

Impact of the law on real estate cadastre on improvement of land governance

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Key words: cadastre, legislation, real estate development, land management

SUMMARY

Successful establishing a real estate cadastre is a challenge for every country, especially due to the fact that it activates the real estate market, which is directly related to successful land governance, economic growth and development.

The real estate cadastre is a registry of real estate data, i.e. a public book for registration of real estate data and property rights. In other words, the cadastre is an integrated system of geo-spatial data on real estate and of the rights concerning the real estate.

The system of the real estate cadastre in the Republic of Macedonia has been determined in the Law on Real Estate Cadastre, as well as in the bylaws adopted pursuant to the named Law. The dynamics of establishing the real estate cadastre within the last ten years has been developing at a faster pace, which is not only due to the good management, but also to the innovations in the legal regulations, which enabled the existence of several additional types of rights registration considered as avant-garde, as well as an introduction of private geodetic practice. This paper shall describe the new legal solutions which enabled the establishment of the real estate cadastre throughout the territory of the country within a short time frame, have strengthened the legal safety of registered real estate rights, and had a positive impact on the real estate market.

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1. INTRODUCTION

The concept of integrated information system for real estate geospatial data, along with registration and maintenance of real estate rights in the real estate cadastre in the form of a public book, has been accepted in the Republic of Macedonia, and it is being implemented by one body - the Agency for Real Estate Cadastre (AREC).

By adoption of the Law on Survey, Cadastre and Real Estate Rights Registration back in 1986, framework for a developed system has been established, which system provided real estate information and information on the registered rights from one source, and was fully compliant to the Cadastre 2014 concept – a document published by FIG. Property rights and other real rights are acquired by registration in real estate cadastre, and data from the real estate cadastre are public and can be used by everyone.

The aforementioned Law regulated the registration of real estate rights in the Republic of Macedonia for the first time, and even though it basically enabled the functionalities of the real estate cadastre, judging from the quantity of data and the manner on which it was collected, it proved to be inadequate in terms of financial costs and in terms of time necessary for realization. By the end of 2005, the Law was implemented on approximately 46% of the state territory (Figure 1). This was evaluated as insufficient, taking into consideration the fact that this reflected the unsettled property and legal affairs, undeveloped real estate market, insecure transactions, etc. In areas where the real estate cadastre has not been established, the legal principles of deeds registration system are being applied, and although they are valid they are generally not used, resulting in the fact that land cadastre/land records are used in practice for all property and legal procedures, the purpose of which is not registration of and guaranteeing real estate rights.

In times of market economy it is necessary to regulate the registration of property rights and other rights and burdens of real estate on the entire state territory. For purposes of improving this status, 2005 was the year when the first amendments to the aforementioned Law as of 1986 were made, which led to developing a completely new Law on Real Estate Cadastre in 2008, as a result of the activities realized in the legal area. It certainly goes without saying that the legal regulations are based on the fact that the registration of real estate rights is done according to updated data collected during the process of surveying land and buildings. Apart from data on the owner of the right and of the real estate, the following rights are also registered in the real estate cadastre, namely: property right, real and personal easements, burdens and limitations (mortgages, personal limitations), as well as other rights which have to be registered according to law.

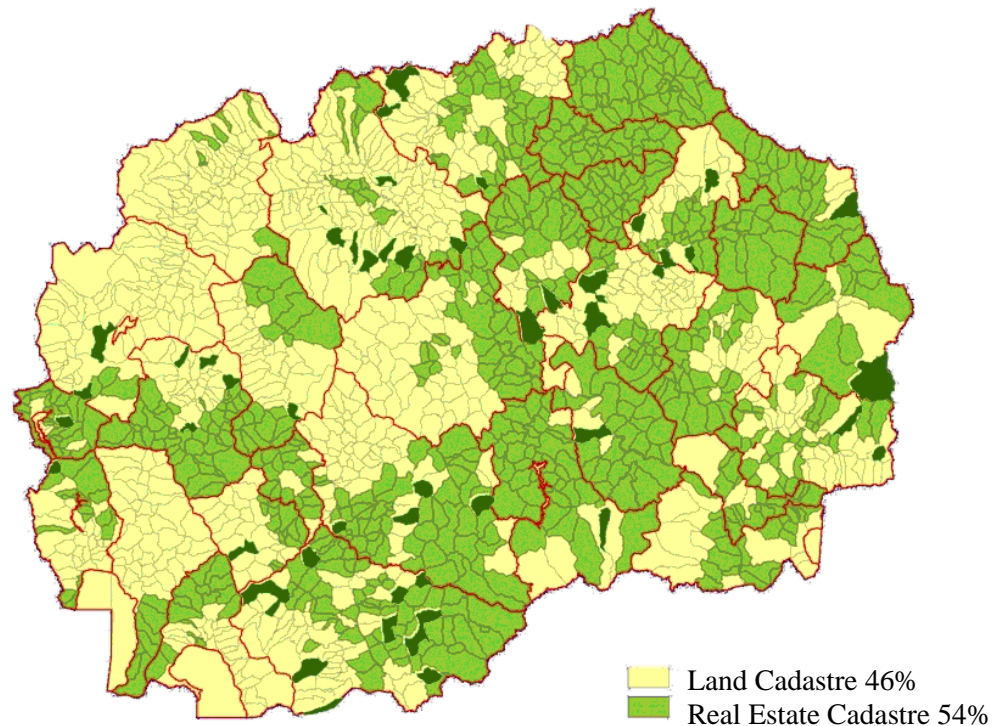


Figure 1. Graphic overview of the established real estate cadastre in 2005 in Republic of Macedonia

The following data in hard copy form can be acquired from the real estate cadastre: property sheet, list of conditional registration of construction, copy from the cadastre plan, comprehensive overview of made changes, copies from the set of documents and other data derived from the real estate cadastre.

Property sheet is the most important document derived from the real estate cadastre, and it is an official document that proves the registered property right and other real rights over the real estate. The content of the property sheet has been divided into four parts: Part A – containing data on the owners and on the real estate rights; Part B - containing data on cadastral parcels; Part C - containing data on buildings and specific parts of buildings; as well as Part D – containing data on burdens and on other registered real rights, as well as other rights that have to be registered according to laws, legal basis for the registration, date and hour of registration, size of claim guaranteed by mortgage right, and conditional registrations of construction.

The fee charged for using and viewing data in the real estate cadastre has been determined in a Tariff Book, adopted by AREC's Management Board upon prior approval by the Government of the Republic of Macedonia.

2. LAW ON SURVEY, CADASTRE AND REAL ESTATE RIGHTS REGISTRATION – NOT IN FORCE

For purposes of fully understanding the manners of performing registration in the real estate cadastre, it shall be necessary to take into consideration the legal solutions defined in the Law on Survey, Cadastre and Real Estate Rights Registration, as well as the amendments from 2005, although they have not been in force following the adoption of the new Law on Real Estate Cadastre in 2008. The amendments made in 2005 were aimed at enabling the establishment of the real estate cadastre throughout the territory of the country within a short time frame, by:

- simplifying the real estate survey and allowing collection of data relevant to the real estate rights registration only (thus refraining from collection of data for vertical land layout, as well as of data on land classes);
- shortening the procedure for establishing the real estate cadastre;
- determining new procedures for real estate rights registration; as well as
- engaging the private sector in the performance of the geodetic practice.

The point referring to determining the procedures for rights registration in the real estate cadastre might be especially worth elaborating on. Up to 2005, the following procedures for registration in the real estate cadastre were used:

- ✓ first registration (systematic registration): registration done *ex officio*, covered by financial means of the state; as well as
- ✓ registration upon request of the client under maintenance of the real estate cadastre, performed during realization of every additional transaction. A precondition for realization of this registration is to have the first registration completed, which implies that real estate transactions can not be done outside of the real estate cadastre. Costs for this type of registration are borne by the client.

The legal amendments from 2005 determined the following new registration procedures that enabled the establishment of the real estate cadastre, namely:

- ✓ individual registration; and
- ✓ registration by converting data from land cadastre into real estate cadastre.

Having in mind that the two new registration procedures, as well as the registrations upon clients' request have remained the same in the new Law on Real Estate Cadastre as of 2008, each will be elaborated in further details within the next Chapter 3: Law on Real Estate Cadastre.

For purposes of spotting the differences in the first registration as stipulated in the Law applied up to 2008 and in the Law as of 2008, this part shall only focus on analyzing the procedure for first registration – the so called systematic registration – from the perspective of the regulation that had been in force up to 2008.

The first registration up to 2008 comprised presentation of real estate data for purposes of public inspection and determining real estate rights for one cadastral municipality, whereby a survey had previously been performed, and the real estate data had been initially processed and put into an inventory. The client was summoned by written invitation attached to which was the real estate inventory, and was then able to participate in the procedure whereby documents had to be submitted, serving as proof for registration of the real estate right. The

registration procedure was led by a lawyer, assisted by geodetic expert and an administrator. The procedure was accompanied by a discussion on rights registration, followed by minutes signed at the end by the lawyer, the geodetic expert and the client. Within the frames of the procedure the client may submit an appeal against the survey data, should he/she believe that an oversight occurred during the process of performing the survey. On the basis of the facts determined during the discussion, a decision for registration of the right in the real estate cadastre is made. The real estate right of clients that will not participate in the procedure despite being invited twice, shall remain unregistered. This type of first registration is commonly known as "systematic registration", and the entire procedure including the survey is financed only by funds from the state budget. It is important to note that during the realization of this rights registration procedure it is mandatory to observe the provisions from the Law on General Administrative Procedure, which stipulates that cases must be closed within a time frame of 30 - 60 days.

3. LAW ON REAL ESTATE CADASTRE

The new Law on Real Estate Cadastre was adopted in 2008, and the bulk of its provisions referring to registration of rights in the real estate cadastre have been derived from the previous Law on Survey, Cadastre and Real Estate Rights Registration. However, the aforementioned Law on Real Estate Cadastre offered solutions which enabled the establishment of the real estate cadastre within a short time frame, as well as the introduction of a modern way of providing cadastre services to clients. The key legal solutions within the Law are aimed at further simplification of the real estate rights registration procedures, as well as at shortening the registration time frames which refer to the four manners of establishing the real estate cadastre.

Taking into consideration the costs and scope of work, the four real estate rights registration procedures can be classified into two categories, namely:

- free of charge registration; and
- registration with fee.

3.1 Free of charge registration in the real estate cadastre

Free of charge registration in the real estate cadastre can generally be considered as registration imposed by Law, and it has been defined as massive registration comprising real estate in entire or parts of cadastral municipalities. The total costs for registration of rights in the real estate cadastre that are part of this category are covered by the state, which means that clients are exempted from paying any fee. This category comprises the systematic registration and registration by way of conversion.

3.1.1 Systematic registration

According to the Law, the real estate rights registration procedure classified as systematic registration, i.e. first registration, shall be completed within a time frame of 15 days, instead of 30-60 days time frame stipulated in the old version of the previous law. Identically to the old version of the Law, real estate data shall be presented at publicly

designated locations, and documents shall be accepted in cadastre branches. The procedure is usually organized for real estate in one cadastral municipality, however, should the municipality be of larger size, the first registration can then be organized according to parts of it. Prior to initialization of the procedure, public announcement is being published in printed and electronic media, thus avoiding the step of sending written invitations to clients, for purposes of summoning them and guaranteeing their participation in the first registration. The real estate rights registration is done without implementing the administrative procedure pursuant to the Law on General Administrative Procedure, which means that there shall be no meeting with the clients, i.e. public discussion, no minutes, and no decision made. AREC issues confirmation of the realized registration and submits it to the client. These essential changes in the procedure resulted in simplification of the work flow, and this in turn had direct effect on shortening the time frames for realization of the first registration.

The costs for the first registration shall be entirely covered by the state budget, which means that clients would not be subject to any financial implications when realizing the first registration.

For clients who shall not initiate this procedure, the real estate right shall be registered according to the data from the land cadastre, however, this refers only to areas whereby the land cadastre had been established according to a performed survey. It shall also be noted that the data had been taken from the land cadastre. Data on owners of the rights from the documents on legal status or acts of competent authorities, shall have greater legal force. Within a time frame of three years as of the realized registration, each person that has a suitable legal basis for registration, shall be entitled to submit a registration request for purposes of being registered in the real estate cadastre, instead of the person already registered as owner of the right. Upon expiry of the three years time frame, should no changes occur, the note shall be deleted. Confirmation shall be issued for this registration as well, and shall be submitted to the owner of the right. In cases when clients have not initiated the procedure and their real estate is located in cadastral municipalities whereby land cadastre had been established based on inventory (without performed survey), the real estate shall remain as it is – with no registered rights.

Upon completion of the procedure, AREC's Director shall make a decision on entering into force of the established real estate cadastre for a specific cadastral municipality, published in the Official Gazette.

3.1.2 Registration by way of conversion

The aim of the procedure for registration by way of conversion of data from land cadastre into real estate cadastre is to assist in the establishment of the real estate cadastre, by reducing the time frames and the necessary finances. This method of registration is generally planned, and can be used for entire/parts of cadastral municipalities that meet the following requirements:

- established land cadastre based on performed land survey;
- location outside of urban areas and populated locations; as well as
- no changes on the forms of the cadastral parcels, i.e. the land has not been changed.

Conducting another survey in cadastral municipalities of this type would mean investing additional time and major finances, and the field results would match the ones already registered in the land cadastre, due to the fact that no land changes were registered in the listed areas. If this option for registration in the cadastre is not used, apart from survey costs, additional finances shall be necessary for the employees who would perform the systematic registration, as well as time for organizing the entire long procedure for systematic registration.

The cost-efficiency of this procedure is derived from the legal option that enables full transfer of data from the survey and the land cadastre, into the real estate cadastre. The abovementioned procedure can be realized for cadastral municipalities or parts of cadastral municipalities defined in AREC's Annual Operational Program, and AREC's Director makes a decision that is being published in the Official Gazette. The conversion procedure comprises office activities only, and does not entail field surveys or clients' engagement. Should this procedure be applied, a note is put in Part D of the property sheet for real estate that has been subject to conversion. The note shall say: "data taken from the land cadastre by way of conversion" – meaning that no legal basis for registration has been submitted. Persons who believe they have suffered damages as a result of this procedure have a legal time frame of three years to submit a request for registration to the Agency for Real Estate Cadastre, along with suitable legal basis for real estate registration. In such cases, a person with suitable legal basis is registered instead of the person registered by way of conversion. If no request for real estate has been submitted within the time frame of three years, the note in the property sheet shall be deleted.

During the process of conversion, data on real estate - the rights of which have already been individually registered - shall be taken, and they shall not be subject to conversion.

As per buildings in this procedure, the property right shall be registered only up to ground floor – data that has already been registered in the land cadastre as land under the building. The only disadvantage of this procedure - if it can be considered as disadvantage - is the nonexistence of an option to register data on buildings' floors and on the size of apartments. However, this disadvantage is not so prominent since as previously mentioned, the conversion is done outside of populated locations, and mostly in agricultural areas, where the number of constructed objects (buildings) is very limited. For this limited percentage of constructed objects it is still possible for the owners to entirely register buildings rights, including the area per floor – ownership per floor, within the procedure of maintaining the real estate cadastre, but the costs for this shall be borne by the owners themselves.

3.2 Real estate cadastre registration with fee

Real estate cadastre registration with fee is only done upon client's request. This registration procedure refers only to an actual real estate, and the costs for its realization shall be covered by the client him/herself. This registration category comprises the following types of registration: individual registration and registration under maintenance of the real estate cadastre. The fee charged for registration in the real estate cadastre shall be determined in accordance with the actual costs necessary for undertaking activities relevant for registration, and shall be defined in a Tariff Book adopted by AREC's Management Board, upon prior approval by the Government of the Republic of Macedonia.

3.2.1 Individual real estate rights registration

The individual real estate rights registration procedure is new element in the Law on Real Estate Cadastre, and is entirely compliant to the Law on Ownership and Other Real Rights. This procedure was not available for owners up to 2005, as a result of a lack of detailed regulations on its practical use, i.e. it was not used as an option for registration of property rights over real estate in the cadastre. The flow of the mentioned procedure comprises submission of an application for individual registration, along with survey report prepared by a private survey company, as well as a legal basis suitable for registration. The legal time frame for individual registration is 15 days as of the day the application had been received.

This procedure allows each interested party to register his/hers real estate rights in the real estate cadastre, regardless when the systematic rights registration had been planned for the cadastral municipality. This way, the interested parties may acquire their “real estate/property sheet”, and have an opportunity to put their real estate under mortgage, long-term lease and concession. The property sheet the right of which shall be registered within this procedure, shall have a note which shall read: “prior to initiating real estate cadastre use, data shall be harmonized with survey data, for purposes of realizing the systematic registration.” This is done for purposes of taking into consideration the real estate that was individually registered, when performing the systematic registration of real estate in the entire cadastral municipality.

This method of registration of separate real estate in the real estate cadastre helps in avoiding cases of mortgages on real estate outside of the provisions from the Law on Real Estate Cadastre, i.e. real estate which should not exist – such as illegally constructed objects, temporary objects, etc.

As far as illegally constructed objects are concerned, it is important to note that up till the end of 2010, their number in the Republic of Macedonia is approximately 330.000. The possibility of placing this capital on the real estate market should not be disregarded. Therefore, at the beginning of 2011 the Law on Acting Upon Illegally Constructed Objects was adopted, offering an opportunity for owners to first of all legalize the objects, and then to register them in the public real estate book – the cadastre.

3.2.2 Registration under maintenance of the real estate cadastre

This method of registration is used upon clients’ request, and may comprise two types of cases:

- ✓ registration of real estate that remained with unregistered rights following the systematic registration; as well as
- ✓ registration under maintenance – registration when performing real estate transactions.

As far as the first case is concerned i.e. registration of real estate rights which remained unregistered following the systematic registration, the client shall submit a request accompanied by: survey report containing identification statement, suitable legal basis, as

well as proof of paid registration fee. The time frame for registration is 15 days as of the day the request had been received. AREC issues confirmation of the realized registration of the real estate right, and submits it to the client. Should the legal basis be unsuitable, or the survey report and identification statement unapproved by AREC, a note for rejection of registration is issued, and the real estate shall remain with unregistered rights.

As far as the second case is concerned i.e. registration under maintenance of the real estate cadastre, which occurs in cadastral municipalities whereby a real estate cadastre has already been established, two options are feasible. The first option enables persons who have not made use of the first registration or the “systematic registration”, to be able to individually initiate a procedure for realizing the registration of the real estate right in the cadastre. The second option however, provides for constant monitoring of the occurred changes in real estate that has already been registered in the cadastre, and its task is to practically keep the real estate cadastre updated. In accordance with the Law, each real estate transaction must be registered in the real estate cadastre.

It is important to note once again that in order for a real estate right to be registered upon request of the client, as stipulated in points 3.2.1 and 3.2.2, the client shall pay a fee in accordance with the Tariff Book for registration in the real estate cadastre upon request of a client.

4. ESTABLISHMENT OF A PRIVATE SURVEYING PRACTICE

One of the most essential amendments to the Law on Survey, Cadastre and Real Estate Rights Registration as of 2005, which also had an impact on the dynamics of the establishment of the real estate cadastre, referred to the solution to have private surveying companies that would perform geodetic activities. Up to 2005, all operational and field surveying activities were performed by the Agency for Real Estate Cadastre, which at that time was considered as monopoly in the geodetic area. This set-up was not able to provide the necessary results, and to duly fulfill the requirements expressed by clients. This also proved to be good ground for deviational patterns and for manipulating clients for purposes of speeding up the procedure for deciding upon their requests. The established positive practice of performing field geodetic activities by private companies has been incorporated in the new Law on Real Estate Cadastre as of 2008.

Private surveying companies perform everyday field geodetic activities with regard to survey, basic geodetic works, topographic maps, as well as geodetic works that have an impact on the maintenance of the real estate cadastre, and their obligation is to observe the strict technical standards and rules of the surveying profession. The most frequent surveying activities of these companies refer to the following: parcels division, parcels merging, recording changes that occurred due to construction and extensions of objects, preparing numerical data, developing survey report for registration in the real estate cadastre, preparing survey report on geodetic works for special purposes that affect cadastre maintenance, giving expert opinions, updating geodetic maps for urban purposes, as well as legalizing objects.

Surveying activities can also be performed by foreign companies registered for surveying practice, should they be selected from an international tender procedure, as well as by private foreign companies located in countries with which there are proportional relations established within the geodetic area.

The following requirements should be met by a private company, in order for it to perform surveying activities:

- be registered in the Trade Registry, its main practice being surveying practice;
- have at least two employees exercising the surveying profession, at least one of whom must be an authorized surveyor;
- possess license for performing surveying activities, issued by AREC;
- have liability insurance policy; as well as
- have premises and equipment necessary for performing surveying activities.

The authorized surveyor certificate is issued by the Chamber of Authorized Surveyors, and it is awarded to a person that meets the following requirements:

- is citizen of the Republic of Macedonia;
- has a degree of surveying engineer with at least three years of relevant working experience in the geodetic area; as well as
- has passed the exam for becoming authorized surveyor organized by the Chamber of Authorized Surveyors, the validity of which is 10 years.

The dynamic of the development of the private surveying practice can be monitored through two indicators, namely: the number of authorized surveyors, as well as the number of licensed private surveying companies. Figure 2 below presents a graphic overview of the development of the private surveying practice, up to the end of the third quarter of 2011.

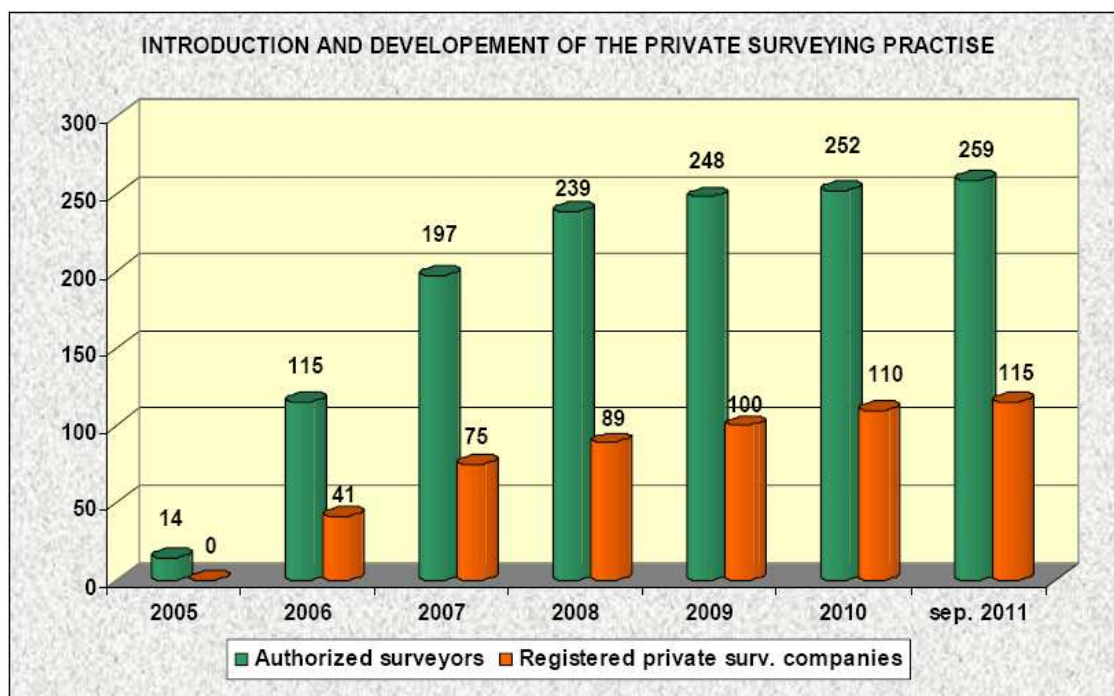


Figure 2. Graph presenting the development of the private surveying practice

5. DYNAMICS OF ESTABLISHMENT AND BENEFITS

The analyzed legal amendments enabled the establishment of the real estate cadastre throughout the territory of the country within a relatively short time frame. The establishment dynamics per year has been shown on Figure 3.

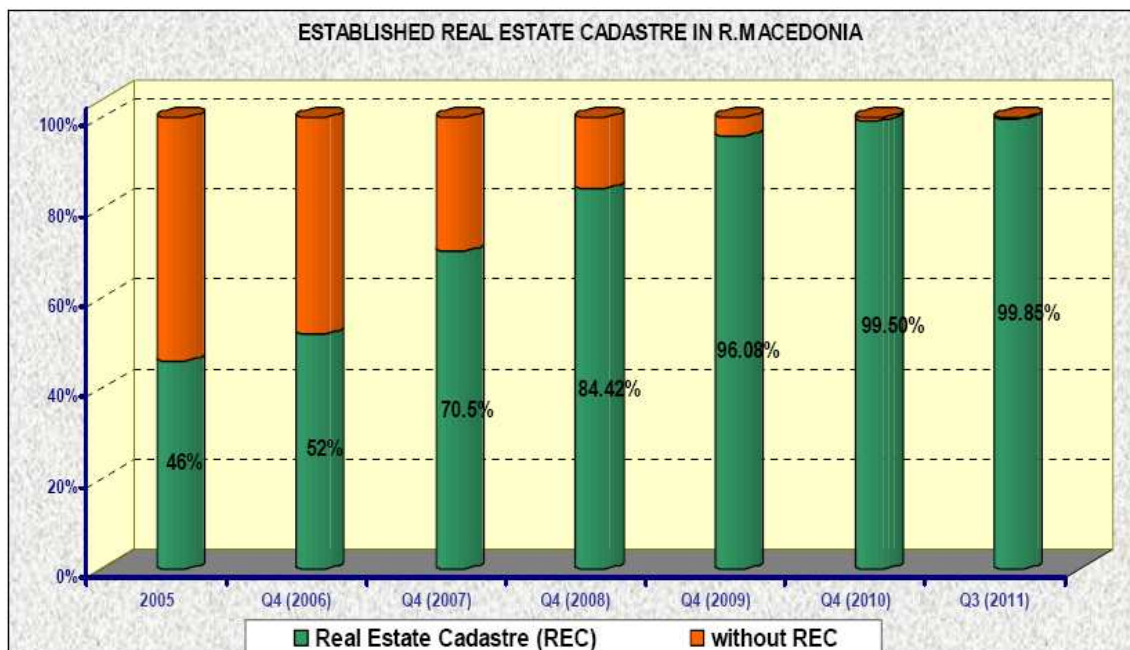


Figure 3. Diagram on the establishment of the real estate cadastre

Apart from the establishment of the real estate cadastre, the benefits arising from the analyzed legal regulations can be seen in the shortened procedures and time frames for real estate cadastre registration, in receiving documents from AREC, as well as in the more active real estate market.

In this regard, the newly determined legal time frames which are mandatory to be observed by regional offices of AREC's real estate cadastre, shall be the following:

- ✓ issue a property sheet and copy from cadastral plan within 1 day;
- ✓ register and delete mortgage within 1 day;
- ✓ issue certificate of historical overview of real estate within 3 days;
- ✓ upon request of the client, register an apartment, house or business premises which have not been registered in the real estate cadastre, and for which there is no property sheet, within 15 days;
- ✓ process purchase/sale contract within a time frame of 1 up to 3 days; as well as
- ✓ register a newly constructed object within 3 days.

In summary, the positive results are evident from the increased number of submitted cases and of realized transactions in the real estate cadastre. Figure 4 below shows the total number of submitted cases per year, whereas the number of realized transactions is shown on the next Figure 5. It is more than clear that the realized numbers are directly related to the establishment of the real estate cadastre.

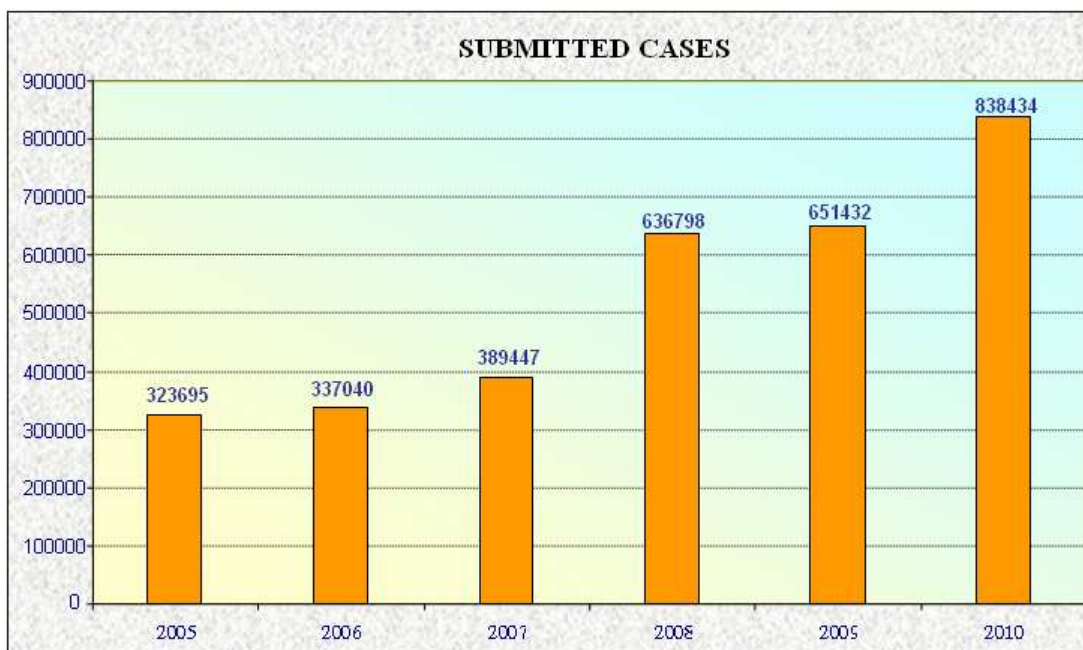


Figure 4. Total number of submitted cases



Figure 5. Total number of realized transactions

The positive impact on the activities on the real estate market has additionally been supported by economic factors, evident from the number of registered mortgages. The total number of registered mortgages per year is shown on Figure 6 below.

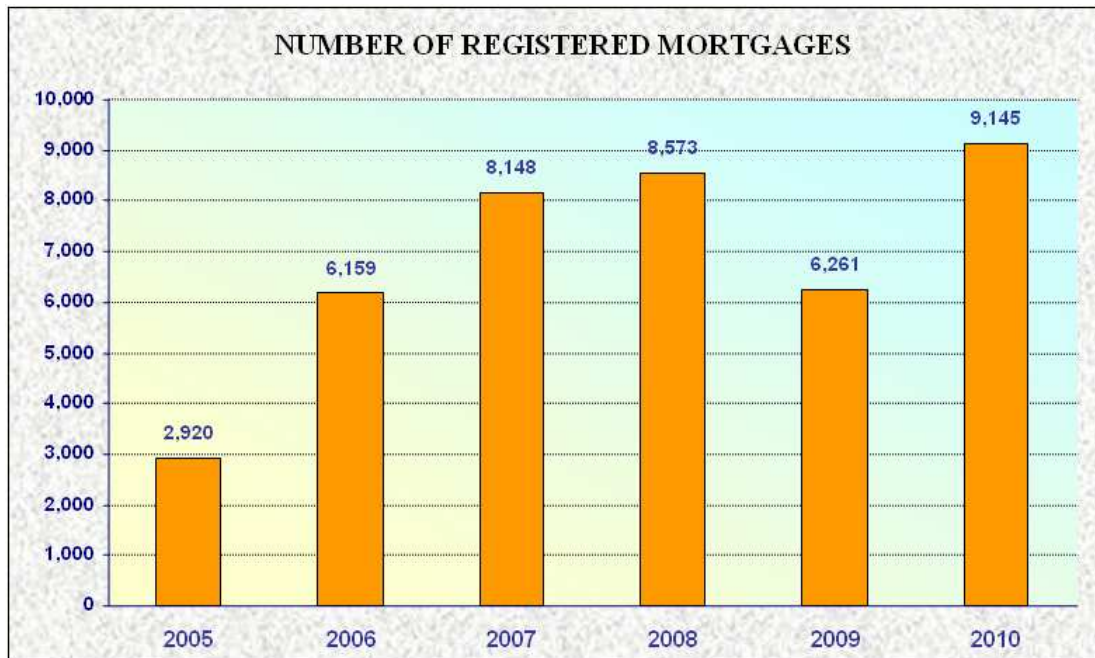


Figure 6. Total number of registered mortgages

For purposes of creating a clearer picture, the total value of the registered 9145 mortgages in the real estate cadastre in 2010, is EUR 1.938.821.000.

6. CONCLUSION

Taking into consideration the previously stated aspects, the main conclusion can be derived - the legal regulations i.e. the Law on Real Estate Cadastre, is the key to successful establishment of the real estate cadastre. It contains innovative solutions enabling new methods of real estate rights registration in the cadastre, and it also offers solutions which enabled the establishment of the real estate cadastre throughout the territory of the country within a relatively short time frame. From the data presented on Figure 4 it can be concluded that the number of submitted requests to AREC (compiled in one number - from all regional offices throughout the entire territory of the Republic of Macedonia) has been increasing with a pace which is similar to the pace of establishing the real estate cadastre. This trend is also followed by the number of registered mortgages, which is simultaneously a direct indicator of how active the real estate market is.

If we have in mind that the entire concept of successful land management can be viewed from different angles, namely: legal, economic, historic and social, one may say that AREC has achieved true success in this regard. After all, within the concept of land management, the legal framework serves not only as a basis for establishment of the real estate cadastre, but also as a basis for successful land management.

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