

ARTÍCULO DE INVESTIGACIÓN

## The description of property and discrepancies in registration

Yasna Otarola 

yotarola@uandes.cl

*Universidad de los Andes, Santiago, Chile*

**ABSTRACT** The object of the article is to determine whether current legislative requirements prevent the existence of doubtful ownership rights due to imprecise or lacking identification of the property. In the event that they do not prevent it, we ask the following questions: Can the Real Estate Registrar register a title that has as its object a property whose area and/or boundaries differ from those defined in previous correlative registrations of the property or to accede to a request for rectification of the same? Could the Registrar provide a solution to this situation through qualification of the registration? Does legitimization extend to the identification of the property? Faced with such questions, our working hypothesis is that the Real Estate Registrar can and should be the main architect of coordination between the physical reality and its representation, since title, registration and survey (if one exists) are the means by which the reality outside the register is represented. Whenever a registration is intended, the Registrar must assess the legality of the instrument through qualification of the registration, because in a constitutive registration system, such as exists in Chile, in every circumstance, even simple description of the property, the Registrar must verify that the legally established requirements are met, including the identification, location and delimitation of the property.

**KEYWORDS** Description; property; discrepancy; registration; qualification; legitimization.



Este trabajo está sujeto a una licencia de Reconocimiento 4.0 Internacional Creative Commons (CC BY 4.0).

**RESUMEN** El artículo ofrece un análisis para determinar si las exigencias legislativas vigentes evitan la existencia de derechos dudosos derivados de la falta o imprecisa identificación del inmueble. En el caso de que no lo impidan, se cuestiona sobre si ¿puede el Conservador de Bienes Raíces inscribir un título que tiene por objeto un bien raíz cuya superficie y/o deslindes difieren de aquellos que aparecían consignados en las inscripciones correlativas anteriores, o bien una solicitud de rectificación de estos? ¿Podría el Conservador dar solución a esta situación a través de la calificación registral? ¿Se extiende la legitimización a la identificación del inmueble? Frente a tales cuestionamientos, la hipótesis de trabajo es la siguiente: Conservador de Bienes Raíces puede y debe ser el principal artífice de la coordinación entre la realidad física y su representación, pues tanto el título, el Registro y el Catastro (si se llega a establecer uno) son los medios de representación de la realidad extrarregistral. Siempre que se pretenda una inscripción, el Conservador debe valorar la legalidad del instrumento a través de la calificación registral, pues en un sistema de inscripción constitutiva, como el nuestro, a cada circunstancia, aunque sea descriptiva del inmueble, el Conservador debe verificar que se reúnen los requisitos legalmente establecidos, entre otros, la identificación, ubicación y delimitación del inmueble.

**PALABRAS CLAVE** Descripción; inmueble; discordancia; registral; calificación; legitimación.

## Introduction

Articles 52 and 53 of the Regulations of the Real Estate Registry (or indistinctly the "**Regulations**") indicate the titles and legal situations (rights) that may be registered. Such instruments contain the transfer, transmission, constitution and renunciation of ownership and other real rights over property, as well as any suspensive or resolutive condition thereof. Likewise, such instruments contain the legal, judicial and voluntary prohibitions that effectively limit the power of alienation of the registrant; the modalities that may affect the ownership of the constituent of the real right, other encumbrances, leases and other legal acts and contracts that the legislator has ordered to be registered. This is so that they may be enforceable against third-party purchasers, since each of these situations affects some (or all) of the attributes of the respective real rights. However, it is not taken into account that it is not possible to accurately delimit the registered right, separating it from the object on which it falls. Because of that, the right is incomplete when the ownership excludes the object of the right. Thus, the extent of the right is determined by the registrable rights and also by the property identification that constitutes its object.

The Regulation gives several provisions to the description and identification of the object of the registration. For instance, Article 41 considers that each registry will have an index indicating the name of the parcel of land and the subject matter of the registration. Article 44 states that the items of both indexes will enunciate the specific name of the parcel of land, the street in which it is located, if urban. And if it is rustic, the sub-delegation, the nature of the contract or encumbrance, the citation of the page and the number of the registration. In contrast, Article 78 in its fourth rule indicates that the registration of property titles and real rights will contain "the name and land boundaries of the property".

The aforementioned precepts regulate the description of property in Chilean Land Registry legislation and account for the parameters involved in its identification, in general, the name and boundaries of the property. Consequently, a real description is not required, despite the legal consequences that this may generate, among others, discrepancies in registration<sup>1</sup>.

The discordance in the registry causes a serious risk, since, by virtue of the legitimation principle, it is legally presumed that the content of the Registry is accurate, even if it is not. This is the case as long as it is not contradicted in form, and the need to rectify the description of the property is determined, the entry produces all its effects. From the above it is clear that our entries can be discrepant whenever the description, the land area or the boundaries are inaccurate<sup>2</sup>.

Various problems arise from this inconsistency. Among those of interest to this research are the non-existence of the property, the imprecise location of the property, ignorance of the delimitation and boundaries of the property and, consequently, the modification or rectification of the registration<sup>3</sup>.

By virtue of the foregoing, the research question that arises is to determine whether the current legislative requirements prevent the existence of these doubtful ownership rights. In the event that they do not prevent it, can the Real Estate Registrar register a title that has as its object a property whose area and/or boundaries differ

---

1. Concordance is a broad term, meaning the agreement in terms of elements of fact and law that exists between the Registry and reality. Thus, a greater parallelism is pursued: in addition to the concordance between the Registry and the legal situation, it is intended that the Registry agrees with certain physical relations. MARTÍNEZ-PREVENCIÓN Y MARTÍNEZ (2021), p. 1358. En el mismo sentido, ANTÓN y GARRIDO (2021), p. 107.

2. PICA PEMJEAN (2001) p. 1.

3. "The modification of boundaries is made when there is a difference between the physical reality and the legal reality of the land, that is to say, that the fencing of a land in reality do not agree with the property survey and deeds of this registered in the respective Real Estate Registrar. In contrast, the rectification of boundaries is carried out when there is a note-taking error of the property plan dimensions, specification or surface area table, which may result in an incorrect registration of the background. These measurements may refer to the dimensions, boundaries or land surfaces, as a result of a note-taking error of a numerical calculation". PÉREZ (2019) p. 1.

from those defined in previous correlative registrations of the property or to accede to a request for rectification of the same? Could the Registrar provide a solution to this situation through registry qualification? Does legitimization extend to the identification of the property?

This problem is currently being addressed in two different ways:

The first, and from a formal point of view, would correspond to the procedure to fill the lack of any of the legal designations in the titles, or defective or insufficient designations through the subscription of a draft by the parties (Article 82 of the Regulations) and of rectification of mistakes, omissions or modifications according to the registered title, made at the request of a party by means of a public deed, or a decree or order (Article 88 of the Regulations).

Meanwhile, the second would correspond to a more substantive way, in the sense that it has been attempted to resolve by applying the Articles 1831, 1832, 1833 as provided in the Civil Code. In these provisions a distinction is made between the purchase of a property by surface area or as a certain species or body<sup>4</sup>. In the latter case, the difference in surface that may arise is of no great relevance, since Article 1833 has made it clear that, in such a situation, the parties may not allege anything with respect to the real surface. The situation is different if the sale is by surface area, since in this case article 1832 states that if the actual surface area is greater than the declared one, the Buyer must complete the price, unless the price of the excess surpasses one tenth of the price of the actual surface area. In this case, the Buyer may choose between increasing the price proportionally or withdrawing from the contract, in which case he must be compensated for damages according to the general rules<sup>5</sup>. For its part, if the actual surface area is smaller, the Seller must complete it. And if he cannot or is not required to do so, he must suffer a proportional price reduction. But if the price of the missing surface area reaches more than one-tenth of the price of the full surface area, the Buyer may, at its own judgment, either accept the reduction in price or withdraw from the contract under the terms indicated above. Thus, the consent of 10% stated in the preceding rules has been adopted by the Real Estate Registrars, and they frequently do not prevent the registration of titles whose variation regarding the property which is reported in the respective registry does not exceed such percentage. However, the matter is not solved if the surface area is greater than this percentage.

For instance, in judgment No. C-88-2019 of the District Court of Yumbel, 07-05-2020, on the claim for the rectification of the surface area and boundaries. The plaintiff points out that in the public deed of promissory Purchase and Sale Agreement dated April 1, 2010, entered into between the same parties, as well as in the final Purchase and Sale Agreement entered into between them on December 9, 2010, it

---

4. ALESSANDRI (2011) p. 804.

5. MEZA BARROS (2010) p. 60.

appears that the parties have stated (fifth and eighth clauses, respectively, of such agreements) that the actual surface area of the property is greater than that stated in the registration of ownership. It adds that "*Articles 1832 and following of the Civil Code refer precisely to the situation in which, if the property being sold has an actual surface area greater or less than the declared one, certain obligations related to the price arise for the Buyer and/or Seller, so it is therefore perfectly possible for a property to have a different size or surface area from that indicated in the agreement, there is no legal provision limiting such possibility*". However, there is no way to resolve this difference, except for the unnamed action that is being attempted. In fact, it is not appropriate to rectify the surface area of the property not included in the title deed to National Assets, given the high tax appraisal value of the property. Neither is there an administrative rectification procedure before the Local Government's Works Department, in order to modify the property subdivision survey of the year 2000, from which Lot No. 2 arises. Nor can this matter be aired in a voluntary procedure, given that it is necessary to sue those who may eventually have interests involved. For this reason, the request must be processed in accordance with the rules of a contradictory procedure of wide knowledge, in order to be certain that the rights of third parties are not being affected. The court rejects the lawsuit because it considers that the adjoining parties have not been summoned to trial in the P.R.O. (or his successor, as stated in the lawsuit) and, in the North, R.R.O. (or his successor) and A.M.R., "it is not possible, in the court's opinion, to accept the complaint in that part, since they have not been able to appear at the trial to defend their rights"<sup>6</sup>.

It is also attempted to be resolved through the exercise of the legal boundary servitude established in Article 842 of the Civil Code. In judgment No. C-799- 2014, of the 3rd District Court of Antofagasta, September 20, 2017. The plaintiff initiates this action based on the fact that she is the owner of the property to be delimited and fenced. That the properties involved are adjacent and belong to different owners and that the boundaries are undetermined. The court rejects the lawsuit because there is no certificate from the Real Estate Registrar to prove ownership and because the existing expert report shows that the fence would not only cover the property of the Chilean Treasury, but also that of three other persons. And that the fence would even have to

---

6. On this point, in Case No. 46560/2016 (Cassation). Resolution No. 755383 of the Supreme Court, Third Chamber (Constitutional), of December 29, 2016, the Court indicated that "*The foregoing is relevant, since, beyond the study of the relevance of action, it is evident that the final claim of the plaintiff aims for this Court to declare that the action attempted is appropriate, a matter that contains an implicit request of verification that the title registered in her name contains an error in the surface area of the property. Such a task requires the complete analysis and weighing of the documentary, testimonial and expert evidence submitted, but within the framework of the corresponding declaratory action, followed between legitimate opposing parties, which is beyond the margins of an action such as the one that in these proceedings has been called of mere certainty*".

pass over a public street. All these elements would prevent the acceptance of the lawsuit, i.e., the enclosure, since what is resolved cannot be applied to third parties that are not part of the trial, given the relative effect of the judicial sentences<sup>7</sup>.

Furthermore, the administrative regularization procedure contained in D.L. 2.695 of 1979, on the regularization of land titles on the small property, is intended to solve the problem<sup>8</sup>. In Case No. 668/2017 (Civil). Resolution No. 16 of the Court of Appeals of Copiapó, of December 15, 2017 (Protective Order), an organization composed of a group of about 200 people living in an area called Cuatro Palomas Sur, occupying a strip covering an area of 1.61 km<sup>2</sup>. In the letter, they request: a) to have access to the results of a legal technical study carried out by the EULA Study Center, belonging to the Universidad de Concepción, regarding the Cuatro Palomas Sur sector, as they wish to regularize the property in accordance with Decree Law 2,695 of 1979. *“The authority states that the scope of application of the Decree Law is given by private lands or properties and not by government-owned lands, and for this reason and especially the study of the registrations in favor of the Treasury existing in the city of Valdivia, the entry of applications via Decree Law 2.695 of 1979 does not proceed. Without prejudice to which, with the analysis of the boundaries of the registration statements, it will be determined with certainty how far the domain of the Treasury reaches, to then determine if the aforementioned decree is applicable”*.

In contrast, the bill modifying the operation and organization of the Registry and Notary considers that the registration of property deeds and other real rights will contain the singularization of the property, with express mention of its name, if applicable. And also, its address, region, province, commune. As well as the clear delimitation through the coordinates expressed in the UTM georeferencing system or equivalent defined by the Real Estate Property Regulations; tax appraisal role or roles; surface and property survey, if any (Art. 78 No. 2 of the Project, Bulletin No. 12.092-07).

Thus, the description must include the cadastral reference of the property, in the terms to be proposed by the future Real Estate Property Regulations. This requirement may favor the determination of the object of the registration in the act or contract and its concordance with reality, as long as there is a global cadastre and the certified data are correct. However, the mere incorporation of the coordinates may make the determination difficult when they do not match those of the previous registry description. Faced with the legal problem which has just been set out, the hypothesis proposed is that the Real Estate Registrar can and should be the main author of the coordination between the physical reality and its representation, since the title, the

---

7. See Case No. 3321/2015 (Appeal). Resolution No. 413723 of Supreme Court, Fourth Chamber (Mixed), August 3, 2016, and judgment No. C-1483-2017 of District Court of La Ligua, 08-11-2019.

8. Judgment No. C-88-2019 of District Court of Yumbel, 07-05-2020.

Registry and the Cadastre, if the latter is established, are the means of representation of the extra-registral reality. Articles 13 and 14 of the Conservatory Regulations attributes to the Registrar a fundamental role in the legality and legitimacy of the Registry. Whenever a registration is sought, the Registrar must assess the legality of the instrument through the registry qualification. Because in a constitutive registration system, such as ours, at every circumstance, even if it is the description of the property, the Registrar must verify that the legally established requirements are met, among others, the physical location. Therefore, and as a complement to this activity, Article 67 paragraph 2 of the General Law of Urban Planning and Construction states that *“the modifications and rectifications of boundaries authorized by the Directorate of Municipal Works shall be recorded in the Property Registry of the Real Estate Registrar and shall be noted in the margin of the respective registration of ownership”*. Article 24 No. 1 of the Organic Law of Municipalities states that the Municipal Works Unit shall be responsible for approving mergers, subdivisions and boundary modifications of properties in urban areas, urban or rural extension areas in the case of application of Article 55 of the General Law of Urban Planning and Construction. And Decree Law No. 3,516 establishes the division of rural properties, Articles 1 and 5. Consequently, the title qualification work carried out by the Registrar extends beyond its traditional legal scope, to an aspect to which the Regulation makes little reference: the description and physical delimitation of the property. Now, in order to prove or disprove such hypothesis, the following sections study and analyze the individualization of the property; the problems derived from the lack of property identification; the registry qualification of the property’s description and the legitimation.

## **I. Individualization of Property**

The property registered in the Registry must be individualized in accordance with the principle of registry specialty, which implies configuring the property that is the object of the real right, in all its extremes and details<sup>9</sup>. The property must then be singled out as to its boundaries, measurements and surface area. However, the literary description maintained by the regulatory legislation of the Registrar is limited to the identification of the property by its boundaries, by the name of the owners or possessors. As well as by means of the recorded statement in the public deed, without contrast of these by any external means, so that it may happen that the description of the property is not consistent with the extra-registral reality<sup>10</sup>.

The exclusively literary description system by declaration of the parties creates a number of problems (imprecise location of the property, delimitation and demarcation of the property and rectification of the registration). Therefore, the effects of

---

9. GODOY (2017) p. 217.

10. ZÁRATE (2018) p. 311.

the registration, in principle, those derived from the legitimacy, do not extend to the factual data of the property description.

The divergence between the legal reality and the extra-registral reality has different explanations. For instance, it may derive from the will of the owner who decides to merge or subdivide a property he owns. In these cases, it is possible to file subdivision surveys showing the division or merger of the land<sup>11</sup>.

In this order, "some Registrars usually accept that, together with the planimetry by virtue of which it is intended to adjust the registry reality of the property to its physical reality, a statement of the owners of the adjacent properties is attached. This alternative is well received in practice, since in that statement, the owners of the adjacent properties can not only state that they accept the modifications included in that planimetry, but they can also declare that they do not affect the surface areas or measurements of their properties (...)"<sup>12</sup>.

The individualization of these properties is done considering that these properties are within the legal transactions. Although for the singularization, sometimes references established in tax cadastres informed by principles other than those of the Real Estate Registry are used<sup>13</sup>. These descriptors do not acquire legitimacy by the mere fact of being incorporated in the Register. Their use is used by the Registrar to determine the correspondence between the extra-registral reality and the legal reality, in accordance with the qualification established in Articles 13 and 14 of the Regulation.

Thus, the clear and precise identification of the property is fundamental for the Registry to publish, with all the consequences that emanate from the registration. The implementation of planimetries and topographical or other surveys makes it possible to reduce and, in many cases, eliminate the uncertainty with regard to the object and content of the real right of ownership over real estate, by achieving the identification and description of the real estate, as will be seen.

---

11. "In view of the lack of determination of the property resulting from the current regulation, it is possible to submit to the Registry property survey that determines the property, indicating its boundaries, measurements and surface area. Having said that, in the absence of measurements and surface area in the Register, the presentation of these property surveys must necessarily be accompanied by formal statements of the adjacent owners, justifying their legitimacy through the noting of the registry data that show such conditions." GODOY (2017) p. 218.

12. SOTO (2021) p. 1.

13. For instance: "In the event that the respective Title Deed does not include the area of the property and it cannot be established through the boundaries or in the previous property survey registered in the Real Estate Registrar through a planimetry, the interested party must present a certificate from the Internal Revenue Service of Chile (SII), or another document issued by a State institution in which the area of the property is determined, or in its absence the same statement contained in a final or enforceable judicial sentence.1. Of the applications, letters of the land background". Exempt Resolution 3904 determines how to issue subdivision certificates for rural properties and abrogates exempt Resolution No. 169 of 1994.



## II. Resulting problems from the lack of identification of the property

The Chilean Registry System adopted the literary description of real estate, as defined in Articles 41 and 44 of the Regulations, which has been maintained to a large extent, regardless of the special legislation<sup>14</sup>. The system of registry description is carried out independently in the Land Registry book and not by reference to another registry or cadastre. Within the personal folio, the property is identified in its essential aspects, which is reiterated and maintained or transformed over time<sup>15</sup>.

The Regulations of the Conservatory Registry maintain this autonomy, although not in absolute terms. Precisely, the modification of Article 67 of the General Law of Urban Planning and Construction, motivated by Law 20.703, allows the directors of Municipal Works to issue an administrative resolution of modification or rectification of boundaries, which must be presented by the interested party before the respective Real Estate Registrar, together with the planimetry that shows both the location of the property according to its registration of ownership, as well as the location of the property according to its physical reality.

It also empowers them to "approve mergers, subdivisions and modifications of land boundaries in urban areas, urban extension or rural areas in case of application of Article 55 of the General Law of Urban Planning and Construction"<sup>16</sup>. Therefore, if the boundary modification resolution does not expressly state what type of property is involved, the Registrar will request the corresponding documentation that certifies that the property is located in an urban area, urban extension, in case of application of Article 55 of the General Law of Urban Planning and Construction.

Consequently, this special regulation improves in the alignment of the physical reality with the legal reality through the solution of the differences that may, and normally exist, between the registry singularization of the properties and their physical singularization. However, this does not necessarily imply that what is described therein is in accordance with the legal reality of the property under consideration, since according to the final paragraph of Article 1.2.2 of the General Ordinance of Urban Planning and Construction, "it shall not be the responsibility of the director of Municipal Works or the Independent Reviewer or the Reviewer of the Structural Calculation Project to study the title deeds of the property".

---

14. By way of illustration, Law 20.703, General Law of Urban Planning and Construction, Organic Law of Municipalities and General Ordinance of Urban Planning and Construction.

15. "This system consists in that the Real Estate Registry of the property is based on the registrant, being a system that only allows locating the property or right over it, once the registrant of one or the other is located by means of registry indexes that are kept for this purpose". GODOY (2017) p. 215.

16. Art. 24 letter a, number 1, of Law 18,695.

In addition to the above, it should be noted that in the case of rural properties that are not included in the hypotheses set forth in Article 55, exempt Resolution No. 3,904 of 2019 establishes a new procedure for issuing subdivision certificates for rural properties. In numeral 1 of the applications, letter c, on the background of the property, it states: "The land area established in the property survey submitted for the property to be subdivided must coincide with that indicated in the corresponding Title Deed, taking into account any marginal notes. If they do not coincide, the owner must first obtain the correction of such situation in the respective Real Estate Registrar. Consequently, the boundaries recorded in the Real Estate Registry prevail"<sup>17</sup>.

In judgment No. V-78-2020 of the 1st District Court of Osorno, 19-08-2020, a complaint was filed against the refusal of the Real Estate Registrar to file a subdivision survey of the property registered in page 5,365 No. 4,648 of the Real Estate Registry of 2019. The court declared that the instrument has no correspondence whatsoever with the boundaries of the property subject to division. And, in addition, contemplates an area that is absolutely non-existent in the registration of the claimants' ownership, which contravenes the regulations on form. For this reason, it admits that the file of the property survey and the marginal notes are legally inadmissible, since the Agriculture and Livestock Service did not comply with the regulations in force when issuing stamping and issuing the certificates of subdivision of rustic properties contained in Resolution No. 3,904 exempt dated May 24, 2019 of the Agriculture and Livestock Service. In the objection dated April 30, 2020, which is claimed in this judicial proceeding, the specific rules that were not observed at the time of certifying the Subdivision Plan by the Osorno Office of the Agriculture and Livestock Service were specified, consisting of the failure of the interested parties to comply with the provisions of Resolution No. 3,904 regarding the rules of point C "Background of the land".

In addition to the above, the Agriculture and Livestock Service itself, at the time of applying the rules contemplated in paragraph "4 point ii: Technical Analysis of the Documentation", should have verified the correspondence between the boundaries of the property established in the property surveys and the boundaries contained in the copy of the registration of ownership in the Real Estate Registrar. Accordingly, he states: "*The Registrar was forced to refuse such file and such note, since they fell into the boundaries and surface area of the property, aspects of utmost importance when it comes to preserving the real estate and its story*".

Thus, in the Real Estate Registry the individuality of the properties remains, which is materialized in the personal Folio, and deepens the difference between the legal and physical reality. For instance, several properties express their boundaries with mention of the owner of the neighboring property, without necessarily coinciding with the description of the adjacent property.

---

17. ALCALDE (2020) p. 265.

In Case No. 44575-2017 (Cassation Form and Merits) Supreme Court - Third Constitutional Chamber, 27-11-2018, the plaintiff initiates a summary demarcation trial based on the fact that, together with her siblings, she is the owner of the property by hereditary succession of her father. The property is located in the commune of Viña del Mar, Jorge Montt Avenue, Reñaca, and it is individualized in the property survey added with the number 1.939 to the Registry of Documents of the year 1992 of the Real Estate Registrar of Viña del Mar. This property is duly registered and has the following boundaries: in the north: in one hundred meters with current property of the Treasury, before it belonged to Mr. Pedro González Miranda, today with property of the Treasury Navy. In the south: with Marina Avenue of Vergara Neighborhood in one hundred meters, today belonging to another owner (Municipality of Viña del Mar). In the east: with property of Mr. Vicente Merino Jarpa, Mr. Luis Alberto Plaza and Mr. Luis Gómez Carreño, roadway of Playa in between, today Avenida Jorge Montt, in two hundred and fifty meters. And in the west: with the sea, in two hundred and fifty meters. The Court dismissed the action because the evidence adduced in the case was insufficient to determine the physical location of the boundaries of the plaintiff's property. As a result of this method of describing the registered properties, they may be described literally and imprecisely. They may even be geographically unlocatable according to their current description.

On the other hand, the Land Registry is governed by the principle of rogation, on the basis of which "from the time the deeds are presented to the Registry until the relevant entries are made, a series of steps are taken that make up the registration procedure and this procedure can only be initiated at the request of a party, i.e., it is a rogatory procedure"<sup>18</sup>. Consequently, registration is not mandatory. However, the principle of registration promotes that the acts and contracts that serve as title to acquire the real right of ownership over real estate be registered. Reasons of different nature, economic or social, which it is not necessary to specify, mean that real estate acquired by a form other than tradition does not have access to the registry.

The dissimilar nature of the registration, whether it is about the acquisition of real estates by a means other than tradition, prevents the identification of this real estate simply because of the lack of registration in the Register. The same happens with errors in the registry description of the real estate. In fact, in the Land Registry it is possible to find properties with a defective limitation and location due to the absence of planimetry and topographical surveys to support it. Undoubtedly these errors, when they occur, will affect the identification.

The Regulation does not establish a legal procedure for rectification or clarification of its boundaries, much less to account for the surface of the properties. In some cases, the procedures of the General Law of Urban Planning and Construction or

---

18. GUTIÉRREZ (2004) p. 1.

Exempt Resolution No. 3,904 will have to be used to rectify the description of the properties. In other situations, errors or inaccuracies in the information provided by other institutions involved may result in the non-incorporation of the planimetry being preferable, when the procedure does not ensure the correct description of the property with respect to reality. It makes no sense for the Municipal Works Department or the SAG to share these representations, when they do not have an adequate correspondence with the legal reality, if the latter always takes precedence.

In conclusion, in spite of the progress made by the collaboration mechanisms between the Directorate of Municipal Works or the SAG and the Land Registry, there is still no common regulatory development that establishes the way in which we are going to overcome the lack of determination of the surface, the imprecision or non-coincidence of the boundaries with the registry entries, in the property surveys and titles that access the Registry, and if the Registrar can carry out this qualification.

### **III. Qualification of the property description**

In our system, qualification means that any title that intends to be registered in the Registry must be examined by the Registrar in order to determine whether it is legally permissible. In other words, it confirms whether it meets the established legal requirements. According to Articles 13 and 14 of the Regulations, this is one of the most important functions of the Registrar, due to the effects attributed by the Land Registry to the entries that are published.

The clause that allows the Registrar to refuse if the registration is in any sense legally inadmissible and the exemplary situations that must evaluate and that are related to the extrinsic forms of the document; the requirements of the validity of the act or contract contained in the title and the legal designations for the registration lead to consider that the registry qualification should ensure that the rights or situations that access the Registry are in conformity with reality, with the current legality and worthy of the protection that our system provides.

Taking into consideration the indications that the registrations must have, and made evident through the publicity of the Registry, they have an *erga omnes* effectiveness, so that third parties cannot plead ignorance against a title registered in the Registry and, at the same time, the title holders of the entries resulting from the Registry see their rights secured at the same time that the system protects them by means of the qualification.

Successive tract and legitimization apply simultaneously to this activity. The former is contemplated in Article 80 of the Regulations of the Real Estate Registrar, which establishes that "[w]henver a previously registered right is transferred, the previous registration shall be mentioned in the new one, at the time of designating the property, citing the Registry, folio and number thereof", and in Article 692 of the

Civil Code, which indicates that the previous registration must be mentioned in the transfer of a right that has already been registered. The second is not expressly stated in the legal system, although it is implicitly considered in Article 13 of the Regulation<sup>19</sup>, since in this way it is certified that the right incorporated in the Registry exists and with the characteristics of which the registration reports, among others, those that identify the property<sup>20</sup>.

That is to say, in the case that a title accompanied by property surveys or topographical surveys is presented for registration, the Registrar will analyze this description through a graphic analysis of what is declared, compared with what results from the content of the Registry, to verify the accuracy of its description and the coincidence with the description that results from the Real Estate Registry of the property and the coherence of the description with the graphic reality provided.

This operation includes determining the location, that is, the localization of the property. Placing it in a determined place, identifying it and delimiting it. Thus, the Registrar will positively evaluate the graphic information if he has no doubts about the correspondence between this representation and the registered property, and will appreciate the coincidence between this representation and another one that has been incorporated previously, as well as the invasion of the public domain. Meanwhile, the evaluation will be negative if the circumstances that confirm the correspondence are not given<sup>21</sup>.

The judgment of the Court of Appeals of Arica affirms, regarding a case in which the modification of the registration is requested through the rectification and complementation of its boundaries, where the increase between the registered surface area and the one to be rectified corresponds to a superficial length of almost five hectares of land, affecting the rights of third parties if the holders of the registration of the adjacent properties were not heard in the proceeding. To admit the contrary would lead to accept, in this case, a substantial variation in the limits of the property and, consequently, in the content and surface area of the same by the simple requirement of the person who claims to be the owner of the property, modifying the registry history of title, thus threatening the legal security of the same, which consists in the rights and obligations acquiring the certainty and publicness necessary to achieve social stability and, consequently, to prevent possible litigation of a patrimonial nature<sup>22</sup>.

---

19. MOHOR (2003) p. 3.

20. PEÑAILILLO (2019) p. 784.

21. FANDOS PONS (2016) p. 483.

22. Case No. 231/2016 (Civil). Resolution No. 27252 of the Court of Appeals of Arica, dated August 17, 2016.

This does not prevent the recognition that this security may be violated and that the titleholders may be harmed as a consequence of registrations that do not reflect the extra-registral reality. The Chilean system attempts to prevent this risk by not affecting the rights of third parties in the case of boundary modifications and, also<sup>23</sup>, by attributing this responsibility to the Registrar through the qualification, which is made present by registering boundary modifications and rectifications authorized by the Directorate of Municipal Works (Art. 67 of the General Law of Urban Planning and Construction), considering the interests of those who may be harmed by this situation. In the qualification of the Registrar, there is a general duty to ensure compliance with the law and, consequently, a concern to protect the interests of those who may be harmed by the practice of the registry entry.

All that has been said highlights the importance of the registry qualification of the description of the property, which is related to the effects that our legal system attributes to the registered rights and their holders.

In conclusion, the qualification implies that the Registrar ensures that the information published by the Registry and which produces the important effects indicated is true and that the registration cannot be invalid or not in accordance with reality. The latter is due to the concordance and adequacy of the contents of the Registry with the law and the extra-registrar reality, thus reducing information asymmetries. Therefore, it cannot register a title whose object is a real estate whose surface and/or boundaries differ from those that appeared in the previous correlative registrations, or a request for rectification of these if all the affected parties do not concur.

#### **IV. Legitimation of the property description<sup>24</sup>**

One of the effects produced by the registration is that of registry publicness. Through it the owners of the rights are made known, which are guaranteed by the presumption of veracity and accuracy that assists the Registry in accordance with the principle of legitimacy. From this the right of the holder is deduced, which exists and belongs to him in the form determined in the entry. Thus, the physical description of the property in the Registry determines the location, delimitation and extension of the real right of ownership. Therefore, it should enjoy the legal effects inherent to the registration.

---

23. PÉREZ (2019) p. 1

24. Taking into consideration that in our registry system the registration is constitutive in the case of the tradition of the real right of ownership over real estate and that it is voluntary, there is sometimes a lack of coordination between the Registry and the extra-registry reality. Thus, it may occur because a legal-real mutation concerning a property registered in the Registry has not been acceded, in which case the legal situation that it publishes will be different from the extra-registral one. On the other hand, the physical situation of the property may be different from the one indicated in the entry, because it did not have an adequate correspondence at the time it entered the Registry or because a modification of the physical situation has occurred subsequently. The addition is mine.

The incorporation of a property survey to the deed and to the registration, as a result of Law 20.703, has reinforced the concordance between the Registry and the reality. As stated in the Message of the Law: "a. The necessary coordination is established between the tasks assigned to the Municipal Works Directors, in the General Law of Urban Planning and Construction, and the functions established for them in Article 24 of Law No. 18,695, Constitutional Organic Law of Municipalities". "b. In addition, it fills the existing legal void in relation to the approval of the property surveys for boundary modification located within the urban limits or those authorized to be subdivided and urbanized in accordance with Article 55 of the General Law of Urban Planning and Construction". The aforementioned, considering that the Municipal Works Directors have among their functions the approval of property surveys of lot and land subdivision in such areas, so it is logical that they can also authorize modifications of land boundaries<sup>25</sup>. Therefore, it is possible to deduce that the registrant who has or owns a property registered and described according to the authorized property surveys enjoys the presumption of accuracy, also, as to the identity of the property.

The application of the principle of legitimacy to the description of the property is deduced from Article 67, paragraph 2 of the General Law of Urban Planning and Construction By virtue of which the applicant must attach the administrative resolution and the graphic planimetry that exposes the situation of the property according to its domain registration. As well as according to its physical reality. As well as of the Ordinary Circular No. 397 dated July 23, 2014, later modified by Ordinary Circular No. 553 dated December 9, 2015. Because according to the provisions of these, the Registrar would have to review that the resolution of the Directorate of Works and the property survey presented are originals, or authorized copies duly certified as true to their originals.

And that it contains the current boundaries of the property, as well as those resulting from the modification or rectification, since the marginal notes in the registration of ownership of the property is made, precisely, with the merit and the tenor of said resolution. In addition, confirming that there is correspondence between the boundaries indicated in the resolution and the planimetric identification of the property. Also, that the resolution contains a certification of the director of Municipal Works in the sense that third party rights are not affected. As well that the documentation corresponds to the property whose registration is to be modified; that the request was formulated by the owner or owners of the property. That there are no impediments or burdens that prevent the rectification or modification. In such a way that the rights insured are not modified or canceled without the consent of the holder, or without the holder having been able to intervene in the procedure in which such modification or cancellation is carried out.

---

25. Law History No. 20.703. Library of National Congress of Chile, pp. 12 y 13. Available in: <https://www.bcn.cl/obtienearchivo?id=recursolegales/10221.3/44419/2/HL20703.pdf>.

Therefore, if the real right of ownership requires a holder, it also requires the identification of the property on which the powers that include the content of the right are to be exercised. Therefore, all the aspects that constitute the legal reality of the property are important to the Registry, including the circumstances that describe it. This is so because the description of the property delimits in an exclusive and excluding manner the location and extension of the registered property. Then, the Registrar guarantees the planimetric configuration and that it coincides with the one established in the registry books.

The principle of registry legitimacy may be applied to the latter, which is not limited to publication, but attributes to the content of the Registry a presumption of accuracy, unless proven otherwise. This presumption implies that the registration produces all its effects, as long as its inaccuracy is not declared in the terms established in the law. And of the aforementioned article 67, so that no contradictory claim may be exercised in relation to the rectification or modification of boundaries without previously, or at the same time, filing a claim for cancellation of the corresponding registration.

Once the discrepancy in registration has been overcome, the holder of a right over the property has in his favor a rebuttable presumption that the location and delimitation of the area of the layout shown in the Registry corresponds to reality. So, he does not need to prove it in court, and whoever claims otherwise must prove it. The burden of proof is therefore reversed.

The scope of the principle of registration legitimacy is not only limited to the courts of justice, it also has an effect in the registration field. Once the modification or rectification has been registered, the administrative resolution of an adjacent property that does not respect its delimitation may not be registered. Although the mere fact of being accompanied by planimetries approved by the competent Directorate of Municipal Works does not necessarily imply that what is described therein conforms to the registry reality of the property in question, pursuant to the provisions of the final paragraph of Article 1.2.2. of the General Ordinance of Urban Planning and Construction, since the Article tacitly motivates the Registrar to assess the lack of coincidence, even partial, with the incorporated planimetric representation. Article 13, on the other hand, compels the Registrar to refuse the registration of the resolution if it does not coincide in whole or in part with another registered graphic.

Thus, the extension of the principle of legitimacy to the description of the property is confirmed by the General Law of Urban Planning and Construction and the General Ordinance of Urban Planning and Construction. And if the Registry does not admit it, it does not explain the reason why the law gives this important task to the Registrar, nor the reason why Articles 67 and 55 of the first one lead to the qualification in the case of rectification and modification of boundaries. Since it is required the precise description of the place where the modification is made.



In conclusion, if the identification of the property in the case of mergers and divisions must go through the process of registry qualification, it seems appropriate that the property survey and topographic surveys produce the same effects as the registration, which leads to the extension of the principle of legitimization.

## **Conclusion**

The traditional method of literal identification of the property to be registered is insufficient to adequately determine the situation of a property because it is impossible to locate it, even if the elements to be contained in the registration are specified.

The General Law of Urban Planning and Construction, the General Ordinance of Urban Planning and Construction and the Organic Law of Municipalities make it possible to situate the property within the national territory and complete its description, individualize it and associate it with a plot of land and. And above all, to reduce the distance between the legal reality and the extra-registral reality through graphic delimitation.

In addition, these rules allow strengthening the qualification function of the Registrar by extending it to both the concordance and the adequacy of the contents of the Registry to the legality and reality.

Finally, to confirm the extension of the principle of legitimacy to the description of the property in the case of rectification and modification of boundaries, since it is required a precise description of the place where the modification is made. If the identification of the property in the case of mergers and divisions must go through the process of registry qualification, it seems appropriate that the property survey and topographic surveys produce the same effects as the registration, which leads to the extension of the principle of legitimization.

## **About the author**

Yasna Otarola is Professor of Civil Law at the School of Law. Dr. of Law and Master in Juridical Science from the Pontificia Universidad Católica de Chile. Has developed research in the area of registry law, family and civil liability.

## **Thanks**

This article is part of the Fondecyt Initiation Project N° 11200092, entitled "The qualification of the title in the Chilean Real Estate Registrar", of which the author is the responsible researcher. The article was written in January 2022, during the research stay at Universidad de Sevilla, Spain.

## Bibliographic references

- ALCALDE, Jaime (2020): *La individualización del bien raíz que se reivindica y el señalamiento registral de sus linderos*. Corte Suprema, sentencia de 13 de agosto de 2020, Rol n.º 5837-2019, Westlaw CL/JUR/76099/2020. Núm. 37, , p. 251-272.
- ALESSANDRI, Arturo (2011): *De la Compraventa y de la Promesa de Venta*, tomo I, volumen 2. (Santiago, Editorial Jurídica de Chile).
- ANTÓN, Alberto y GARRIDO, Natalia (2021): *Manual técnico y jurídico de delimitación inmobiliaria*. (Valencia, Tirant lo Blanch).
- FANDOS PONS, Pedro (2016): *Los Efectos Jurídicos de la Identificación y Descripción Gráfica de Fincas Registrales: la Base Gráfica Registral*. (Valencia, Tirant lo Blanch).
- GODOY, Manuel (2017): “El principio de especialidad en el Registro conservatorio chileno. Ideas para mejorar el sistema”, en *Revista de Derecho Inmobiliario*, año 1, n.º 1, pp. 211-226 (Marco Sepúlveda, director). Santiago, Editorial Metropolitana.
- GUTIÉRREZ, Nelson (2004): “Principio de la Rogación”, en *Revista Fojas*. Disponible en: <http://fojas.conservadores.cl/articulos/principio-de-la-rogacion>.
- HISTORIA DE LA LEY N.º 20.703. Biblioteca del Congreso, pp. 12 y 13. Disponible en: <https://www.bcn.cl/obtienearchivo?id=recursoslegales/10221.3/44419/2/HL20703.pdf>.
- MARTÍNEZ PROVENCIO Y MARTÍNEZ, Ruperto Isidoro (2021): *La función notarial y registral en el derecho inmobiliario*, (tomo II. Madrid, Editorial Bosch).
- MEZA BARROS, Ramón (2010): *Manual de Derecho Civil. De las fuentes de las obligaciones*, tomo I. (Santiago, Editorial Jurídica de Chile).
- MOHOR, Elías (2003): “*El sistema registral chileno*”. Ponencia, Encuentro de Antigua, Guatemala. 17 al 21 de febrero. Disponible en: [cinder.info/wp-content/uploads/file/El\\_sistema\\_registral\\_chileno.pdf](http://cinder.info/wp-content/uploads/file/El_sistema_registral_chileno.pdf).
- PEÑAILILLO, Daniel (2019): *Los Bienes*. (Santiago, Editorial Jurídica de Chile).
- PÉREZ, Miguel Ángel (2019): “*Modificación y rectificación de deslindes*”. Disponible en: <https://www.arqydom.cl/modificacion-y-rectificacion-de-deslindes/#:~:text=La%20Modificaci%C3%B3n%20y%20Rectificaci%C3%B3n%20de,afecten%20los%20derechos%20de%20terceros>.
- PICA PEMJEAN, René (2001): “Actualización de deslindes y superficies prediales en inscripciones de dominio”, en *Revista Fojas*. Disponible en: <https://fojas.conservadores.cl/articulos/actualizacion-de-deslindes-y-superficies-prediales-en-inscripciones-de-dominio>.

SOTO, Sebastián (2021): “Alcances registrales del artículo 67 de la Ley General de Urbanismo y Construcciones en la determinación de superficies y deslindes prediales”, en *Revista Fojas*. Disponible en: [conservadores/alcances-registrales-del-articulo-67-la-ley-general-urbanismo-construcciones-la-determinacion-superficies-deslindes-prediales](#).

ZÁRATE, Santiago (2018): “Concepto y evolución histórica de la publicidad registral inmobiliaria. Fuentes del sistema chileno”, en *Revista de Derecho Inmobiliario*, año 2, no. 1, pp 309-326 (Marco Sepúlveda, director). Santiago, Editorial Metropolitana.

### JURISPRUDENCIA CITADA

E.J.V.S.M. con Conservador de Bienes Raíces de Arica, Fernando Manterola Sala. Causa n.º 231/2016 (Civil). Resolución n.º 27252 de Corte de Apelaciones de Arica, de 17 de agosto de 2016.

Vergara Klickmann, Blanca con Municipalidad de Viña del Mar y Fisco. Causa n.º 44575-2017 (Casación Forma y Fondo) Corte Suprema, Sala Tercera (Constitucional), 27/11/2018.

V.F.M.C. con Secretaría Regional Ministerial de Bienes Nacionales de Atacama, Causa n.º 668/2017 (Civil). Resolución n.º 16 de Corte de Apelaciones de Copiapó, de 15 de diciembre de 2017 (Recurso de protección).

Inversiones Intercorp Limitada con Conservador Bienes Río Bueno y otro (2016). Causa n.º 46560/2016 (Casación). Resolución n.º 755383 de Corte Suprema, Sala Tercera (Constitucional) de 29 de diciembre de 2016.

Luengo López Mariagicella con Cofré Duarte María (O) (2020). Causa n.º 76704-2020, (Civil) Casación Fondo, Corte Suprema, Sala Primera (Civil), 23-02-2022.

P.O.A.L. con sucesión de doña N.L.G., esto es, doña N.E.A.L. y don J.O.A.L. N.L.G. (2016). Causa n.º 3321/2015 (Casación). Resolución n.º 413723 de Corte Suprema, Sala Cuarta (Mixta) de 3 de agosto de 2016.

J.S.M.B. con don D.E.F; doña M.E.L.L.; don S. A.F. L; don Marcial del C.F.L.; don J.F.F.L.; don O.P.F.L.; doña J.R.F.L.; don S.Á.F.L.; don C.A.F.L y, doña V.d.C.F. L Sentencia n.º C-1483-2017 de Juzgado de Letras de La Ligua, 08-11-2019.

César Enrique Escalona Acevedo con don José Miguel Adolfo Monares Saldivia; de doña M.I.M.A.; de doña M.L.M.A; y de doña F.I.M.A. Sentencia n.º C-88-2019 de Juzgado de Letras y Garantía de Yumbel, 07-05-2020.

Alterra Desarrollos Inmobiliarios S.A., contra del Fisco de Chile, y de don Sebastián Ignacio Flores Stuckrant, Sentencia n.º C-799-2014, de 3º Juzgado de Letras Civil de Antofagasta, 20 de septiembre de 2017.

J.B.J. y de M.J.B.M con Conservador de Bienes Raíces. Sentencia n.º V-78-2020 del 1er Juzgado de Letras de Osorno, 19-08-2020.

## **OTROS**

Circular Ordinaria n.º 397, de fecha 23 de julio de 2014.

Circular Ordinaria n.º 553, de fecha 9 de diciembre de 2015.

Resolución exenta n.º 3.904, de 24 de mayo de 2019 del Servicio Agrícola y Ganadero.