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# THE PUBLIC REGISTRY OF PROPERTY IN MEXICO

FRANCISCO VILLALON IGARTUA

The Western European legal system has produced, among many others, two legal institutions which affect the system of private property in important ways. These are the public notariat and the public registry of property. The acts of both are endowed with the public authority and both have important roles in securing the proper functioning of the system of private property. A general knowledge of the origin and evolution of these institutions must be presumed and this article will attempt a brief description of the principles governing the public registry of property in Mexico.<sup>1</sup>

The most important single consequence to the emergence of the public registry was the drastic effect that it had upon the traditional modes for creating, modifying or transferring land or interests in land.

Those transactions which formerly could be solely between private parties now require inscription, as well, in order to be valid against the entire world. When a conflict arises between a registered and a nonregistered interest, the former will prevail in the great majority of cases. Since validity against the whole world is the essential characteristic of property in its truest sense, the registry can be said to be the main institution for establishment of property interests.

In order for a document of ownership to qualify for inscription, the property registrar requires that it contain all of the prerequisites laid down in the Civil Code together with those additional formal requirements which he deems necessary. The registrar's authority, in setting up such requirements, is understood to be limited to that which will produce the fairest and most efficient results in dealing with real property and interests therein.

Mexican law requires the inclusion of each piece of real property in the register in order that the chain of title or transmission of ownership may begin from the date of such inscription. This is the process of original inscription of land in the registry. One who desires to have property registered must submit a detailed legal description thereof and must give notice to all of the adjoining property owners as well as publish general notices informing the public at large of the intention to register the particular property. The applicant must also obtain certificates from the tax collector's office and the office of land control, as well as sworn statements from citizens, certifying his lawful ownership of the property or his possessory rights therein. Any party who feels that his rights will be adversely affected by the regis-

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1. A translation, perhaps not entirely satisfactory, of *Registro Publico de la Propiedad*.

tration may bring an action in the court where the original application for registration was made.

From the general character of the law of property registration, it can be seen that the chain of title creates a presumption that the last owner indicated by the register is entitled to deal with the property as he wishes. It is probably this presumption, as well as several other simple subsidiary consequences of registration, that has converted this voluntary act into an almost indispensable one. Only the person having the interest in the land or the notary who drafted the ownership document may inscribe the property.

The Mexican Law of Registry<sup>2</sup> has created a special institution which provides valuable additional protection to the inscription process. This is the so-called anticipatory notice,<sup>3</sup> which the notary must give immediately after the signing before him of any instrument for the purchase or transfer of any property or the modification or cancellation of any interests in land. This notice is effective for a period of 30 days.<sup>4</sup> During the time covered by the preventive notice the first copy of the notarial instrument, which constitutes the title, must be presented to the appropriate registry for inscription. The purpose of the notice is to prevent any liens or other charges against the property from being created in the period between the signing of the notarial instrument and the final inscription of the property. The notice has the legal effect of suspending completely the power of the grantor. He cannot deal with the property in any way, nor can any inchoate rights against him vest within the period.

The main purpose of preventive notice is to strengthen the principle of priority. This principle prevents the simultaneous inscription of two documents purporting to create interests, which are legally incompatible, in the same property. Since the rule of priority guarantees the interests claimed by him who first registers, preventive notice makes it practically impossible to inscribe interests which could cause any litigation over the question of who is really prior in time. Mexican law has adopted in part the German legal principle making registration, in effect, a prerequisite to full ownership. The acceptance was only partial, perhaps due to the influence of Spanish legal thinking. The rule is that registration creates property, provided the instrument inscribed was secured in good faith and shows no substantive defects. Even though the strict civil law rule would state that a second sale is no sale at all, since the second purchaser acquires something that was no longer owned by the vendor, still if the second purchaser reg-

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2. Sometimes alternatively designated Mortgage or Real Property Law.

3. *Aviso preventivo*.

4. This period has been increased to 60 days in the Civil Code amendments already enacted but not yet in effect.

isters his ownership certificate first, the law will protect the interests created.<sup>5</sup>

The constitutive effect of registration of title is limited to those situations in which the bona fide purchaser's instrument has the following characteristics: first, that the vendor's ownership is evidenced by inscription and that there are no patent defects in the inscription; second, that the purchaser's instrument be registered; third, that the purchaser's conduct be bona fide in the sense that he neither has nor should have obtained knowledge of any basic defect in the title of the vendor; fourth, that the transfer was for value. If the transaction was a gift or did not bear other consideration, equity and the security of judicial administration require cancellation where no economic loss has been suffered.

Each of our public registries of property is given control over a specific land area. Within this territory the registry should receive indications, by inscription or notice, of all transactions affecting property therein. This includes not only those interests capable of inscription in the strict legal sense but all other acts or contracts which might affect interests in land; also included are instruments indicating the creation, termination, merger, or any other change in corporations or other juridical persons and the designation of any agent, representative or attorney thereof.

As an example of a typical registry, one might look briefly at that of Mexico City, which serves the entire Federal District. All of the other registries are organized in the same manner as this model and are governed by the civil code in general and by special rules and regulations in particular. This is true whether the registry be for a state or *municipio*.<sup>6</sup> This registry of property has the following sections:

1. That in which all of the transactions regarding land or other interests therein are registered.
2. That in which all mortgages of land are registered.
3. That in which all movable personal property which is capable of individual identification is registered together with any mortgages or charges thereon.
4. That in which are inscribed all of the acts relative to the formation of legal entities of the civil type together with any modifica-

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5. Merican legal rules are contained in Article 3007 of the Civil Code, which, in effect, constitutes a limitation on the general rule contained in Article 3006 of the Civil Code of the Federal District stating that registration will not validate acts and contracts that are null and void in accordance with the law. The exception created by Article 3007 is limited to protecting the rights of purchasers or acquirers of other interests in good faith.

6. *Municipio* is an administrative subdivision of the state approximating the county in the typical state government in the United States.

tions, by-laws and powers of attorney which have been issued by them.

5. That in which the registers and indexes of land-owners are kept and from which certificates of title may be obtained by authorized persons upon request.
6. That devoted to inspecting and regulating the registrability of private instruments.<sup>7</sup>
7. That charged with the conduct of the administrative activities of the registry; the receiving, depositing, and returning of the various instruments processed by the office.

There is also, as an annex to the public registry of property, the public registry of commerce, or commercial registry. Herein are registered all transactions of a mercantile nature; among others, there are those dealing with the formation, merger, or termination of mercantile associations as well as the naming of officers and agents for these enterprises. The effect of registration of commercial contracts is the same as that for transactions dealing in real property. Only those that are registered are valid against third persons.

In order for a certificate of ownership to be valid for inscription, it must, in the opinion of the registrar, fulfill all of the formal requisites and must be accompanied by a receipt for the payment of registry fees, stamp taxes and any other fees levied on the particular transaction. Fees for the registration of most instruments are fixed by law and are based upon a sliding scale. In those cases where the law has set no fee, the registrar fixes a fee according to his discretion and these fees are listed together with those prescribed by the law.

In conclusion, it should be noted that the system described above is the one presently in effect in Mexico. Numerous modifications and amendments to the system have been proposed, and there are pending, but indefinitely suspended, changes in the civil code and a new regulation for the public inscription of property which, unfortunately, do not appear likely to take effect in the near future.

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7. *Documentos privados*. These are instruments which in certain limited cases can affect interests in land and are not required to be made before a notary public.