

The Basis for an Entry in a Land and Mortgage Register

Maciej Rzewuski

University of Warmia and Mazury in Olsztyn

Abstract

The analysis of the issue of land and mortgage register entry is a difficult and multifaceted task. The problem is important inasmuch as currently there are no uniform legal solutions in this area at European level yet. The ever increasing migration of people is conducive to generating further difficulties, not only in private international law, but also in the matter of property law.

The freedoms guaranteed to European Union Member States regarding free movement of capital, people and property have opened the door wide to trade in foreign real estate for many entities. Every single purchase of real estate requires, of course, to be reflected in the relevant land record. It would be socially desirable to make the rules for making entries in the “European” land and mortgage registers uniform, or at least similar. Unification of bases for a land and mortgage entry may constitute the first step towards the unification of EU law in the field of recording real estate transactions in Europe.

Keywords: *land and mortgage register, land registry, entry into a land and mortgage register, basis for an entry.*

Introduction

The increasingly intensive migration processes occurring presently both in Europe and worldwide undoubtedly affect the transnational nature of legal proceedings being conducted, including land and mortgage proceedings. The desire to leverage assets and securely invest capital is conducive to investments involving the purchase of real estate, located not only in one’s home country but also abroad. This affects the need to regulate the legal status of purchased real estate in an appropriate land register applicable for the location of the property.

Real estate registers have long been part of the economic life of Europe, increasing the security of legal transactions in this area. They are known not only in Europe but also globally. Despite this, however, there are no uniform legal solutions to reflect the legal status of real properties in individual legal systems. Also, there is no in-depth legal comparative analysis, which would contribute to the improvement of domestic legislation within this area, and eventually result in the unification of European land registries, or at least the rules under which they are maintained. This in turn could result in a strong revival in legal transactions regarding real estate, both in Poland and abroad.

I will focus my deliberations on an attempt to offer an insight into the title issues and initiate in-depth discussion in this regard. In order to compare and to find the best legal solutions in the field of making entries into a land and mortgage register, I will refer to foreign (non-Polish) regulations covering legal systems of both state law, and common law cultures. Due to the limited scope of the subject as it is demarcated, these contemplations cannot be deemed an exhaustive analysis of the problem. They should be seen rather as the author's voice in the discussion on contentious issues related to making entries in land and mortgage registers, and especially the basis for such entries. Detailed discussion is preceded by a few general remarks about the nature of the system, which is necessary for the purposes of the introduction to the title issues.

The nature of an entry and the basis for an entry in the land and mortgage register

According to Article 1, paragraph 1 of the Polish Act on Land and Mortgage Registers and Mortgage (Act of 6 July 1982 on land and mortgage registers, consolidated text: Dz. U. [Journal of Laws] of 2016, item 790, hereinafter: U.K.W.H.) land and mortgage registers are maintained in order to determine the legal status of a real property. Essentially, they are to be established and kept for those real properties that do not have land and mortgage registers yet established or whose land and mortgage registers have been lost or destroyed (paragraph 2 of the Article). Both the establishment and keeping a land and mortgage register is associated with the need to make various kinds of entries. None of statutory regulations does explain, however, the very term of "entry in the land and mortgage register".

The scholarly opinion presents two main views on the nature of an entry into a register. According to the first position, an entry is each annotation made in the land and mortgage register, indicating the change of the legal status of the real property, or determination of that status according to facts (Ciepła, Bałan-Gonciarz, 2011, p. 65; Ignatowicz, Stefaniuk, 2009, p. 345ff.; Ignatowicz, Wasilkowski, 1976, p. 900 f.; Barłowski, Janeczko, 1988, p. 28ff.; Henclewski, *Monitor Prawniczy* 2010, No. 4, p. 238ff).

Proponents of the second view argue that an entry in a land and mortgage register has a double nature in the sense that it is not only a judicial decision – to rule on the substantive essence of the case), but at the same time, it is a technical operation – reflects the substance of the judicial decision in the land and mortgage register (Rudnicki, 2009, p. 135; Jefimko, *Przegląd Sądowy* 2002, No. 10, p. 53ff.; Oleszko, 2003, p. 127; Hoffmann, *Rejent* 2002, No. 5, p. 97ff.; Stawecki, 2005, p. 65ff).

What is noteworthy is the position of jurisprudence in the described area. According to the concept assumed by the Supreme Court, “the nature of land and mortgage register, as a legal institution, requires a written form of legal actions that are relevant to achieving the purpose of the register (public determination of the legal status that is open to the unlimited circle of addressees). This is done by describing and crossing out. The literal meaning of the word “entry” refers to the expression of thoughts with a visible and permanent system of signs. In the law, this concept is given a conventional and heterogeneous nature – depending on whether the formal or material importance prevails. If an entry does not establish legal circumstances, the legal significance of the term is limited to its form and the place (relevant sections of land and mortgage register) where it was made. This applies for example to mentions on requests and remedies that are not judicial decisions. Even these steps (the procedural nature of which is unquestionable) must also be made by the physical act of making an entry. On the other hand, an entry as a form decisive ruling on the substantive essence of the case is another thing, being, according to Article 49 of the Act, a judicial decision. By virtue of an express provision of Article 30 of the Act, deletion as an operation opposite to an entry has the same nature. Thus, in this case, the logical and functional meaning of the word “entry” rests on its role as an imperious act that directly or indirectly decides about a right (e.g. entries in

section I-O)” (Grounds for the Supreme Court’s resolution of 20 September 1996, III CZP 104/96, OSNC 1996, No. 12, item 163).

In land and mortgage registers maintained in a computer system, entries take the electronic form. Each such entry, however, requires the authorized signature of the judge or court clerk. This follows from the wording of Article 626⁸ § 8 of the Civil Code, according to which a signed entry shall be only deemed made when it is saved in the central database for land and mortgage registers. In this case, a signature of the judge or court clerk is electronic data, which, together with other data they are attached to, are used to identify the judge or the court clerk who performs operations in the computer system (Article 626⁸ § 9 of the Civil Code) (Deneka, 2010, p. 67–68).

Scholars of law make the distinction between the content of an entry to a land and mortgage register and the basis for the entry. The content of an entry covers the core of the document underlying the entry. It consists of a description of the right that is subject to entry or deletion, and an indication of the authorized or obligated entity. Where any discrepancies arise between the content of the entry and the reason to make it, the content of the entry decides in favour of a person who does not know the content of the document. This is so because, as a general rule, no one can plead ignorance of the entries in a land and mortgage register (Art. 2, sentence 2 of U.K.W.H.). This rule does not apply to files of a land and mortgage register, to which documents which form the basis for the entries are to be lodged (Ibid. p. 68; Ignatowicz, Stefaniuk, 2009, p. 346).

The term “basis for the entry” was used by the legislature in a number of various legal provisions. By way of example, one may mention Article 31, paragraphs 1 and 2 of U.K.W.H.; Article 626² § 3 and Article 626⁹ K.P.C. (Act of 17 November 1964 – Civil Procedure Code (consolidated text: Dz. U. [Journal of Laws] of 2014, item 101, as amended), hereinafter: K.P.C.), Article 92 § 4, sentence 2 of the Notary Law (Act of 14 February 1991 – Notary Public Law (consolidated text: Dz. U. [Journal of Laws] of 2014, item 164, as amended), hereinafter: Pr. Not), § 10 para. 1 item 3 and para. 3 of the regulation of 2013). Regulation of the Minister of Justice of 21 November 2013 on establishing and keeping land and mortgage registry in an IT system (Dz. U. [Journal of Laws] of 2013, item 1411, as amended) “Basis for the entry” is a concept essential and superior to “the basis for

the purchase” or “basis for the designation of the property” (Kuropatwiński, Rejent 2015, No. 5, p. 167.).

Scholars of law make a distinction between two meanings of the term entry. The first meaning is the factual basis of a judicial decision (basis for an entry in a substantive sense), and second – a document or set of documents forming the basis for an entry into a land and mortgage register (basis for an entry in a formal sense). To sum up, one may conclude that the basis for an entry in its formal sense as evidence generally taking the form of documents is used to demonstrate the basis for the entry in its substantive sense (Ibid., p. 168; Mysiak, Rejent 2006, No. 7–8, p. 158; Bieniek, Nowy Przegląd Notarialny 2007, no. 2, p. 13).

Basis for an entry in comparative terms

The Polish legal regulation concerning the basis for an entry in the land and mortgage register is not too extensive. The provision of Article 31 para. 1 of U.K.W.H. specifies a formal minimum for an entry in the form of a document with notarised signature. On the other hand, an entry needed to eliminate discrepancies between the contents of the land and mortgage register and the actual legal status may be made where the discrepancy is proved by a judicial decision or other relevant documents (para. 2 of the article).

According to the wording of Article 32 of U.K.W.H., to make an entry of limited property rights to a real property, it suffices to have a document containing a statement of the establishment of this right given by the owner. For an entry of a personal right or claim, it suffices to have a document containing a statement of the owner on the establishment of this right, or the owner’s consent to the entry of the claim. This provision shall apply accordingly to the entry regarding the transfer of mortgage and waiver of priority; however, where the rights of another person are to be affected by the waiver of priority, a document containing the consent of that person is also needed. It should be stressed here that the consent to making an entry may not be subject to a condition or time limit.

By way of comparison, in Germany the bases for an entry are governed by § 19 of the German Law on Land Registers (Grundbuchordnung of 24 March 1897 (RGBl 1897, 139), hereinafter: GBO), according to which

an entry is made based on the consent of the person whose the right is to be affected by the entry. There are of course exceptions to this rule specified in the other sections of the provision, although the general rule is that an entry requires the consent of the person entered as a person entitled to dispose of the right. In accordance with § 29 of GBO, the basis for an entry can only be official documents or officially certified documents (Bengel, Bauer, Weidlich, 2000, p. 178ff.; P. Mysiak, 2010, p. 189).

In Switzerland, entries in the land and mortgage register can be made solely on the basis of demonstration of the right to dispose of the right concerned, and the legal basis thereof (Article 965 of the Swiss Civil Code) (Schweizerisches Zivilgesetzbuch of 10 December 1907 (SR 210), hereinafter: ZGB). The “demonstration of the right to dispose of” means the requirement of proving that the person performing the action which is to form the basis for the entry is recorded in the land and mortgage register as an authorized entity or has the authorization of such a person to perform that specific action. The “demonstration of the legal basis” involves demonstrating that the action was performed in the form set out in the law (Zohl, *Grundbuchrecht*, Zürich 1999, p. 179). Apart from legal actions, also administrative decisions, judicial decisions and statutory provisions may constitute a basis for an entry (Mysiak, 2010, p. 189).

In Austria, pursuant to § 94 paragraph 1 of the Austrian Act on Land Registers (Allgemeines Grundbuchgesetz 1955 (BGBl. 39/1995), hereinafter: GBG), there are four prerequisites to make an entry. Firstly, no obstacles for making an entry may be derived from the content of the land and mortgage register. Secondly, there will be no doubt as to the legitimacy of the applicant or their capacity to dispose of the right. Thirdly, the demand of the application shall be supported by documents attached thereto. Finally, the documents that form the basis of an entry shall be prepared in the appropriate form (Rechberger, L. Bittner, *Grundbuchsrecht*, Wien 2007, p. 137ff). The basis for an entry should therefore be the documents submitted in the form required by law. Upon acquisition or change of a property right, the content of the document must include the legal basis for the action performed. Austrian scholars of law make a distinction between a “decisive entry” and “pre-notation.” The former requires the submission of an official document or a document with an officially certified signature, while a pre-notation occurs

when the document does not meet all the legal requirements established in the provisions of § 31 et seq. of GBG (Mysiak, 2010, p. 190).

It is also noteworthy to mention the solutions applied in English-speaking countries. The English Land Registration Act of 2002 makes the basis for an entry conditional upon whether *in concreto* we are dealing with the first entry, or with a subsequent one for a property that is already registered. In the first case, apart from documents, other evidence, including copies of documents, is also admissible. For entries regarding registered real properties, it is necessary to submit the original document or its officially certified copy (Harpum, Bignell, 2004, p. 31; Mysiak, 2010, pp. 190–191).

The comparison demonstrates that the issue of the basis for an entry in the land and mortgage register is variously regulated in the continental and English legal systems. It is interesting that each of these regulations is quite narrow and regulates these issues in a brief, vague manner. Meanwhile, the basis for an entry is undoubtedly one of the most important elements of the process of making a substantive decision on land and mortgage register applications. However, perhaps, the intent of the legislatures was to create a flexible structure, providing courts and other bodies keeping land registers with the discretion in decision-taking, especially for complicated factual circumstances.

Limited substantive legalism

The mortgage registry system in Poland is based on the principle of substantive legalism. Its essence is based on the assumption that, subject to exceptions specified in the Act, making an entry in the land and mortgage register is dependent on demonstrating a relevant change in the legal status of the property. The subject of the evidentiary proceedings in a land and mortgage register court must therefore include both the circumstances confirming the transfer of the right from the entity recorded in the land and mortgage register to another, and the circumstances confirming the validity and effectiveness of the actions leading to a change in such this legal status. All those factors constitutes the basis for an entry in a substantive sense (Kuropatwiński, Rejent 2015, No. 5, pp. 169-170; Wasilkowski, Part II, Państwo i Prawo 1947, vol. 5–6, p. 50; Oleszko, Rejent 2007, No. 1, p. 15ff).

Similar solutions have been adopted in Switzerland and Austria (*Legalitätsprinzip*), where the principle of substantive legalism reduces the risk of discrepancies between the content of the land and mortgage register and the actual legal situation (Zohl, 1999, p. 178; Rechberger, Bittner, 2007, p. 136). In Germany, in turn, the mortgage registry system is based on the principle of formal consensus, which, according to German scholars, is a significant simplification of the mortgage registry procedure (Erickmann, 1994, p. 86–87).

It is worth noting that in the light of the judgement of the Polish Constitutional Court of 3 July 2007, SK 1/06, „(...) the entry may be made on the basis of a document, which proves the existence of a legal status of the property, or is evidence of a substantive action giving rise to, change in or termination of a right that is subject to entry in the land and mortgage register (...). In view of the Act on the Land and Mortgage Register and Mortgage, and the challenged Article 626⁸ § 2 of the K.P.C., it is worth referring to the case law, showing that an action under substantive law, which constitutes the basis for an entry, should be examined by the mortgage registry court not only in formal terms, but also in terms of its substantive effectiveness (...). The jurisdiction of the mortgage register court is not limited only to control the literal content of the application and attached documents. Therefore there is no grounds to conclude that Article 626⁸ § 2 of the K.P.C. infringes Article 45 paragraph 1 of the Polish Constitution” (OTK-A 2007, No. 7, item 73).

The Polish mortgage registry legalism is subject, however, to certain exceptions for the benefit of the principle of formal consensus and the principle of formal statement of one party (Ignatowicz, Rejent 1994, No. 2, p. 15; Wasilkowski, Part II, Państwo i Prawo 1947, vol. 5–6, p. 50. Cf. Gniewek, 2005, p. 100ff). Hence, the literature on the subject refers to the principle of limited substantive legalism. It results in the delimitation of evidence measures, by which the change of the legal status of the property can be demonstrated in the land and mortgage register proceedings. In addition to this, there is the limited jurisdiction of a land and mortgage registry court, covering only an examination of the content and form of the application, attached documents and the content of the land and mortgage register (Article 626⁸ § 2 of the K.P.C.) (Cf. Kuropatwiński, Rejent 2015, No. 5, p. 171–172; Mysiak, 2010, p. 196).

Thus, the rules for giving evidence in land and mortgage proceedings differ significantly from the general rule of evidence. With a few exceptions, they do not admit other evidence than documents. The latter are generally the basis for entries in its substantive sense. In the event the change in the legal status of the real estate is due to various legal events, all of them are the substantive basis for the entry in the land and mortgage register. This does not mean that they become the basis for an entry in the formal sense *per se*. These bases may often differ from each other, and the role of the land and mortgage court is to verify them and select the basis which is appropriate to the facts and the state recorded in the land and mortgage register (Rechberger, Bittner, 2007, p. 139ff.; Kuropatwiński, Rejent 2015, No. 5, p. 171).

In practice, situations in which the basis of an entry is built based on the principle of formal consensus (Article 32 paragraph 2 of U.K.W.H.) or the principle of a statement by one party (Article 32, paragraphs 1 and 2 of U.K.W.H.) are rare. In the latter case it is *de facto* about a further restriction on the principle of substantive legalism, involving excluding from the jurisdiction of the land and mortgage court an examination of the declaration of intent of a party to a contract referred to in Article 32 paragraphs 1 and 2 of U.K.W.H. (Ignatowicz, Rejent 1994, No. 2, p. 16; Kuropatwiński, Rejent 2015, No. 5, p. 171–172).

The form of the documents constituting a basis for an entry

In the literature of reference, authors assume that the basis for an entry may be mostly documents constituting proof of ownership or other rights that are subject to entry in the land and mortgage register. Those documents include primarily:

- notarial acts – including a number of legal actions related to real estate transactions. Because of their public nature, the significance and evidence qualities of such documents is high. A notary is a person of public trust, and their role is to examine the content of legal actions, both in the context of current and previously applicable legislation;
- documents with a notarized signature – their importance in the land and mortgage register transactions is as high as these mentioned above and their role cannot be ignored. However, pursuant to the decision of the

Supreme Court of 9 March 2005, III CK 132/04, “the principle, provided for in Article 31 paragraph 1 of U.K.W.H., of a notarized certification of signature on a document, which forms the basis for an entry to the land and mortgage register, does not refer to official documents within the meaning as defined in Article 244 of the K.P.C. Such documents include court rulings. The function of an original is replaced by its official copy, since the original is taken out of the flow of documents and is held on file” (Lex No. 453048);

- administrative decisions – the content of which directly decides the change in the legal status of real estate or limited property rights, which the land and mortgage registers are kept;
- judicial decisions – both final and those determined as immediately enforceable;
- other documents – usually evidencing the acquisition of ownership or proving that such acquisition took place, e.g. a certificate from the state archives, extracts from liquidation tables, documents from the land and buildings records etc. (Borkowski, Trześniewski-Kwiecień, 2008, Nb. 2).

As a rule, an entry in the land and mortgage register may be made only on the basis of an original document or documents. The exception is the entry of ownership upon establishing a land and mortgage register. The requirement to submit the original document was highlighted in the resolution of the Supreme Court dated 8 December 2005, III CZP 101/2005, where it was decided that the basis for an entry of compulsory mortgage in the register can only be an original enforcement order (OSNC 2006, No. 11, item 180. Likewise; the Supreme Court’s in its decision of 12 June 1996, III CZP 61/96, OSNC 1996, No. 10, item 132). Despite this, due to the requirements of the substantive law as to the form of documents, in real estate transactions the basis for entering is often not an original document *sensu stricto* (Siciński, 2013, Nb 2.4).

Also requiring consideration is the situation of public, which are usually issued in the form of duplicates or extracts. These are documents, in respect of which the function of the original is played by their official copy, because the original is held on file. In such a situation, notarial authentication is virtually excluded, because deeming such a document excluded from legal

transactions, the notary will not be able to make a duplicate or copy of it. In addition, in the decision of the Supreme Court dated 24 June 1997, II CKN 216/97, it was assumed that the basis for an entry to the land and mortgage register may not be a duplicate made of a duplicate of an official document certified by the authority in possession of a duplicate of this document (OSNC 1998, No. 1, item 7). This decision also decided the question of inadmissibility of a copy as the basis for an entry in all cases, where the copy would not be based on an entry in a specific public register. This is so, since only documents issued from these records are admissible duplicates made from the original (Wrzecionek, Przegląd Prawa Handlowego 2007, No. 2, Nb 2.4).

Moreover, according to Article 109 of the Pr. Not., only an excerpt of a notarial act has the legal effect of the original. Thus, copies, duplicates and extracts drawn up by a notary, although they have the effect of an official document, do not have legal effect of the original. Therefore, they shall not constitute the basis for an entry in the land and mortgage register, if their capacity as a notarial document within the meaning of Article 31 U.K.W.H. does not suffice to make the entry. It will be so in the case of a judicial or administrative decision. In assessing such documents constituting the basis for an entry, one should not ignore limited jurisdiction of the land and mortgage court, comprising, according to Article 626⁸ § 2 of the K.P.C., the examination of only the documents attached to the application. It should be kept in mind that Article art. 626² § 3 of the K.P.C. clearly requires that only documents that form the basis for an entry are to be attached to the land and mortgage register application (P. Rylski, Polski Proces Cywilny 2012, No. 1, p. 129; Bieniek, Nowy Przegląd Notarialny 2007, No. 2, p. 48; Siciński, 2013, Nb 2.4).

The grammatical (textual) interpretation of Article 31 paragraph. 1 of U.K.W.H. seems to speak in favour of the assumption that only those documents that are directly assessed by the court in the land and mortgage register proceedings are required to be in the form specified in this legislation. The documents in question are those which are the basis for an entry in the formal sense. On the other hand, however, the principle of substantive legalism entails the fact that legal events that determine the effectiveness of a particular action also form the basis for an entry in the land

and mortgage register. So, one cannot say that they are less important than the legal documents supporting the land and mortgage register application. The role of Article 31 paragraph 1 of U.K.W.H. is undoubtedly to increase the security of legal transactions in the field of private documents, which determine the change of the legal status of real estate (Czech, 2014, p. 463; Kuropatwiński, Rejent 2015, No. 5, p. 176–177; Mysiak, 2010, p. 196).

Jurisdiction of the land and mortgage court

One of the matters that are closely related to the subject of the basis for an entry in the land and mortgage register is the issue of the scope of court's jurisdiction in the in the land and mortgage register proceedings. The crucial role is played by Article 626⁸ § 1 and 2 of the K.P.C. The content of the first states that the court is bound within the scope of the request, which means that the court may not adjudicate on what has not been requested, or more than the request submitted in the application. In contrast, the provision of Article 626⁸ § 2 of the K.P.C. results in the obligation of examination by the court of only the content and form of the application, documents attached to the application, and the content of the land and mortgage register. Where the land and mortgage register is kept in a computer system, the court, when examining the application, additionally examines *ex officio* the compliance of the data included in the application with the data resulting from the systems keeping records of universal identification numbers (Article 626⁸ § 3 of the K.P.C.). Additionally, in the case of a request to amend the designation of the property in the land and mortgage register kept in a computer system, the court shall, also *ex officio*, verify the data indicated in the application and the property designation recorded in the land and mortgage register with the data of the real estate cadastre, unless there are obstacles to actually prevent making such a check – article 626⁸ § 4 of the K.P.C. (Deneka, 2010, p. 111).

When a document covering legal action is attached to the application for an entry, the mortgage registry court must examine this step not only in terms of formal and legal requirements, but also in terms of its substantive effectiveness (See the decision of the Supreme Court of 25 February 1963, III CR 177/62, OSNC 1964, No. 2, item 36 and of 16 January 2009, III CSK 239/08, Lex No. 523685). The court should first assess whether the

legal action is not affected by the sanction of absolute nullity. On the other hand, it is emphasized in case-law that “the nature of jurisdiction, limited under art. 626⁸ § 2 of the K.P.C., of a district court deciding the case upon an application for an entry, does not allow it to conduct the examination in the direction of finding the facts. The phrase “examines only” is to emphasize the limited nature of the jurisdiction of the court in the proceedings in which the court has no power or possibility of taking evidence, so it cannot verify the data provided by the parties” (Supreme Court’s resolution of 17 January 2003, III CZP 79/02, OSNC 2003, No. 11, item 142).

It should be agreed with the view expressed in the literature on the subject, that the court’s serious doubts as to the content of the agreement to form the basis for an entry in the land and mortgage register may be left unsolved. In such a case, the court should conduct a full investigation of evidence and admit e.g. witness evidence or hearing of participants to the proceedings, which is not possible as part of land and mortgage registry proceedings (Deneka, 2010, p. 114; H. Ciepła, *Przegląd Sądowy* 1999, No. 9, p. 30).

Without a doubt, however, in the light of article 626⁸ § 2 of the K.P.C., the deliberation on the application for an entry in the land and mortgage register includes the examination of the documents attached to the application. This regulation does not define the limits of such “examination”. Only the content of § 10 para. 1 item 3 of the Regulation of 2001 (Regulation of the Minister of Justice of 17 September 2001 on the manner of keeping land and mortgage registers and collections of documents (Dz. U. [Journal of Laws] 2001., No. 102, item. 1122, as amended.)) stipulates that “document” should be understood as “data on the basis for an entry,” therefore the type, date and number or reference sign of the document. In practice, a document intended to be the basis for an entry should also specify the subject matter and the name and address of the authority that issued it, or the name of the notary and the notary office.

The legislation mentioned above do not specify the scope within which the land and mortgage court examines the basis for an entry – a document attached to the application. Although secondary legislation defines the formal requirements for such a document, it is beyond dispute that the competence of the court in the proceedings for an entry also includes the obligation to examine the content of the document as the basis for an entry. The content

of the document is determined by the type of the document to form the basis of an entry in a particular section of the land and mortgage register. Thus, the scope of jurisdiction of the court will also be different depending on whether the basis for the entry will refer to Section I, II, III or IV of the land and mortgage register (Oleszko, 2016, Nb. 6).

According to Article 626² § 3 of the K.P.C. the application for an entry must be accompanied by the documents constituting the basis for an entry in the register. The *ratio legis* of the regulation is to provide the court with all the documents necessary for the initiation and conduct of the land and mortgage registry proceedings.

Particularly important, especially for notarial practice, are the provisions of § 3 and 4 of Article 626⁸ of the K.P.C. on how to compose e-applications, in which the basis for an entry is a notarial deed. Their content must always be consistent with the formal requirements of the ICT system. The integrity of the notarial deed with regard to the e-application requires a separate assessment. In the light of the applicable land and mortgage registry regulations, the court examines not only the formal requirements of the e-application, but also *ex officio* verifies the consistency of the data indicated in the application with the data resulting from systems keeping the records. Moreover, it checks the data included in the application and the designation of the property recorded in the land and mortgage register with the data from the record of land and buildings. These circumstances have a direct impact on the responsibilities of a notary who, before drawing up a notarial deed and submitting the e-application, should read the entries in the land and mortgage register, and compare them with the current data in the record of land and buildings (Oleszko, Pastuszko, 2016, Nb. 4.4).

The above does not change the fact that the jurisdiction of the land and mortgage court includes the examination of not only the form but also the content of the notarial deed constituting the substantive basis for the entry. The validity and effectiveness of a legal action identified in the notarial deed constituting the basis for an entry may be assessed only by the court. The court's role is to correctly demarcate between the actual intention of the parties of a legal action and the influence of the notary on the editorial content of the deed (Ibid.).

Conclusions

The above observations show that bases for an entry in the land and mortgage register are a complex, multifaceted issue, both in theory and in practice. Certainly, it is impossible to define a single pattern of proceeding, consistent for all land and mortgage registry cases. Although in practice the basis for an entry is usually different kinds of documents, one must remember about other types of basis for an entry, e.g. in the form of specific legal provisions, notorious facts, etc. The analysis of all these bases would certainly exceed the scope of this study.

The author has tried to provide an insight into the issue and to define certain issues related to the title issue. On the basis of selected foreign legislation, an attempt was also made to show the main rules of foreign jurisdictions in terms of making entries in land registers. However, the assessment of foreign regulation was intentionally abandoned, bearing in mind that regardless of the chosen system of the land and mortgage register, and whether it is based on the principle of substantive legalism (Poland) or formal consensus (Germany), the most important factor is always the security of legal transactions of real estate and other rights recorded in land and mortgage registers. When examining a particular land and mortgage register application and assessing the documents in terms of the basis for an entry, one should always have in mind the purpose of land registry, which is the need to reflect the actual legal status of the property in the land and mortgage register.

As regards proposals for the law as it should be (*de lege ferenda*), it is worth considering the idea of establishing, at least across the European Union, a central system for the registration of real estate. The EU's land records built based on this system would unquestionably make the life of potential real estate buyers easier – this also applies to creditors seeking measures to secure their claims in the form of a mortgage. Such a European land registry (European Mortgage Register) would, in fact, play a crucial role in terms of information, as well as contribute to security of real estate legal transactions transnationally.

References

- Allgemeines Grundbuchgesetz 1955 (BGBl. 39/1995)
- Barłowski B., Janeczko E., *Księgi wieczyste – rejestr nieruchomości*, Warszawa 1988
- Bengel M., Bauer R., Weidlich D., *Grundbuch Grundstück Grenze*, Kriftel 2000
- Bieniek G., *Podstawa wpisu do księgi wieczystej a kognicja sądu wieczystoksięgowego*, Nowy Przegląd Notarialny 2007, No. 2
- Borkowski P., Trześniewski-Kwiecień J., *Dokumenty stanowiące podstawę wpisów do księgi wieczystej*, [in:] Borkowski P., Trześniewski-Kwiecień J., *Wpisy do ksiąg wieczystych*, Lex/el. 2008
- Ciepla H., *Kognicja sądu wieczystoksięgowego*, Przegląd Sądowy 1999, No. 9
- Ciepla H., Bałan-Gonciarz E., *Ustawa o księgach wieczystych i hipotecę. Komentarz po nowelizacji prawa hipotecznego. Wzory wniosków o wpis. Wzory wpisów do księgi wieczystej*, Warszawa 2011
- Czech T., *Księgi wieczyste i hipoteka*, Warszawa 2014
- Deneka M., *Księgi wieczyste. Zasady materialnoprawne*, Warszawa 2010
- Erickmann D., *Grundbuch – Verfahrensrecht: ein Lehrbuch*, Bielefeld 1994
- Gniewek E., [in:] *System prawa prywatnego*, vol. IV, *Prawo rzeczowe*, Ed. Gniewek E., Warszawa 2005
- Harpum C., Bignell J., *Registered Land. Law and Practice under the Land Registration Act 2002*, Bristol 2004
- Henclowski T., *Podstawy ujawnienia wzmianki w księdze wieczystej*, Monitor Prawniczy 2010, No. 4
- Hoffmann P., *Dane i informacje z ewidencji gruntów i budynków a księgi wieczyste*, Rejent 2002, No. 5
- Ignatowicz J., *Podstawy wpisów do ksiąg wieczystych*, Rejent 1994, No. 2
- Ignatowicz J., Stefaniuk K., *Prawo rzeczowe*, Warszawa 2009
- Ignatowicz J., Wasilkowski J., [in:] *System prawa cywilnego*, vol. II, *Prawo własności i inne prawa rzeczowe*, Ossolineum 1976
- Jefimko E., *Postępowanie wieczystoksięgowe jako szczególny rodzaj postępowania nieprocesowego (zagadnienia wybrane)*, Przegląd Sądowy 2002, No. 10
- Kuropatwiński J., *Jurydyczna konstrukcja podstawy wpisu do księgi wieczystej*, Rejent 2015, No. 5
- Mysiak P., *Podstawa wpisu do księgi wieczystej*, Rejent 2006, No. 7-8

- Mysiak P., *Postępowanie wieczystoksięgowe*, Warszawa 2010
- Oleszko A., *Badanie podstawy wpisu (treści dokumentu)*, [in:] *Wpis w księdze wieczystej na podstawie aktu notarialnego*, Lex/el. 2016
- Oleszko A., *Obrót cywilnoprawny w praktyce notarialnej i wieczystoksięgowej*, Kraków 2003
- Oleszko A., *Uzgodnienie stanu prawnego nieruchomości w zakresie podstawy dokonanego wpisu prawa własności w księdze wieczystej*, Rejent 2007, No. 1
- Oleszko A., Pastuszko R., *Kognicja sądu rozpoznającego wnioski*, [in:] Oleszko A., Pastuszko R., *Prawo o notariacie. Kodeks Etyki Zawodowej Notariusza. Księgi wieczyste. Postępowanie wieczystoksięgowe*, Lex/el. 2016
- Rechberger W.H., Bittner L., *Grundbuchsrecht*, Wien 2007
- Rudnicki S., *Ustawa o księgach wieczystych i hipotece. Przepisy o postępowaniu w sprawach wieczystoksięgowych. Komentarz*, Warszawa 2009
- Rylski P., *Odpis dokumentu poświadczony przez pełnomocnika występującego w sprawie jako podstawa dokonania wpisu w postępowaniu wieczystoksięgowym*, Polski Proces Cywilny 2012, No. 1
- Siciński P., *Podstawy dokonywania wpisów – uwagi o formie dokumentu*, [in:] *Komentarz do wpisów w księgach wieczystych*, Ed. Ignaczewski J., Lex/el. 2013
- Stawecki T., *Rejestry publiczne: funkcje instytucji*, Warszawa 2005
- Wasilkowski J., *Znaczenie wpisu do księgi wieczystej według prawa rzeczowego*, Part II, Państwo i Prawo 1947, vol. 5-6
- Wrzcionek R., *Kontrola sądu rejestrowego nad czynnościami notarialnymi w spółkach kapitałowych*, Przegląd Prawa Handlowego 2007, No. 2
- Zohl D., *Grundbuchrecht*, Zürich 1999
- Grundbuchordnung of 24 March 1897 (RGBl 1897, 139)
- Schweizerisches Zivilgesetzbuch of 10 December 1907 (SR 210)
- Act of 17 November 1964 – Civil Procedure Code (consolidated text: Dz. U. [Journal of Laws] of 2014, item 101, as amended)
- Act of 14 February 1991 – Notary Public Law (consolidated text: Dz. U. [Journal of Laws] of 2014, item 164, as amended)
- Regulation of the Minister of Justice of 21 November 2013 on establishing and keeping land and mortgage registry in an IT system (Dz. U. [Journal of Laws] of 2013, item 1411, as amended)