr. Article 9.1 of PLREC and articles 62 and 64 of Law 39/1988). This is understandable taking into account the unbreakable connection between the two institutions and also the option adopted by the legislator for a process of transition towards a more expressive and versatile cadastral titlehold.

This last purpose is addressed in paragraph 2 of article 9 of the PLREC while the last paragraph of part 1 clearly derives from the local fiscal tradition of our cadastre. In effect, as a novelty of the LREC, after 2005 (15), the cadastre will begin to register owner networks and, more generally, the owner that up to now could not register because in his place appeared – as the taxpayers of the IBI – the lessee, the surface tenant or the user of his estate. Although incompatiblility or exclusion made full sense for the municipal tax, this is not the case for the new focus of the cadastral institution, and neither for Personal Income Tax or the distribution of grants, where exclusion, rather than a solution, poses a serious problem, as it is easy to imagine. This gives rise to the argument that the last paragraph of part 1 of article 9 of the PLREC is closer to the old cadastral model than to the new one. The reason, once again, lies in the caution that has guided the legislator towards the transitional path, and it is not difficult to believe that in future it will disappear allowing, as a minimum, voluntary registration of the concurrent rights and ideally, their compulsory registration in the Cadastre.

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(14) Except for certain co-titleholds informally reflected in the context of the rural cadastre with regard to CAP.

(15) For a detailed study of the transitory regimen of the LCI and the IBI, see BAUZÁ CARDONA, G. I. (2003): "El régimen transitorio en la nueva normativa reguladora del Catastro y el Impuesto sobre Bienes Inmuebles". CT/CATASTRO. 47, pp. 7 a 16.