



## Legislative improvements in Central and Eastern Europe: Quality of mortgage collateral

*Country report:* **POLAND**

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### **Mortgage collateral. Land and mortgage registers.**

**Land and mortgage registers** are court registers maintained in Poland in order to establish the legal status of an estate. They help put into practice the openness principle of rights in property and at the same time increase the safety and security of property trade. The role of land and mortgage registers does not only consist of keeping records of circumstances relating to the legal status of a given estate – in some cases an entry to a land and mortgage register bears legal and substantive consequences (eg. an constitutive entry).

Other property-related registers are **registers of land and buildings (property cadastres)**. They are standard, for the whole country, regularly updated databases relating to land, buildings, and premises, their owners and other natural and legal persons holding rights to them. Registers of land and buildings are maintained by heads of districts [starosts].

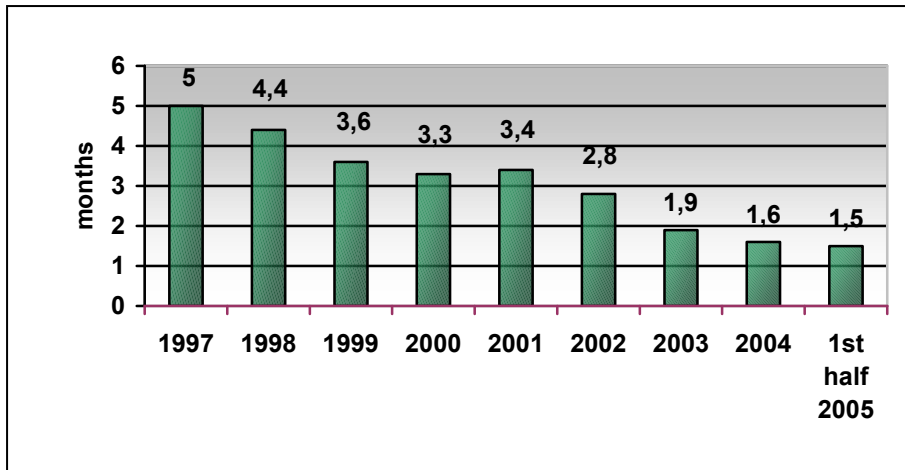
The role of land and buildings registers is to keep a record of data that help public administration authorities in the area of economic and spatial planning, establishing taxes and charges, and keeping public statistics.

#### **Land and mortgage registers – basic information:**

- land and mortgage registers are maintained by regional courts
- the number of land and mortgage registry divisions in Poland (as at end 2004): 347
- the number of land and mortgage registers (as at end 2004): 17 million
- the annual increase (land and mortgage registers newly set-up): 860 thousand
- the annual number of applications submitted to land and mortgage registry divisions: 4.2 million

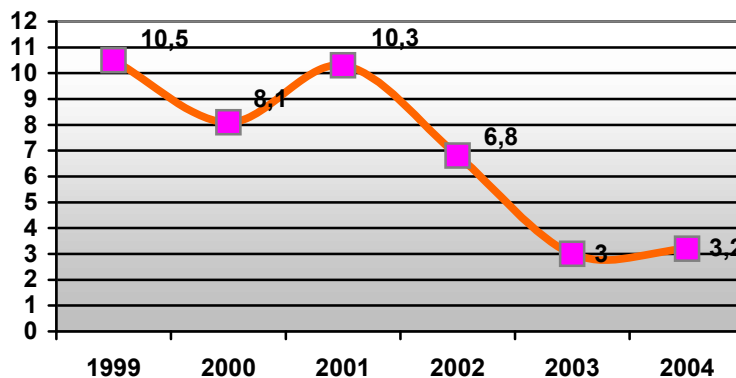
The duration of the land and mortgage registry process in Poland, though still not fully satisfactory for users of land and mortgage registers, has dramatically shortened over the last few years while the number of applications and of land and mortgage registers have increased. The basic parameters are shown on the figures below.

### Efficiency of land and mortgage registry divisions in Poland (mean in months)



Source: The Foundations on the basis of the data provided by the Ministry of Justice

### Efficiency of land and mortgage registry divisions in the Warsaw district (mean in months)



Source: The Foundations on the basis of the data provided by the Ministry of Justice

### Electronic land and mortgage registers

**The implementation of the reform in the land and mortgage register systems, including the switch to an electronic format,** started in Poland in 2003. The reform, co-financed from PHARE funds, was planned to take ca. 10 years. 66 land and mortgage registry divisions have been incorporated in the electronic system to date.

At the end of 2004 620 thousand land and mortgage registers were run in an electronic format. Five land and mortgage registry divisions have been made fully electronic.



Among the advantages of electronic land and mortgage registers are:

- easier access to the content of land and mortgage registers and increased safety of property trade
- reduced workload connected with land and mortgage registers, which may improve the efficiency of courts
- wider access to land and mortgage registers, faster handling of cases and preparation of entry duplicates

### **Varied practices**

Whereas the progress in terms of the efficiency of entry procedures is considerable, there are other factors that negatively influence the situation of banks as mortgage creditors. The main of them are **different practices applied by land and mortgage courts with respect to register entries**. The problem, signalled by the banking sector, has been the subject of the Foundation's intensive activities for several years now. They aim at standardising this practice by, *inter alia*:

1. Organising joint conferences for judges and entities using land and mortgage registers
2. Using template application forms for entries to land and mortgage registers

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In 2001–2004 the Foundation, in co-operation with the Ministry of Justice, organised **four editions of the conference "Land and mortgage registers in courts as a guarantee of safe property trade"**. To date the conference has been attended by more than 400 judges and court officials, and ca. 300 users of land and mortgage registers – representatives of the banking sector, law offices, notaries public, insurance companies and representatives of other professions involved in the property market.

The conference aims at:

- improving co-operation between courts and users of land and mortgage registers
- summarising experiences of users of both, land and mortgage registers as well as courts running land and mortgage registers
- standardising practices of banks granting mortgage credits as well as courts making entries to land and mortgage registers
- streamlining land and mortgage registry proceedings that are of critical significance for the quality of mortgage collateral and the mortgage market as such.

**All the above aims have been, to a great extent, achieved.** Thanks to the agreements made during the conference a great number of problems have already been clarified, many joint solutions for the banking and court practice have been established, and specific suggestions of legislative changes, necessary to improve the efficiency of the mortgage market, have been worked out.

The fifth **edition of the conference "Land and mortgage registers in courts as a guarantee of safe property trade"**, with the participation of judges, court officials, and representatives of circles involved in the property market **has been scheduled for 14-15 December 2005.**

**Application form and program of the conference will be available since 15 November 2005 on [www.mortgage.org.pl](http://www.mortgage.org.pl)**



Re. 2

One of the tangible outcomes of the previous conferences attended by land and mortgage registry judges is **a template application form for entries to land and mortgage registers** prepared by the Foundation in wide sectoral consultation. The template application helps eliminate legal risks connected with different interpretation of the law. It also prevents application forms from being rejected.

Among the aims of the template application are:

- standardising the bank and court practice
- limiting the risk of the bank secured by mortgage
- eliminating the existing controversy, eg. that relating to contentious modes of using mortgage as collateral.

## Mortgage collateral in property foreclosure

Over the last few years the efficiency of court procedures relating to setting-up collateral on an estate has improved (see above). However, in order that institutions (banks) could finance the entire property related process in a rational manner and on the basis of market principles, **correct functioning of foreclosure procedures** is necessary. Unfortunately, in Poland this area still leaves a lot to be desired. While a mortgage creditor has the right to satisfy his claim from the collateralised property, in practice he has very little chance to get his money in a reasonable time and in a fair amount.

According to the data of the World Bank the time needed in Poland to recover one's debt through court proceedings amounts to almost 1000 days, ie. almost 3 years. This places Poland at the very last place among all the 24 countries participating in the study.

Another problem, apart from the time aspect, is the recovery rate, ie. the percentage of the debt that can realistically be recovered by the creditor. In Poland this rate is estimated at the level of just 40%!

Unfortunately the available statistics provide combined data on all types of enforcement proceedings together. As the data is not broken down according to individual types, data that specifically refer to foreclosure proceedings are not available.

Overall, difficulties that creditors come across in their daily practice are as follows:

- lengthy court proceedings
- problems with the granting of the executory formula to bank foreclosure titles
- sluggishness and low efficiency of enforcement officers
- excessively formalised enforcement proceedings
- high court charges and fees relating to foreclosure proceedings.

Despite certain imperfections that can still be seen in foreclosure proceedings, a huge legislative breakthrough that has recently taken place in this area should not be forgotten.

After many years of efforts on the part of the banking sector, and with significant participation of the Foundation, substantial reform in foreclosure proceedings was carried out. The reform consisted of **the elimination of hidden property charges (statutory mortgage) and the guaranteed reasonable order of mortgage satisfaction in foreclosure proceedings.**



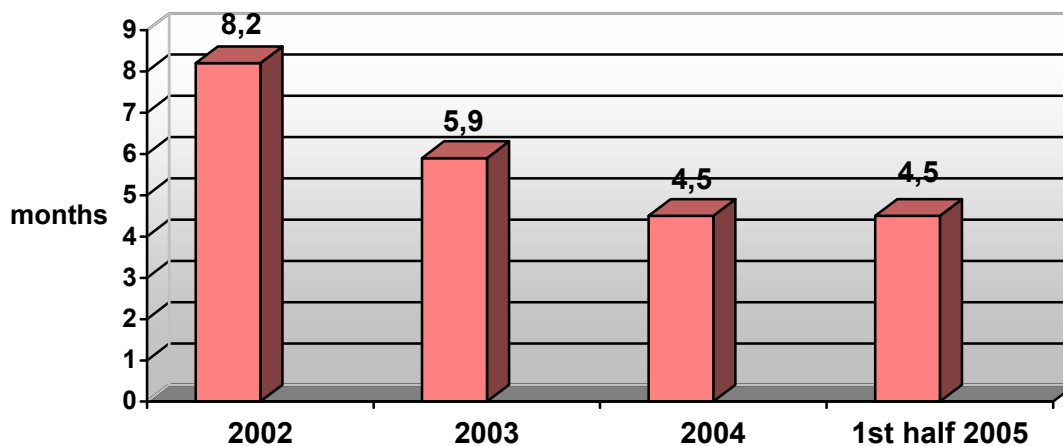
(Statutory mortgage, referred to as "hidden", by virtue of the law itself, charged a tax payer's property in lieu of his tax liabilities; its coming into being did not require an entry to a land and mortgage register.)

Moreover, further attempts to streamline the foreclosure process continue to take place, eg. the amended Code of Civil Procedure, effective as of 5 February 2005, introduced the possibility to apply the **simplified foreclosure procedure**.

The simplified procedure can be used for the foreclosure of a land estate that has not been built on and an estate with a residential or functional buildings, provided the notification of the completion of the construction process has not been submitted before the date of the foreclosure application. The simplified procedure allows an executive officer to sell a foreclosed estate *from free hand*, without a public auction, which is not just very time-consuming, but also subject to numerous formal and legal requirements. Therefore, the free hand sale aims at reducing the time between the foreclosure of an estate and the satisfaction of creditors.

## Mortgage collateral in bankruptcy

### Length of bankruptcy and rehabilitation proceedings (in months)



Source: Ministry of Justice

On 28 February 2003 the new Act on Bankruptcy and Rehabilitation Law was adopted.

In comparison with the previous legal status, the Bankruptcy and Rehabilitation Law has introduced significant changes with respect to the situation of creditors secured with rights in property, including those secured by mortgage collateral. Under the new Law such creditors can satisfy their claims from the collateralised property and enjoy the so-called separateness right. In accordance with the separateness right sums acquired from the sale of collateralised property, eg. including by mortgage collateral, are not included in the bankruptcy estate but



are dedicated for the satisfaction of the creditors whose claims have been collateralised on the property sold. This takes place by an independent division of the estate based on a separate division schedule.

General terms of the above-described procedure are as follows:

- Sums from the sale of the collateralised property (reduced by relevant selling cost) are first used to satisfy claims of mortgage creditors (a "separate" bankruptcy estate).
- Within the "separate" bankruptcy estate, the scope of claims preceding mortgage claims have been dramatically restricted (these include alimonies, pensions, and remuneration for work, yet only for up to 3 months and a maximum threefold of the minimum remuneration, ie. privileged claims subject to protection).
- Parts of claims that have not been satisfied in this manner, can still be satisfied from the general bankruptcy estate.

Changes introduced by the new Law are in line with the Foundation's recommendations and lead to the improved position of creditors secured with rights in property, thus also to the enhanced credibility of mortgage collateral.

## Summary

There has recently been significant progress in two out of the three areas presented above (land and mortgage registers and enforcement of mortgage collateral in the bankruptcy proceedings), which contributes to the higher credibility of mortgage collateral. Moreover, worth noting is a considerable improvement both in terms of the efficiency of land and mortgage registry procedures (duration) and the strengthened position of a mortgage creditor in bankruptcy proceedings. However, the third of the presented areas (foreclosure) is still in need of significant reform.

While a few other factors improve the efficiency of mortgage collateral, unfortunately there are also some whose impact on the efficiency is negative.

## FACTORS REDUCING THE QUALITY OF MORTGAGE COLLATERAL IN POLAND

### **Absence of flexible (non-accessory) collateral on property**

One of the conditions that must be fulfilled for the more dynamic development of the credit market in Poland and the popularisation of complicated financing methods is the introduction, into Polish law, of a new non-accessory collateral on property – land debt.

Land debt is a new limited right in property. It differs from mortgage collateral in its lack of a link between the collateral and the claim, ie. in its non-accessory character. Another strength of land debt is its letter format.

The draft of the law introducing the instrument of land debt was discussed during the current term of the Polish Parliament; unfortunately, the legislative process has not been completed.

The banking sector expects the discussion on the draft to be continued in the next term of the Parliament.



### **Absence of spatial management plans**

One of the main barriers to investment in Poland is the absence of local spatial management plans.

Due to the change in relevant legislation, the validity of local spatial management plans expired on 1 January 2004. Only plans adopted following this date remain valid, it covering just about 14% of all the urban and rural areas.

The highest share in the areas which have valid local spatial management plans can be observed in cities and amounts to 27% on average. However, there are also locations, such as eg. Cracow, where only 3.1% is covered by local plans.

Fortunately, the number of local plans adopted under the new law has been gradually increasing. New plans take on average 1 year to be adopted.

### **IMPROVEMENT IN THE QUALITY OF LEGAL INFRASTRUCTURE**

#### **European regulations**

Published by the European Commission on 19 July 2005, the Green Book for Mortgage Credit is a starting point for the discussion on relevant modifications in legal instruments supporting mortgage lending at a European level. The Green Book tries to assess the possibility to increase the competitiveness of the European mortgage market and to extend the product offer.

Moreover, the Green Book discusses matters that are directly connected with the quality of mortgage collateral in EU Members States – eg. credit collateral (Euromortgage), land registers (EULIS), or the improvement in the forced sales procedures.

In December 2005 the European Commission will take decisions on the implementation of significant changes in the above-named areas.

These changes will be particularly evident on new Member States. Therefore:

On **27-28 October 2005** in Warsaw the Mortgage Credit Foundation, in co-operation with the European Mortgage Foundation, will hold **"New EU Forum on Mortgage Financing – Single European Mortgage Market"**. The Forum will create an opportunity for participants of the Polish property market to directly take part in the debate on the future shape and development of the mortgage market, including the discussion on the legal issues influencing the quality of mortgage collateral.

**More information, program and application form on [www.mortgage.org.pl](http://www.mortgage.org.pl)**

### **Simple system of court charges in land and mortgage registry proceedings**

Another recommendation of the Foundation will soon be fulfilled – the simplification of the court charges system for entries to land and mortgage books and the introduction of fixed charges. The new Law on court charges in civil proceedings will enter into force on 1 March 2006.



The Law **will revolutionise the court charges system for land and mortgage registry proceedings** – the complicated system of pro rata charges, reliefs, and exemptions will be replaced with a system of fixed charges, thus eliminating doubts and controversies with respect to the calculation of charges to date.

The Law provides for the following fixed charges (examples):

- an entry, to a land and mortgage register, of ownership, perpetual usufruct, and limited rights in property, including mortgage and co-operative rights - PLN 200; the charge will apply to all transaction types, ie. irrespective of the property value an entry, to a land and mortgage register, of a new owner or mortgage will cost PLN 200!
- changing the text of limited rights in property (a change in the text of the mortgage) - PLN 150
- setting up a land and mortgage register - PLN 60
- a uniform fixed charge for an entry of collective mortgage, even if the entry covers more than one land and mortgage register.