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Selected Evidence of Acquisition and Loss of Property Rights in Regulation of Property Legal Status**

1. Introduction

Pursuant to article 113 section 6 of the *Real Estate Management Act* "a property with unclear legal status means the property, for which due to lack of land and mortgage register, a collection of documents or other documents, cannot be determined the holders of property rights to it."

This provision relates to the issue of expropriation of property for public purposes, but is often subject to broad interpretation in the practice of administrative bodies. It is due to the fact that, in practice, situations concerning the legal status of properties which are subject to assessment of administrative bodies, including the surveying administration, in many cases do not apply directly to the statutory provisions. They create problems, which, in order to be solved, require clarification or interpretation. Some of these problems arise from ignorance of the effects of acquisition (loss) of derivative or primary ownership rights (Tab. 1), the required legal procedures and frequent regulatory changes (Tab. 2).

Ownership documents of historical interest, such as property grant deeds from the period of agrarian reform and land ownership deeds, are often invoked in legal proceedings. In particular, land ownership deeds. However, in view of recent changes in laws (normative acts), the noteworthy documents include confirmation of acquisition of inheritance and certificate of succession deed, and particularly the relationship between the role of the court and notary public, as well as the decision to authorize the implementation of road investment.

The decision on the expropriation of property or the decision to authorize the implementation of road investment may be issued only to parties, i.e. to the person who has a legal interest in the proceedings (article 28 of the *Civil Code*).

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Determining such a person is the primary responsibility of the authority conducting the proceedings, by any available evidence. According to [4] "It shall be presumed that property possession is consistent with the state of law (article 341 of the *Civil Code*) and that an entry of the right in the Land and Mortgage Register shall be presumed to be reflecting its real legal status (article 3 of the *Land and Mortgage Register Act*). Indeed, those presumptions may be challenged in any proceedings."

Table 1. Primary and derivative methods of acquisition and loss of ownership rights

Primary method of acquisition and loss of ownership rights	Derivative method of acquisition and loss of ownership rights
The right of the previous owner has expired and a new one, independent of the previous owner's rights or any person's entitlements, is created, such as nationalization, acquisition by the state, expropriation, confiscation of property, forfeiture of goods, acquisitive prescription, finding, appropriation of a waif, abandonment, separation of natural proceeds from property	The new owner derives his/her rights from the previous owner's rights, in particular, cannot acquire more power than the previous owner of the property, therefore we are dealing with legal succession, e.g. sale, donation and exchange, i.e. transfer of ownership right, and then: a loan, commission contract, delivery contract and inheritance, the acquisition of property through merger of legal entities, enfranchisement of legal entities, communalization, privatization

Table 2. Basic legislation in real estate

Selected normative legal acts	Selected non-normative legal acts
1. *Act of 23rd April 1964 Civil Code* 2. *Act of 21st August 1997 on Real Estate Management* 3. *Act of 19th October 1991 on State Treasury Agricultural Property Management* 4. *Act of 28th September 1991 on Forests* 5. *Act of 24th June 1994 on Premises Ownership* 6. *Act of 11th April 2003 on Formation of Agricultural System* 7. *Act of 3rd February 1995 on Protection of Agricultural and Forest Lands* 8. *Act of 10th April 2003 on special rules of preparation and implementation of investment in public roads* 9. *Act of 29th July 2005 on Conversion of Perpetual Usufruct into Ownership Title* 10. *Act of 21st March 1985 on Public Roads*	1. Court decisions e.g. in the case of confirmation of property acquired by acquisitive prescription, confirmation of acquisition of inheritance, inheritance distribution, cancellation of joint property, and others. 2. Administrative decisions: the deed of land ownership, the expropriation of property, return of expropriated property, communalization decision, enfranchisement of a state legal person, enfranchisement of the county or province, establishing or extinction of permanent administration, and others. 3. Notarial deeds: contractual transfer of ownership (sale, exchange, donation, life annuities), contract of establishment and transfer of perpetual usufruct, agreement with the successor, certificate of succession deed, inheritance distribution contract, contract of sale of cooperative ownership right to a residential property, and others

2. Land Ownership Deed

Land ownership deed was issued after 4th November 1971, pursuant to article 1 of the *Act of 20th October 1971 – on regulation of agricultural farm property* (Official Journal No. 27, item. 250, as amended) in the form of an administrative decision issued by the then regional branch for agriculture of the boards of national councils, competent due to the location of the property, in the proceedings at the request of the entitled persons, or ex officio. On the grounds of this act, the acquisition of agricultural property ownership was carried out ex lege, by law, as of 4th November 1971. However, the administrative decision was of a declaratory character.

The purpose of the act was to regulate the ownership of farms, held by long--term informal possessors, provided that they meet one of the three conditions set out in the act:

1) autonomous possession of the property (without any indication of the passage of time), constituting a part of the farm, as of 4 November 1971, acquired for example on the grounds of "agreement informal in its form" sale, exchange, donation, life annuities, or any other agreement to transfer ownership or an inheritance distribution agreement (article 1 section 1);
2) autonomous uninterrupted possession of the property by a farmer for five years in good faith or ten years in bad faith, before 4th November 1971 (article 1 section 2).

If the autonomous possessors had not farmed personally or with family members for five years until 4th November 1971 due to permanent employment in occupations other than working on an individual farm or in an agricultural production cooperation, the decision could be issued to the hitherto dependent possessor (tenant or holder of any other title), or acquired by the state (article 2 of the act).

The area of the acquired real estate could not exceed the upper limit of the property area which was subject to acquisition by the State for the purposes of the agrarian reform. The surplus over the said area was subject to takeover for the benefit of the State without compensation, free of encumbrances. Only real estate easements were maintained. Agricultural property acquired under the act of 1971 by one of the spouses was included in the joint property of both spouses, if on the date of the entry into force of this act there was statutory conjugal joint property.

The farmers' holdings and property acreage were determined according to the data contained in the land register, and the final administrative decision determining the acquisition of real estate ownership was the basis for the disclosure of a new state of the property, not only in Land and Property Register, but also in the land and mortgage register established for that property.

The decision of the agricultural authority was subject to an appeal to the provincial commission for enfranchisement, whose decision was final.

Deed of land ownership is a proof of acquisition of real estate property via enfranchisement under this act and without it the possessor of an agricultural property cannot be regarded as the owner, although the decision is of a declaratory nature, and the enfranchisement was conducted ex lege. On the grounds of a deed of land ownership, an entry regarding a new owner was made in the land and mortgage register of the property, or a decision was lodged to the documents, which were made possible by 31st December 1982. Since then, a confirmation of the evidence of enfranchisement was submitted to common courts, which currently issue the decisions of enfranchisement, confirming the acquisition of property by a farmer.

In the above context, it should be noted, however, that the issuance of an administrative decision in the form of a land ownership deed does not allow the existence of the legal situation such that some other person shall acquire the property by acquisitive prescription. Proceedings for the acquisitive prescription of such property should always take place before the court, involving the property owner. If a person holding a land ownership deed is involved in the proceedings, an interruption of the running of the acquisitive prescription shall be made in relation to that person.

3. Confirmation of Acquisition of Inheritance and Certificate of Succession Deed

3.1. Common Regulations

Law of succession requires that, within six months after receiving information about a possible appointment to an inheritance (Tab. 3) due to the death of the decedent (opening of inheritance) the heirs who decided to accept the inheritance (unreserved or limited to the value of the assets) or to disclaim it by submission of an appropriate declaration. The legal consequences of the statements are governed by articles 1012–1024 of the *Civil Code*.

However, at any time since this event, one may apply for a confirmation of acquisition of inheritance or succession certification. However, the heir can prove his/her rights arising from the inheritance, only with a confirmation of acquisition of inheritance or a registered certificate of succession deed. The document is also issued to an entity who is not an heir, although there was such a presumption towards this person. He is not responsible for the debts of the inheritance.

Table 3. The course of basic legal events according to the law of succession

opening of inheritance	– date of decedent's death specified in a death certificate, or – court decision to declare a person dead, or – court decision confirming death
receiving information about appointment to inheritance	
lapse of time up to 6 months	
acceptance of inheritance: – unreserved, or – limited to the value of the assets	disclaimer of inheritance
joint inheritance assets according to implied shares (possible opening of the will) for any period of time	
confirmation of acquisition of inheritance or certificate of succession deed drawn up by a notary public	
dissolution of the joint inheritance (distribution of inheritance)	
contractual distribution of inheritance	court distribution of inheritance

A confirmation of acquisition of inheritance or succession certification lead to the following official presumptions:

- A person who received the document is an heir.
- The document is necessary to reveal the heir's rights in the land and mortgage register as well as in Land and Property Register, if the subject of the inheritance is a property right to a real estate.
- The document can be used by an heir to third parties to prove his/her identity.
- There is a merger (not incorporation) of the inheritance assets with personal properties.
- The heir may demand that a person who is holding the inheritance as an heir, but is not an heir, releases the inheritance and individual items belonging to the inheritance (article 1029 of *Civil Code*).

Joint inheritance that is created on the date of opening of the inheritance still exists, although the ring of persons who are officially heirs may change. Shares in the joint property play the same role as in fractional parts of the property, which applies exclusively to items. However, since there is joint property ownership, or the community of rights and obligations, the liability towards the creditors of the decedent shall be joint and several, and the heir's creditor may assert their claims against him/her.

The heir may dispose of the share of inheritance without the consent of other heirs, however, that right does not apply to a disposal of a share in a particular object of inheritance.

3.2. Confirmation of Acquisition of Inheritance

Confirmation of acquisition of inheritance shall be issued by the court of inheritance. This name is defined in the regulations of the *Civil Code* and the *Code of Civil Procedure* and refers to the *Civil Division* of the district court competent for the last place of residence of the deceased. And if the place of residence cannot be determined in Poland, then the case is considered by the court where the property, or a part thereof, is located (article 39 of *Code of Civil Procedure*). Confirmation of acquisition of inheritance is conducted in non-litigious proceedings, in the form of a decision.

The decision confirming the inheritance acquisition is a document confirming the acquisition (or not) of a right to inheritance by a given person, giving legitimacy to everyone (article 1027 of *Civil Code*). The decision is issued by the court, only at the request of a person having an interest therein, which is not necessarily a legal interest. Except for the heirs and their legal successors, those persons include: legatees, entitled to a legitim, decedent's creditors and heir's creditors, executor of the will, and others who have a legal interest in demonstrating their succession of the testator. Evidence of legal heirs' rights are copies of civil status, and testamentary heirs' rights – additionally a will.

It is also important is that the regulations do not introduce a mandatory time limit for applying for the issuance of the confirmation of acquisition of inheritance. Joint inheritance property is based upon the presumption of potential heirs.

The court of inheritance issues a decision on the confirmation of acquisition of inheritance following the hearing, to which the applicant is summoned, as well as the persons likely to come as statutory heirs or testamentary heirs (article 66 of *Civil Code*). If the opening of a will (wills) had not been carried out earlier, before issuing the decision, the court conducts these activities and examines the validity and the contents of the will. In the decision confirming the acquisition of inheritance, the court lists all the heirs and states the amount of the shares in the inheritance, in fractional parts.

The court does not determine, though, the composition of the inheritance, nor the items of property due to the heirs. However, two situations may occur:

– In the written will (the testator's holographic will) no shares of inheritance have been determined, and thus, not the heirs have been specified, but legatees (indicated persons have been assigned property items). Then, based on a valuation, the court shall assess their relative value and determines the shares of inheritance.

– The inheritance includes an agricultural farm or a contribution to an agricultural production cooperative, and the opening of the will took place before 13th February 2001. Since 14th February 2001, the provisions regarding the inheritance of agricultural farms and contribution to agricultural production cooperatives are no longer in effect. They were repealed by the *Constitutional Court's decision of 31st January 2001* (Official Journal No. 11, item. 91) of non-compliance of these provisions with article 64 sections 1 and 2 in conjunction with article 21 section 1 and article 31 section 3 of the *Polish Constitution*.

The document has a declarative character and its effects are not definitive. As a result of being informed of the changes in the composition of the heirs (recognizing one as unworthy, the disclosure of an illegitimate child, etc.), at the request of the interested party, the court may issue a new decision on the confirmation of acquisition of inheritance.

3.3. Certificate of Succession Deed

In view of heavy workload upon district courts, an idea was created, which was reflected in the articles 1025–1028 of *Civil Code*, and articles 95a–95p of the *Act – Notary Public Law*. Notary public's powers refers to inheritances opened after 30th June 1984 (part 3a of the *Act of 14th February 1991 – on amendment of the Notary Public Law*, consolidated text in Official Journal of 2008 No. 189, item 1158).

A notary may take measures to draw up a certificate of succession deed, upon the request, and in the presence of all potential persons who may be taken into account as legal or testamentary heirs. There may not exist a dispute as to the amount of the shares accruing in the inheritance, either. The parties to a proceeding shall provide the notary with a copy of the death certificate of the deceased, copies of civil status of persons appointed to the inheritance under the act, as well as other documents that may affect the determination of rights to the inheritance.

The procedure can be started even if since the opening of the inheritance has not been six months yet. Then, in the claim for succession certificate, the notary includes individual declarations of the heirs of an unreserved acceptance of the inheritance, or acceptance of the inheritance limited to the value of assets, or disclaimer of the inheritance.

Before preparing a certificate of succession deed, if there is a will, the notary public carries out its opening and announcement, unless the opening and announcement of the will has already taken place. The opening and announcement of the will shall become subject to drawing up claim for succession certificate. The notary public is not allowed to test the validity of wills, however, must assure the highest degree of professional care and conduct.

In addition, before drawing up a certificate of succession deed, the notary public writes down the claims for succession certificate, with the participation of those people. Prior to drawing up the claims, the notary instructs the persons participating in the event about their obligation to disclose all the circumstances subject to the content of the claim, as well as about criminal liability for making false statements. The mention must be placed in the claim for succession certificate.

In addition, the claim must include the following statements (article 95c of the act) regarding:

- the existence or non-existence of persons who would exclude the known heirs from the inheritance or they would inherit with them;
- knowledge of any wills of the deceased or the absence of such wills;
- no decision on confirmation of acquisition of inheritance had previously been issued, no proceeding regarding confirmation of acquisition of inheritance is pending, nor any succession certificate has been issued;
- if the inheritance includes an agricultural farm, and who among the heirs appointed to the inheritance complies with the conditions set forth to inherit an agricultural farm, for inheritances opened before 14th February 2001;
- whether the decedent was a foreigner or, not having a nationality, was not residing in the Republic of Poland;
- whether the inheritance includes property rights or ownership rights to a property situated abroad;
- whether there were made declarations of acceptance or disclaimer of the inheritance;
- whether a decision was issued on the unworthiness of inheritance;
- whether there were contracts concluded with the deceased on the future renunciation of the inheritance.

The notary includes a reference about drawing up a certificate of succession deed on the claim. The notary may not draw up a certificate of succession deed, if an earlier court decision on the confirmation of acquisition of inheritance has been issued, or the testator at the time of his death was a foreigner, or, not having a nationality, was not residing in the Republic of Poland, as well as if the inheritance includes property rights or ownership rights to a property located abroad.

The notary draws up a certificate of succession deed under the provisions of the law of succession of legal and testamentary inheritance, taking into account a provided will, with the exclusion of specific wills. In the event of the will being submitted, the notary shall conduct its opening and the announcement, unless the opening and announcement of the will have already taken place, and shall draw up a record of these operations.

The certificate of succession deed should include, among others:

- personal data of each potential heir, and his/her number;
- date and place of death of the deceased and his/her last residence and Social Security number (personal identification number);
- indication of the heirs entitled to the inheritance, and in the case of legal persons – name and address;
- the title of their appointment to the inheritance, and the amount of shares in the inheritance; in the case of a legal inheritance – together with an indication if the heir was the spouse of the deceased or his/her relative and to what extent, and in the case of testamentary inheritance – together with identifying the form of a will;
- indicating the heirs inheriting an agricultural farm subject to the inheritance under the act, and their shares in it;
- reference to the opening minutes and announcement of the will;
- signatures of all involved in drawing up a claim for certificate of succession;
- endorsement of the registration in the computer system for keeping a register of succession certificates.

Immediately upon the issuance of the succession certificate, the notary public shall make the registration statement to the register of the certificate of succession deeds established by the National Notary Association. The data is entered via a computerized system and secured with an electronic signature verified with a valid qualified certificate. As soon as the entry in the register is made, the notary receives a notice of registration and of the possibility to obtain confirmation of the deed registration, together with a number resulting from the order of entry, through the computerized system. In the same way the notary receives a notice of the failure to register the certificate of succession deed.

Endorsement of registration is placed on the certificate of succession deed, indicating the number resulting from the order of entry, and the day, month and year, as well as an hour and minute of the registration made.

Registering does not occur if, in relation to a particular inheritance, a certificate of succession deed has been previously recorded. A registered certificate of succession deed has an effect of a legally binding decision on confirmation of acquisition of inheritance. Excerpt of the deed is issued to parties to the proceeding, any person who demonstrates a legal interest (creditor of the deceased or of the heir, legatee, entitled to legitim) and at the request of the court, prosecutor, tax chamber and revenue office. An excerpt with more than one sheet must be numbered, connected, initialled and sealed.

The original copies of the certificate of succession deeds may not be given away outside their storage place (article 95m of the act). In the case of revocation of a certificate of succession deed, the notary public makes a note of it in the certificate of succession deed and immediately informs the National Notary Association about such occurrence. The President of the National Notary Association shall immediately order the cancellation of the repealed certificate of succession deed from the register.

4. Decision to Authorize the Implementation of Road Development

The *Act of 10th April 2003 concerning specific terms of the preparation and implementation of investment in public roads* (consolidated text in Official Journal of 2008, No. 193, item 1194) sets out specific terms and conditions for the preparation of investment in public roads within the meaning of provisions of the *Act of 21st March 1985 on public roads* (Official Journal of 2007, No. 19, item 115), as well as the competent authorities in these matters. The provisions of this act shall expire on 31st December 2020.

According to this act, construction works may be commenced upon the receipt of the decision to authorize the investment in road development, which is issued by the governor in relation to national and provincial roads, and the mayor in relation to county and municipal roads, within 90 days from the filing date. In case the competent authority fails to issue the said decision on road investment within 90 days from the filing date, the higher authority imposes upon this organ, by order, a penalty in the amount of 500 zloties for each day of the delay. Proceeds from penalties constitute the state budget income.

The application is submitted by a competent manager of the road: General Director for National Roads and Motorways (in relation to national roads), or the management of commune roads, district or province roads. The application must be accompanied by, inter alia, a map in a scale of at least 1:5000, presenting the proposed route of the road, indicating an area required for buildings, and existing utilities, the analysis of road links with other public roads, maps including the division project of real estate, etc., as well as administrative decisions required by separate provisions. Upon the initiation of proceedings to issue a decision on authorization of road investment, notifications are sent out to the applicant, owners or perpetual usufructuaries of the properties subject to the application, to the address indicated in the Land and Property Register, and the other parties, by way of announcements at appropriate offices, as well as on the websites of municipali-

ties and in the local press. As of the date of the notification, the property cannot be traded within the meaning of the provisions of the *Real Estate Management Act*.

The decision to authorize an implementation of the road investment includes, among others: requirements for road links with other public roads, including their category, determining area demarcation lines, requirements concerning the protection of the legitimate interests of third parties, approval of the real estate division project and approval of the construction project. Thus, the decision to authorize the implementation of the road investment approves the division of the real estate, and the demarcation lines, determined with the decision to authorize the implementation of the road investment, constitute the lines of the property division. As of the date on which the decision becomes final, the properties or parts thereof, are by law: 1) owned by the State Treasury, in relation to national roads, 2) owned by respective local government units, in relation to province, district and commune roads. The decision to authorize the road investment is constitutive and constitutes the basis for making entries in the land and mortgage register and in Land Register. If the property or perpetual usufruct of the property have been subject to established limited property rights on the date on which the decision to authorize the implementation of the road investment has become final, these rights shall expire.

The final decision to authorize the road investment constitutes the grounds for:

- the issuance of the decision on the expiry of perpetual usufruct by the governor or the mayor;
- expiry of the permanent management set up on the property designated for a road lane;
- termination of the lease, rental or lending contract with an immediate effect by a competent road manager;
- acquisition by the General Directorate for National Roads and Motorways, or local organizational unit, the property owned by the State Treasury or local government unit, respectively.

An appeal against the decision to authorize the implementation of the road investment is dealt with within 30 days, and a complaint to an administrative court – within two months.

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