

## LAW OF REAL ESTATE CADASTRE (II)\*

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Part one of this study concluded that, in matters of cadastral titlehold, the then PLCI (hereinafter, Merged Text of the Law of Real Estate Cadastre, passed by Legislative Royal Decree 1/2004 of 5 March, or TRLCI) was “closer to the old cadastral model than the new one”, since it allowed titleholders to choose whether or not to register the rights of joint owners or members of non physical entities, while the registration of concurrent rights was limited to the rights holders legally required to register in the Cadastre for administration of the Real Estate Tax.

The explanation I gave then for the exception to the rule of compulsoriness turned out to be short-lived. Just a few months later, Law 2/2004, of 27 December, on the 2005 National Budget, thoroughly modified the text of article 9 of the TRLCI. It is therefore necessary to discuss the new rule in order to review the complete replacement of the provisions valid in 2003 and 2004 which have ceased to be valid as of 2005.

The change is far-reaching in scope, and it can no longer be said that the Law of Real Estate Cadastre has taken half measures. On the contrary, the Law has evolved with uncharacteristic speed, shedding what in retrospect can be seen as excessive precaution and serious self-limitation. The new legal regulation on cadastral titlehold is today effectively based on the principle of compulsory registration of concurrent or shared rights. Titlehold has therefore ceased to represent a straight line to become a three-dimensional matrix.

“Cadastral titleholders are” –per the new regulation– “those physical and legal entities registered in the Real Estate Cadastre as the entitled holder, relative to the whole or part of an estate, of one of the following rights:

- a) Right of full or partial ownership.
- b) Administrative concession of the real estate or of the associated public services.
- c) Real rights of surface.
- d) Real rights of use.”

(\*) The first part of this work was published in 2003 in edition 48 of CT/CATASTRO. Part 2 now appears following approval of both the (then) Merged Text of the Law of Real Estate Cadastre and its regulations for enactment. With only the new regulation on cadastral appraisal still pending, specific legislation on the purpose and activity of our institution has evolved significantly, and we are now in a position to reinstate the work interrupted at that time precisely because of the need to wait for these provisions to see light.

This first paragraph of article 9 of the TRLCI clearly reflects the change in direction on this matter as of 1 January 2005. The excluding preference defining the rights holder to be the entity liable for payment of Real Estate Tax no longer exists. Rather, cadastral titlehold can and should include all rights holders, of full ownership, bare ownership, concession, surface or usufruct; and each right of each rights holder to the entire estate, or part of the estate. For example, the Cadastre will include the surviving spouse and his/her children (and not only the former, as was the case prior to Law 2/2004), two spouses co-owning their home and, in general, *b* bare owners and *u* usufructuaries of each nth part of the estate.

Having thus solved the quantitative aspect, we should also discuss the matter of quality: why only these rights?

In principle, we can assume that there are two reasons. The first is that these rights –especially a) and d)– are the most common or widespread. This reason justifies the selection made by the combination of articles 61 and 63 of the Merged Text of the Law for Regulation of Local Tax Administration (TRLRHL) to define who is potentially liable for payment of Real Estate Tax.

In short, the inclusion of other uncommon or unusual rights of usage –for example, dwelling rights– is probably not worth considering (once again, because in the event of compulsory registration of these rights in the Cadastre, the costs, both for the individual and the Administration, would outweigh the benefits).

Secondly, the Cadastre is not a Real Estate Register and does not fulfill this function. Therefore, it is not the purpose of the Cadastre to make space for whatever rights are registrable in the Real Estate Register, but rather, to keep to what is our true shared mission: the definition of real estate as objects generating rights, and to register those rights which, due to their majority status and their relevance for taxation, are the principal aim of Real Estate Taxation. (1)

(1) We could here make a passing mention of the debate, widely extended in international forums, on the future functions of the Cadastre, for example, the document CADASTRE 2014 proposed by the International Federation of Geometricians ([www.fig.org](http://www.fig.org)), or the draft declaration on the Cadastre and the Real Estate Register currently under discussion in EUROGEOGRAPHICS ([www.eurogeographics.org](http://www.eurogeographics.org)) and the Permanent Committee on Cadastre in the European Union (PCC) ([www.eurocadastre.org](http://www.eurocadastre.org)). However, as well as leading us away from our purpose, these documents can not be properly summarised in the space of a footnote although I can now say, without too wide a margin of error, that the future of the relationship and connection between the Spanish Cadastre and the Real Estate Register has not yet been written, and that technology, the demands of society, and the European political and economic context will sooner or later lead to a single shared database, or more generally, to fully coordinated and interoperational databases.

The first of the two reasons outlined above is, however, contradicted in paragraph 4 of article 9 of the TRLCI which, while first denying them the condition of cadastral titleholders, requires registration in the Cadastre of the holders of real usage rights other than those listed in 9.1, although “exclusively for purposes of information relative to the assignment of real estate income in Income Tax”. Once again, a measure that falls far short of the overall objective.

Note that denial of the status of cadastral titleholder –which I will refer to later– neither adds nor subtracts from the substance of what is here being discussed. After all, anyone –cadastral “titleholder” or otherwise– using a mooring, a premises, or an apartment in a marina, having been granted right of usage by concession of the licensee of that marina, must necessarily be included in the Cadastre, given compliance with the remaining terms established in article 87 of Royal Legislative Decree 3/2004 (Merged Text of Income Tax Law) in order to assign presumed income for said rights and estates.

This naturally gives way to the coherence of the rule with what has already been said regarding what is essential for the Cadastre. Once again, Cadastre and taxation go hand in hand, although in this case the pairing, far from being accidental, is strategic in scope. I will explain this when the time comes to discuss other aspects of the reform brought about by Law 2/2004, such as the communications and quasi-communications of the AEAT (article 14.d and 7th Transitory Provision of the TRLCI).

Whatever the case, the legal requirement for titleholders to “declare to the Cadastre” the rights of usage not expressly named in article 9.1 of the TRLCI clearly derives from the order of article 9.4. Some will say that it can also be deduced from article 13.2, which establishes the requirement for “titleholders of the rights referred to in article 9” to “formalize the declarations leading to incorporation in the Real Estate Cadastre of estates and their modifications”, however I believe that this conclusion is mistaken.

The question is, then, does article 13.2 refer to the titleholders of all usage rights referred to in article 9, or only to those named in its first paragraph?

The question is hardly innocent, given the penalties deriving from non-compliance with the obligation to declare, but aside from this, neither is it gratuitous. We must observe two aspects that apparently contradict this obligation: on one hand, as we have seen, the titleholders of usage rights defined in article 9.4 of the TRLCI are not cadastral titleholders; on the other hand, article 13.2 itself adds that “the titleholders of the rights referred to in article 9 are subject to the obligation to ... provide identification details of those who are holders” of the rights referred to in article 9.4. From this perspective, the subjective scope of the first clause of article 13.2 of the TRLCI is unclear.

A first interpretation of the text would lead us straight to an affirmative answer: in effect, inasmuch as the legislator fails to make a distinction and indicates “the titleholders of the rights referred to in article 9”, this undoubtedly includes those in 9.4, meaning that the person acquiring the right of usage of a mooring in a marina must declare it to the Cadastre. Why, then, the correlative and specific requirement for information in the second clause of article 13.2, which would, in this example, fall to the licensee of the mari-

na –who in this case is the “cadastral titleholder”– per article 9.1?

In my opinion, the correct interpretation of 13.2 leads us to the opposite conclusion: that the mention of article 9 should be understood to refer to its first paragraph and not to the whole. For two reasons: firstly, it would be absurd to establish the requirement for information on third parties in parallel with the requirement for these third parties to declare, for such a specific case and in such an inadequate location (the duty of collaboration of third parties is properly located in Title IV of the TRLCI, and not in Title II, which establishes the duty to declare). Secondly, the fact, possibly clearer still, that article 15 establishes as a typical case of cadastral request, that which “may” (and not “must”) be presented by the titleholders of the rights defined in article 9.4. The explicit rule (“the user of the mooring may request that his/her right be registered”) therefore prevails over the more general rule governing the duty to declare, since –and let’s not lose sight of this– in the Law of Cadastre, declarations and requests are always, on principle, disjointed and complementary. In other words: it is absurd for someone to be simultaneously required to declare or inform the Administration of something and to be able, at his/her own discretion, to offer up this same information, since in the case of obligation, free will only serves and is applied as an instrument of compliance (or non compliance) and never as the final purpose. The type of will expressed in “I ask because I should” is not the same as “I ask because I want to”: in the former, will is subject to an external imperative, and in the latter, to free will and will usually seek the benefit of its owner, while in the former case it is also usual for negative consequences to occur.

One last knot remains to be tied in our review of article 9.4: why does the Law deny the holders of these rights the status of cadastral titleholder? Here practical sense again raises its head, or in a better turn of phrase, the need to prevent excessive workload for the Administration, the permanent feedback between reality, administrative capacity and the fullness of concepts and institutions.

In principle I would say that there is no theoretical reason for this mutilation, and that one would have to investigate and be satisfied with discovering what differentiates cadastral titleholders from those who are not and draw the appropriate conclusions (but not the reasons, other than those modestly offered by the prudence of the administrator). And we see that:

- 1) in article 10.1, cadastral titleholders “hold the rights recognized in article 34 of Law 58/2003, on General Tax, with the specialties established” in the TRLCI;
- 2) correlatively (article 10.2), titleholders are assigned the generic obligation to collaborate with the Cadastre, including the provision of “whatever data, reports or antecedents may be necessary” for administration of the Cadastre. Further, compliance with this obligation is a condition of the validity and the possibility of presumption of accuracy of the cadastral data benefitting said titleholders and which is established in article 3 of the TRLCI; therefore, the obligation refers to their own data, and not those of third parties, as we will see later.

If this is, in summary, the legal statute of the cadastral titleholder (I will not consider, for now, the special rules of representation of article 9.6 of the TRLCI), we have to conclude that the titleholders of the rights of usage defined in 9.4 should not be subject to application of their assets or liabilities, nor the rights of article 34 of the LGT (but Law 30/1992, ex article 12 of the TRLCI, is still valid and applicable!), nor the obligation to collaborate of article 10.2 of the TRLCI. In view of the above, it occurs to me that this statute could be left behind in the short term, given its limited scope and, to a certain extent, its contradictory nature.

I believe I can affirm here that this rule (“consideration of cadastral titleholders will not apply ...”) is notable, not only for its limited productivity, but also for having been the tactical vehicle of the reform introduced at the end of 2004. It was a matter of enabling the Cadastre to satisfy the need for information of the AEAT and for this purpose—was the thought at the time—the text finally approved by Parliament was enough, and a closer connection with the structure and logic of the cadastral law as a whole was not necessary (2).

#### PREFERENCE OF RIGHTS, REGISTRATION OF SPOUSES AND JOINT OWNERS

Law 2/2004 introduces further innovations, so I have not yet completed the task of discussing the whole, or at least the major part, of the new article 9 of the TRLCI. Other noteworthy aspects, which I will go on to discuss, are the preference of registrable rights or rather, the disappearance of this preference; the registration of spouses and joint owners; and lastly, the afore-mentioned rules of representation.

With regard to preference: possibly the most important innovation of the 2004 reform, from the conceptual viewpoint, is this disappearance of the preference of registrable rights in the Cadastre. As mentioned previously, we are now faced with a matrix of titleholders which, in the most complex case, can be three-dimensional. Thus, since 1 January 2005 the Cadastre contains, as well as the identification of the entity who is the passive subject for the purposes of Real Estate Taxation, any other holder of the rights listed in article 9.1 (and 9.4), regardless of their number and regardless of how minimal their relevance in terms of the entire estate.

Logically, and as I anticipated earlier, this change originated with the Resolution of the Secretary of State of

Taxation of 22 December 2003 ([www.catastro.meh.es](http://www.catastro.meh.es), regulation, 4.1.5) and with the Plan for the Prevention of Tax Fraud submitted to the Council of Ministers on 4 February 2005 ([www.agenciatributaria.es](http://www.agenciatributaria.es)), which places emphasis on the real estate sector and is based on a strategy of close collaboration between the Cadastre and the AEAT within the framework of the provisions of the mentioned Resolution. This brings an end to the long period that began with the creation of the Consortiums for the Administration and Inspection of Territorial Taxes in the mid 1980s which increasingly separated the functions and operations of the two institutions, or more exactly, of the different organizations that in the past twenty years have exercised the competencies that today correspond to the AEAT and the General Directorate of Cadastre (3).

But regardless of its origin, the change we are now discussing has consequences for the traditional perspective from which society has viewed the Cadastre and the way in which society relates with the Cadastre. As well as the improvement in compliance with Income Tax and subsequently in the fairness of Real Estate Tax, it is noteworthy that the cadastral reference has effectively become the single identifier of real estate property for taxation purposes (almost 26 million urban estates have been identified via Cadastral Reference by taxpayers of the 2005 Income Tax in their tax statements presented in 2006). Further, from the viewpoint of local governments, we must also emphasise the repercussions of the change in article 9 of the TRLCI in terms of administration of Real Estate tax, since in the event of several cadastral titleholders it is the local governments who must identify and select which of these titleholders is liable to pay the Real Estate tax by virtue of the level of preference of the titleholder's right, per article 61 of the TRLRHL. Thus, a collateral effect of the new article is that local entities have gained a greater degree of autonomy in the administration of their real estate taxes.

With regard to the registration of spouses in the Cadastre as co-owners of real estate, the 2004 reform introduced a specific paragraph (number 3 of article 9 of the TRLCI) indicating that “when some of the rights referred to in paragraph 1 of this article are common to both spouses, in accordance with the provisions or regulatory pacts of the corresponding marital economic system, cadastral titlehold will correspond to both and will be allocated equally between the two, unless a different share is justified”. This means, as a minimum, that (i) both spouses must be registered in the Cadastre as co-titleholders of the real estate properties they share, and that (ii) by defect, the rule presuming equal acquest or 50-50 ownership is applicable.

(2) We should not lose sight here of the dynamic perspective which I have so often tried to explain our cadastral legislation: once again we read that “cadastral titleholders” are those “who may be passive subjects of the Real Estate tax” (before 2005, one could only say “the cadastral titleholder” in the singular, is the person who “should be the passive subject of the Real Estate Tax”). However, as a novelty, and with the timidity of the unknown, a new group of cadastral subjects appears whose characteristics are stated in the positive “those who should allocate assumed income in Income Tax) and also, for historical purposes, in the negative (unrelated to real estate tax).

(3) The first results of the plan can be summarised in the following figures published by AEAT in September 2006: 1.357.626 taxpayers declare income from property rental, 15% more than before the Fraud Prevention Plan. These lessors earned 11,107 million euros from rentals, 19% more than the figure declared before the Prevention Plan. Further, 4.328.739 declared ownership of a second residence, 35% more than in 2004, and the income allocated in Income Tax for these second residences or estates other than the primary residence grew by 31% up to 1,624 million euros.

This paragraph has had far-reaching effects on the Cadastral database and elsewhere since its introduction. For reasons of brevity, I will here only refer to the three main effects. Firstly, more than 7 million spouses have been registered in the Cadastre who were previously unidentified; second, the number of Income Tax proposals issued by AEAT and confirmed by the taxpayers has increased from 2.9 million in 2005 to 4.2 million in 2006; and lastly, every cadastral certificate (more than 1.9 million issued via Internet and nearly 500,000 issued on paper in the first ten months of 2006) now specifies the condition of joint titlehold and identifies the spouse. All three aspects represent a huge change to the situation in place up to the end of 2004.

With regard to joint owners, members or participants in non physical entities, which I addressed in the first part of this work, the 2004 Reform continues to be inspired by former article 33 (now article 35) of the LGT. It likewise maintains cadastral titlehold *by attribution*, also discussed in the previous work, and for the same reasons; however, it introduces the obligatory registration of joint owners, who are considered “also cadastral titleholders” as defined in the last clause of article 9.2 and articles 13.2, 16.2.f) and, *a contrario sensu*, of D.T. 7 of the TRLCI.

This measure puts an end to the provisionality and precariousness of the previous regulation whereby the registration of joint ownership was voluntary and at the same time, conditional upon their unanimous agreement. As I said at that time, “to the extent that it is possible to obtain information on co-titlehold in a less costly fashion –both for the interested 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 give way to compulsory registration”. In effect, this has occurred with law 2/2004 and with two posterior administrative actions: firstly, through cross-referencing of information with the AEAT and with the juridical support provided by the 7th Transitory Provision of the TRLCI (also a product of Law 2/2004), more than 600,000 previously unregistered joint owners have entered the Cadastre, free of charge and therefore precluding the need to subject them to formalities or declarations. Secondly, the recent modification, by Joint Resolution of the General Directorate of Registers and Notaries and the General Directorate of Cadastre, of the electronic file required for compliance with the duty to collaborate imposed upon public certifiers by article 35.3 of the TRLCI, includes information that will ensure that, upon its introduction. This improvement is likewise supported by the resolutions of the General Directorate of Cadastre approving new formats for the exchange of information supplied by the agencies collaborating in cadastral administration (4) and by the recent Order of 19 October 2006 (5) approving new declaration formats.

One last new aspect of the current regulation governing cadastral titlehold of joint owners is the eli-

mination of what in the first part of this study I denominated *titlehold by assignment*. The reader will recall that, per the abolished law, “in the event of non compliance with the obligation to obtain and use the Fiscal Identity Number by a community when submitting Cadastral declarations, cadastral titlehold is assigned to .... any one of the joint owners, members or participants...” (6). However, the 2004 Reform rules that the community is the cadastral titleholder *by attribution*, and the joint owners are *natural* titleholders, each of his/her own share. Titlehold *by assignment* has ceased to exist, due to the perverse effects of this rule, both in terms of the fiscal implications of the false appearance of real estate titlehold, and of any other false appearances that this simplification transmitted to other administrations or users of cadastral information, usually to the disadvantage of the affected party. For this reason, the reform legislator has ordered that cadastral registration of the community or entity use a “sufficiently descriptive” name in the event that the property effectively lacks a Fiscal Identity Number, plus a proper name associated with said number (7), thus avoiding the more misleading formula of the previous rule.

## REPRESENTATION OF TITLEHOLDERS BEFORE THE CADASTRE

The last matter addressed in the modified article 9 of the TRLCI is, as mentioned before, the representation of cadastral titleholders before the Cadastre. Paragraph 6 of this article establishes the following:

- “When several cadastral titleholders coincide in the same estate (for example, bare owner and usufructuary), they must assign a representative. Failing this, the representative shall be considered to be the person liable for payment of the Real Estate Tax (in this example, the usufructuary) or preferably, the substitute of the taxpayer if one exists. If said substitute is a non physical entity, representation will fall to any of its joint owners, members or participants”. The rule therefore is that, in the event of proliferation of cadastral titleholders, and taking into account that the Cadastre, as an administrative register of real estate, is subject to rules of common administrative procedure as established in article 12 of the TRLCI (and must therefore notify its actions, offer the possibility of appearance, grant audience and inform interested parties of the proper appeals), these titleholders must unite their representation in a single per-

(6) MIRANDA HITÁ, J.S.: La Ley del Catastro Inmobiliario (I). CT/CATASTRO, n° 48, Madrid, 2003, p.26.

(7) A good example is the community of inheritors consisting of the widower (Expedito) and his children (Cínico and Sofista): until they obtain a Fiscal Identity Number, and without prejudice to the infraction and this might represent, the Cadastre will call them, for example, “Heris of Mrs. So and So”, which is evidently more descriptive than the old alternative (“Sofista”).

(4) Resolution of 31 July 2006 ([www.catastro.meh.es/normativa](http://www.catastro.meh.es/normativa))

(5) Orden EHA/3482/2006 of 19 October.

son, to enable formalities and proceedings affecting them (8) to be carried out in an efficient and economic manner.

Is this requirement logical? Certainly, if we consider the case histories that may have inspired the legislator, we won't have far to look. The General Tax Law of 1963, and the current law, did something similar in articles 33 (LGT 1963) and 35 (LGT 2003) (9). In any event, we should here clarify that, firstly, the cadastral ruling is significantly different to the fiscal regulation, and in fact I understand that the latter is not applicable to cadastral matters, whose own regulation prevails. Secondly, that article 35.6 of the LGT is applicable to Real Estate tax, as well as to other types of taxation (although the special rule contained in article 64.2 of the TRLRHL on the shared liability of concurrent titleholders must be taken into account).

But in the area we are now discussing, the Cadastre, it is nonetheless true that the teleological basis of article 9.6 of the TRLCI is not different to that of article 35.6 of the LGT, which is to simplify administration. Regardless of how appropriate I believe this basis to be (it would be absurd to deny a preference, in the interests of better protection of citizens rights, for individual notification, etc.) it is, however, justified by the equally powerful principles of efficiency and efficacy in public spending, especially in view of the precaution contained in the last clause of this paragraph, which I will discuss later.

Granted that it will not always be possible for different "concurrent" cadastral titleholders to reach agreement to name a representative, the law provides a solution to avoid a situation of indeterminacy that would paralyze the process (or alternatively, would require individual notification): in the event several cadastral titleholders exist and only one of them is considered by the law of real estate tax to be the taxpayer, he/she will be considered to be the representative for purposes of Cadastre. Further, if a substitute exists for the taxpayer in real estate taxation, the substitute will be preferred. In short: if the interested parties do not reach agreement, the representative will be, *ope legis*, the person legally liable to pay real estate tax.

Note that the cadastral legislator has again turned his attention to local taxation, in this case to take advantage of the simplifying formula that the local

taxation structure still maintains to decide who is liable to pay the tax. This is also the reason behind the last phrase in paragraph a) of article 9.6 of the TRLCI: if the taxpayer or substitute is a non physical entity, then, as per the article 43.4 of the old LGT 1963 and article 45.3 of LGT 2003, actions will be addressed to any of its members.

Letter b) of article 9.6 of the TRLCI refers to the specific case of co-ownership of property by married couples: "When cadastral titlehold ... corresponds to the two spouses", says the rule, "representation will be considered to have been granted indifferently to either one of them", adding, perhaps unnecessarily, since this presumption is inherently and in essence *iuris tantum*, that said representation will be demolished "in the event of express indication to the contrary".

There are various points that merit brief attention. To start, we have the basic assumption that the cadastral titlehold of the estate is shared by the spouses, regardless – and this is important – of the marital economic system and therefore also regardless of whether they hold equal shares or different percentages.

In effect, the requirement that the estate "be common" to both spouses contained in article 9.3 of the TRLCI can not be understood to mean "in equal parts", for the simple reason that the last clause of this paragraph provides that the "share" in the property of each spouse may be other than 50 per cent. Therefore, the representation regulated in letter b) of article 9.6 of the TRLCI does not require a minimum percentage, nor does it impose a maximum, of ownership by each spouse; rather, in a manner of speaking representation is conferred upon the spouses by the mere fact of marriage, given co-titlehold. Secondly, the presumed representation is applicable indifferently to either spouse and it is this, or even its denial, that can be subject to "express indication to the contrary". This means that only one spouse can be assigned representative or that said representation can be denied unilaterally or mutually. Note here that, contrary to non matrimonial groups, which are required to have a representative for dealings with the Cadastre, spouses can demand to be heard and notified separately. The legislator has clearly been particularly careful with the increasingly frequent situations where the breakdown of a marriage, and the subsequent legal breaking of the marriage ties, give rise to opportunistic behaviours of one spouse at the cost of the other, and by preventing the denial of representation the intention is to protect one spouse from possible abuse by the other.

From the formal viewpoint, the rule refers to an "express indication to the contrary". Unlike the typical "requests" that must be formalized per the provisions of article 44 of Royal Decree 407/2006 of 7 April, for development of the TRLCI (hereinafter, RLCI), we are here apparently faced with a right (that of denying representation or, in better words, of affirming the right to be heard directly, without intermediaries) that can be exercised in any manner at any time, without requiring a cause and obviously, by either of the spouses, fully efficient *ex nunc* and *erga omnes*. In my opinion this indication could even be verbal, although considering the possible repercussions it would be necessary for the

(8) For example: the notification of the new cadastral value of the estate, the requirement to present data or declarations, the initiation of sanctioning proceedings, etc.

(9) Although in the 2003 version the solution adopted is the solidarity of all obligated concurrent titleholders, and not that of compulsory representation, for this purpose the argument is still valid: "seeing that many liable parties exist, and that this will or can complicate administrative management, it is reasonable to deal with only one of them and for them to reach understanding among themselves". (For a critique on how the LGT has gone too far on this point, see MANTERO SÁENZ, A. y GIMÉNEZ-REYNA RODRÍGUEZ, E. (coord.): LA LEY GENERAL TRIBUTARIA. ANTECEDENTES Y COMENTARIOS. Asociaciones de Abogados Especializadas en Derecho Tributario. Madrid 2005. Páginas 229-231).

Administration to issue a document confirming the will expressed by the party to henceforth be heard in the proceedings affecting him/her and to receive notification of their resolution, whether these are final or procedural.

The rule under analysis concludes by referring the remaining assumptions to the rules of representation contained in Law 58/2003, on General Taxation and also, with the recognition of the rights of the represented parties, in general, to “be notified at all times of the proceedings carried out relative to the estate, and of any resolutions that may be adopted”.

The first of these two points is a typical closing clause, intended more to close any potential gaps than to address an identifiable case, since I believe that letters a) and b) of paragraph 6 of article 9 of the TRLC already span all possible assumptions if we limit the context to the subject of the paragraph (“cadastral titleholders”).

#### THE RIGHT OF THE REPRESENTED PARTIES

Of greater interest is the last paragraph of the article we are discussing: if the *incipit* of paragraph 6 were not enough (“for the purpose of their relations with the Cadastre ...”), we are now provided with additional clarification, by affirming something close to the opposite of what, implicitly, is denied: given that the formalities will be addressed to the representative and that, therefore, the represented party is unable to act on his/her own behalf, the paragraph recognizes the right of the represented party, in compensation, to be notified of the Cadastral acts that affect him/her.

The underlying idea is based on distrust of the fullness of representation: the representative may not have been freely designated, as in article 1709 of the Civil Code, by the represented party. Precisely due to disagreement or lack of communication between the parties, their wishes, while unexpressed, may have to be replaced by a proposal from the legislator to designate as representative the person occupying the subordinate position defined in the TRLCI.

This is clearly a good measure which provides an additional guarantee, not strictly necessary in principle, for the defence of the rights of the represented party. However it is probably excessive if we note the fact that the underlying hypothesis might not arise, since it is perfectly possible that the commonholders reach agreement to name their representative and in this case, like a happy marriage, the additional precaution of this peculiar “right of information” would be unnecessary.

In any case, as in some other walks of life, there is no harm in excess, and we should welcome it here if only because the sheer volume of cadastral production makes this type of counterweight highly advisable, not only for the interested parties but also for the Administration, which should and does defend the maximum security, certainty and protection of the rights of its clients, even above economic concerns.

In view of the foregoing, we should take a closer look at the material scope of this right. What exactly

is referred to by “the proceedings carried out relative to the estate, and the resolutions...”?

We know from article 52 of the TRLCI and the corresponding articles of the RLCI (80 and following) that “anyone may access information on their own property ...”, therefore the right of article 9.6, *in fine*, can not refer to the same thing (data registered or not registered in the Cadastre, viewed thus, as static data) but rather to everything else, which is exactly what makes up the dynamic aspect of the Cadastre: cases, formalities, the “proceedings” named in article 9.6 to summarize the total of actions. The specific mention of “resolutions” appears to be more didactic than innovative, since it does not contribute anything to the text.

We must address one last item relative to cadastral titlehold to close this phase of our panoramic tour of cadastral law. This is the matter of the anachronic –partially and apparently, at least– article 12.6 of the TRLCI.

The adjective is deserved if only because its text comes directly from Law 48/2002 on Real Estate Cadastre, and has remained unchanged despite the introduction of Law 2/2004. The ruling states that “When several cadastral titleholders coincide in a single estate, the proceedings deriving from procedures of incorporation will be addressed exclusively to the titleholder referred to in paragraph 1 of article 9. Nevertheless, whenever the cadastral description might be affected by the resolution adopted, notification of the proceedings will be given to the registered owner of the estate as per the provisions of paragraph 2 of said article”.

Two main questions arise after reading this transcription. Firstly, the purpose of the text is to regulate who cadastral proceedings will be addressed to in the event that several titleholders exist – this initially seems very similar to the content and purpose of article 9.6. Secondly, it is worth noting the call to “the titleholder referred to in paragraph 1” of the same article 9. As mentioned previously, this paragraph contains the definition of *natural titleholders* versus the *attributed titleholders* referred to in the first half of paragraph 2; however, 12.6 requires “notification” of proceedings “to the registered owner of the estate” precisely by virtue of the aforementioned paragraph 2.

In effect, article 12.6 states that administrative proceedings be addressed “exclusively” to the natural titleholder. The first thing to note here is the purpose of the ruling, clearly visible behind the adverb “exclusively”: to simplify the procedure and reduce costs, as in article 9.6. Up to this point the two articles coincide, and one could say that article 12.6 contributes nothing new. However, closer inspection shows that this article does not only refer to a single individual, since the same estate may feature several natural titleholders, several attributed titleholders, and a simultaneous mix of natural and attributed titleholders. Here, in my opinion, is the root of what may be an interpretation integrating the two rules: in the event of concurrence of natural and attributed titleholders, the article is telling us to address the most genuine titleholder, the one described in article 9.1, and relegate the titleholder defined in 9.2 to the position reserved for him/her by the second clause of article 12.6.

And if this is not the case, then there will only be natural titleholders (the article 9.1 titleholders), and in this case article 12.6 has nothing to say, since it would be tautological to state in this context that “if only A exists, then deal with A”, an affirmation that neither economises nor simplifies and much less adds value.

Nor can we say that the problem which nevertheless arises through this interpretation is that 9.6.a) could lead us to the opposite solution, which would invalidate the former (because 9.6 is *lex posterior*) and with it, the whole of article 12.6. Let's think it through: although 9.6 also refers, as an example of application, to the concurrence of several cadastral titleholders, without distinguishing if these are natural or attributed, in other words, implicitly acceptance the concurrence of both types; and although in this case the article provides that, if the parties fail to reach agreement, the representative will be the Real Estate taxpayer (a taxpayer who may be a community, as the TRLRHL tells us, that is, an attributed cadastral titleholder and therefore excluded from article 9.1), the rule then immediately corrects its course by establishing that, if this were the case, the representative will not be the community, but any one of the commonholders, that is, a natural titleholder (10).

We can therefore conclude the following:

- 1) The first clause of article 12.5 of the TRLCI establishes that administrative actions be addressed to the natural titleholder.
- 2) Article 9.6 of the law provides instructions on how to determine, when necessary, which of the different possible natural titleholders is to be considered the effective representative (representing all the natural titleholders and other titleholders). Indetermination is not an issue in this point.
- 3) The possible contradiction between the mandate of article 12.6 and the fact that concurrent titleholders may designate a community as representative, must be overcome by the analogical application of the last clause of article 9.6.a), whereby the Administration may address any member of said community.

It is more difficult to understand the rest of article 12.6, on the obligation to notify the titleholder defined in article 9.2 of the existence of the proceedings, unless we realize that this is an anachronism. When this phase was approved, article 9.2

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(10) It might be worth explaining this point, although the attentive reader will already have discovered it, that although the joint owner appears in 9.2, I am assuming that he/she is a titleholder as defined in 9.1, since he/she is clearly a natural or juridical titleholder, entitled in part to some of the rights defined therein. In effect, the margin of inaccuracy (“the consideration of cadastral titleholders will also be given to ...”) in 9.2 enables us to deny that joint owners are fictitious titleholders like communities, and if they are not, they must be real titleholders in their genuine form which is more in compliance with common law.

referred to the bare owner voluntarily requesting the registration of bare ownership rights in the Cadastre. This bare owner was irrelevant in terms of real estate taxation and therefore also irrelevant in terms of cadastral titlehold as defined in article 9.1 of the original version which, as mentioned in the first study, identified this status with the passive subject of the local tax. However, the former Law of Real Estate Cadastre wished to grant the bare owner, together with the possibility of cadastral registration, the opportunity to be heard in proceedings affecting him/her if, and only if, he/she was previously registered. With the introduction of Law 2/2004, this provision is now senseless and in my opinion has become unapplicable, since it contradicts the rules of representation of article 9.6 which, as well as guaranteeing a hearing through representation at all times, extends and improves upon the situation of the interested party by recognising his/her “right to be informed”, commented upon earlier.

In part one of the study on the Law of Cadastre, published three years ago, I made a detailed analysis of the objectives of what was then a brand new legal text. I also described the pillars of the new Spanish cadastral model, the most important of which are the maximum reliability and accuracy of cadastral data. The paper also described the paths followed to progress from a strictly fiscal Cadastre to a multi-purpose Cadastre, paths that led us to embark upon major projects such as the renovation of the rural cadastre, the creation of the e-Cadastre, and the computerization of all information and procedures.

Detailed analysis of the regulation reflected aspects such as the descriptive capacity of the Cadastre; the Cadastral Reference, conceived as the cornerstone of collaboration in the reinforcement of juridical security and the security of real estate operations; and cadastral cartography, as the means to the physical reality and to the literal information that completes the cadastral description of real estate.

The final part of the article was dedicated to explaining what the Law has represented for the cadastral value, among many other aspects, by reinforcing its legality.

Having summarized the previous work, I wish now to reflect upon what I have discussed in detail in the previous pages. Although the previous work also described the significance at the time of cadastral titlehold, it is here that I have been able to explain the transcendental reorientation of this matter brought about by Law 2/2004 of 27 December.

I have attempted to analyse the new scope of cadastral titlehold, taking apart the characteristics and profiles of the new subjective element defined in article 9 of the TRLCI; the reason for the disappearance of the preference of registrable rights in the Cadastre, an innovation driven, among other reasons, by the emphasis that the Ministry of Finance has placed on the real estate sector and on a policy of close collaboration between the Cadastre and the AEAT. It has also been necessary to explain the new provisions for the registration of spouses in the Cadastre, as co-owners of the estates they share, as well as of joint owners and the communities in which they participate.

Two points, no less important for coming last, are the representation of cadastral titleholders for necessary dealings with the Cadastre on matters of real estate; and the the concurrence of several titleholders in the same estate. In both cases the changes introduced by the regulation are inevitably directed at resolving previous, mostly practical, problems.

I have also left to last what has to be a promise to the reader who has patiently and attentively followed me this far, to continue these annotations in

future editions of CT/Catastro until we have completed our tour of the pages of a regulation, the law of cadastre, that is still largely unknown and unexplored by doctrine but which is transcendental for all public administrations and citizens, and which can reasonably be expected to show significant improvements in the efficiency and quality of this public service, and more important still, in the security and transparency of the real estate market and territorial administration. ■