

# Synopsis Tables

## Land Registration

Country	Official name of the land register court system/administrative body education of officials statutory basis	Separate cadaster	Registration of rights or of documents Personal or realfolium	Effect of registration (constitutive/opposability)	Bona fides (protection of good faith)	Rank Priority Notice	Registration procedure	Electronic registration Access to information
<b>Austria</b>	Grundbuch, local court, kept by court clerks, GBG = <i>Allgemeines Grundbuchsgesetz</i> 1955 (Land register Act) www.justiz.gv.at/grundbuch	separate cadaster	registration of rights realfolium	constitutive	protection of bona fides	registration determines rank	certificate of signature (for registration only)	electronic registration public access (§ 7 GBG)
<b>Belgium</b>	conservation des hypothèques administrative body (under Finance Ministry) kept by civil servant ( <i>conservateur des hypothèques</i> ) LH = <i>Loi des hypothèques</i> -Mortgage Act	separate cadaster	registration of documents personalfolium	opposability	some protection of bona fides (art. 1328 CC)	filing determines rank	authentic act (for registration only) (art. 2 LH)	electronic registration limited access
<b>Czech Republik</b>	katastru nemovitostí administrative body Cadaster Act 344/1992 (CA) www.nahlizenidokatastru.cz additional mortgage register kept by the Czech Chamber of Notaries	land register is part of cadaster	registration of rights realfolium	constitutive (for mortgages: § 157 CC)		registration determines rank		electronic registration public access (§ 21 CA)
<b>Denmark</b>	tinglysningskontoret, local court, kept by court clerks/supervision of judge, TL = <i>lov om tinglysning</i> 111/1926 (Land register Act)	separate cadaster	registration of rights realfolium	opposability (§ 1 TL)	presumption of right (§ 10 TL) protection of bona fides (§ 27 TL)		certification of signature or witnessed (for registration only)	electronic registration public access (§ 40 TB)
<b>England/Wales</b>	Land Registry, independent governmental body, kept by civil servants, LRA = Land Registration Act 2002 www.landreg.gov.uk	no separate cadaster	registration of rights realfolium	constitutive	registration is the right	registration determines rank	signed and witnessed deed	electronic registration public access
<b>Finland</b>	lainhuutorekisteri (title register) and kiinnitysrekisteri (mortgage register), local court, kept by court clerks/supervision of judge, MK = Code of Real Estate 1996	cadaster and land register together form the Land Information System ( <i>kiinteistörekisteri</i> )	registration of rights realfolium	opposability	protection of bona fides			electronic registration public access
<b>France</b>	conservation des hypothèques, administrative body (under Finance Ministry) kept by civil servant ( <i>conservateur des hypothèques</i> ) (L 55-22 and 55-1350)	separate cadaster	registration of documents personalfolium	opposability	no bona fides	registration determines rank (art. 30, par. 1, L 55-22)	authentic act	electronic registration public access (not for files)
	in Alsace-Lorraine: "bureau foncier" local court, kept by court clerks/supervision of judge, (statute of 1924)	see above	registration of rights realfolium	opposability	presumption of right (art. 41 L 1924) no bona fides	filing determines rank (art. 45 L 1924)	see conservation des hypothèques	paper registration (electronic registration has started) public access

<b>Germany</b>	Grundbuchamt, local court, kept by court clerks, controlled by judge, GBO = <i>Grundbuchordnung</i> (Land register Act)	separate cadaster ( <i>Liegenschaftskataster</i> )	registration of rights realfolium	constitutive (§ 873 BGB)	presumption of right (§ 891 BGB)  protection of bona fides (§ 892 BGB)	registration determines rank (§ 879 BGB)  priority notice (Vormerkung, § 883 BGB), not limited in time	certificate of signature (for registration only) (§ 29 GBO)  authentic act required for transfer of ownership (§ 20 GBO)	electronic registration almost completed  legitimate interest required for access (§ 12 GBO)
<b>Greece</b>	Ypothecofilakia local court, art. 1192-1208 Civil Code www.okxe.gr	separate cadaster is being built up ( <i>ktimatologio</i> )	registration of documents personalfolium	constitutive (art. 1033 CC)	no bona fides	registration determines rank (art. 1206/1207 CC)		paper registration  public access
	Rhodes/Kos/Porto Lago on Leros: Austrian/German model introduced during Italian government	same agency handles the land register and the cadaster	registration of rights realfolium	constitutive				
<b>Hungary</b>	földhivatala administrative body  additional mortgage register kept by the Hungarian Chamber of Notaries	land register is part of cadaster	registration of rights realfolium	constitutive	protection of bona fides	registration determines rank	certification of signature (for registration only)	electronic registration has started  public access
<b>Ireland</b>	Registry of Deeds (= old system) Registration of Deeds Act 1707		registration of documents personalfolium		no bona fides	registration determines rank	signed and witnessed deed	electronic registration  public access
	Land Registry (= modern system) (both registers are under common control of the Registrar of Deeds and Titles) Title Act 1964		registration of rights realfolium		registration is the right		see above	same as for registry of deeds
<b>Italy</b>	registro immobiliare, administrative body (under Finance Min.)	cadaster ( <i>catasto</i> ) and land register together form the Land Agency ( <i>Agenzie del Territorio</i> )	registration of documents personalfolium	opposability (art. 2644 CC) (constitutive for mortgages)	no bona fides	filing determines rank (art. 2678 CC)	authentic act	electronic registration  public access
	in the provinces acquired from Austria after WW I: <i>Grundbuch</i> (tabular system) Legge tavolare 499/1929		registration of rights realfolium	constitutive			authentic act (art. 31 L 499/1929)	see registro immobiliare
<b>Luxembourg</b>	conservation des hypothèques, administrative body (under Finance Ministry) kept by civil servant ( <i>conservateur des hypothèques</i> )	separate cadaster	registration of documents personalfolium	opposability	no bona fides	filing determines rank	authentic act	
<b>Netherlands</b>	Kadaster independent governmental body, kept by civil servants, KW = <i>Kadasterwet</i> (Cadaster Law) www.kadaster.nl	same agency handles the land register and the cadaster (art. 6, 7 KW)	registration of rights realfolium	constitutive	„negative system“, but some protection of bona fides (art. 3:24-3:26 BW)	registration determines rank	authentic act	electronic registration  public access (art. 3:16 BW)
<b>Poland</b>	księga wieczysta local court, kept by lawyers/supervision of judge ML = Mortgage Law 1982	separate cadaster	registration of rights realfolium	opposability  constitutive for mortgages	protection of bona fides (art. 5 ML 1982)	registration determines rank		electronic registration has started  public access (not for files)
<b>Portugal</b>	Conservatória do Registo Predial, part of court system, kept by lawyers (with specific training similar to notaries) CRP = <i>Código de Registo Predial</i> 224/84 (Land Register Act)		registration of documents personalfolium	opposability (art. 5 CRP)  constitutive for mortgages (art. 687 CC – disputed)	presumption of right (art. 7 CRPre)  protection of bona fides (art. 17 CRPre, 291 CC)	registration determines rank (art. 6 CPRPre)		electronic registration has started  public access
<b>Scotland</b>	Land Register Land Registration (Scotland) Act 1979 www.ros.gov.uk		registration of rights realfolium	constitutive	registration is the right	registration determines rank	signed and witnessed deed	electronic registration  public access
	old type: “Register of Sasins“ Registration Act 1617		registration of deeds personalfolium	opposability			same as for land register	

<b>Slovakia</b>	katastru nemovitostí administrative body	land register is part of cadaster	personalfolium	constitutive			certificate of signature (for registration only)	electronic registration public access
<b>Slovenia</b>	zemljiške knjige local court, kept by judges	separate cadaster	realfolium	constitutive			certificate of signature (for registration only)	electronic registration has started public access
<b>Spain</b>	Registro de la Propiedad part of court system, kept by lawyers (with specific training similar to notaries) LH = <i>Ley Hipotecaria</i> 1946 (Mortgage Law)	separate cadaster	registration of documents	opposability (constitutive for mortgages)	protection of bona fides (art. 34 LH)	filing determines rank	authentic act	electronic registration legitimate interest required for access (art. 607 CC, 221 s. LH)
<b>Sweden</b>	inskrivningsmyndigheter, local court www.lantmateriet.se	cadaster and land register together form the Land Information System	registration of rights realfolium	opposability	protection of bona fides	registration determines rank		electronic registration public access

## Real Estate Sales Contract

<b>Country</b>	<b>Contract Conclusion</b> - Is there a preliminary contract? - Does the sales contract require any form? - Who usually drafts the sales contract?	<b>Transfer of Ownership/Registration</b>	<b>Payment</b> - Is payment made during or after the contract is concluded? - How is payment made?	<b>Seller's title</b> - How is seller's title ascertained? - How is it made sure that buyer acquires free of incumbrances? - How is it made sure that buyer acquires free of existing leases?	<b>Warranties</b> - material defects	<b>Administrative Permits/Restrictions</b> - standard requirements - permits for special types of contracts - Who checks the permits?
<b>Austria</b>		sales contract + registration (constitutive)	escrow account	check of land register	statutory liability for all physical defects	
<b>Belgium</b>	preliminary contract sales contract (notarial act)	sales contract (notarial act) transfers ownership declaratory registration	payment during signing of authentic act	title search (30 years)		
<b>England</b>	signed and witnessed deed	registration is the right	escrow account	check of land register	caveat emptor	
<b>Finland</b>	Preliminary contracts are valid, if they fulfil the statutory formal requirement.  The sales contract has to meet formal requirements (Code of Real Estate 2:1), one of which is certification by a notary.  A real estate agent, the parties or a lawyer (rare in consumer sales).	The parties can agree on when transfer of ownership takes place. If the contract does not entail provisions to the contrary, agreement is presumed from the contract.	The parties can agree when and how payment will be made. Usually 1) the ownership is transferred at the date of sale in exchange for full payment: or 2) the transfer of title is conditioned upon payment in full, which is to happen at a set date. The seller receives a downpayment.  Payment is usually made through bank transfer.	Extracts from the cadastre and title and mortgage register are consulted prior to the sale  by the parties themselves (if their drawing up the contract themselves)  -by the real estate agent (if used)  -by the notary regarding the seller's title prior to confirming the sale	The buyer has to inspect the property and the seller needs to inform the buyer about any information relevant to the sale. Independent inspectors are often used, when a used building or apartment is part of the sale, and their report regarding existing defects are attached to the contract. If the sold property significantly differs from what has been agreed upon a defect in quality exists for which the seller is liable up to five years from the transfer of possession.	No standard requirements.  - A permit from the relevant Administrative City Authority is needed, if the seller is under legal guardianship.  - The city or municipality can condition the sale on a building requirement, when selling unbuilt land.  - The parties can condition the sale on issue of a permit.  - the municipality in which the real estate is situated has a statutory pre- emption right in some sales.

<b>France</b>	preliminary contract: <i>promesse unilatérale du vente</i> (unilateral) or <i>compromis de vente</i> (bilateral) – writing is sufficient  The sales contract itself requires notarial act for registration only.  notary (sometimes two notaries, one for seller, one for buyer)	sales contract (notarial act) transfers ownership declaratory registration	Payment has made at the time of the contract. – Either buyer pays cash to seller (seldom). – Normally buyer gives the notary a bank guaranteed check. After registration, the notary pays to seller.	Before concluding the contract, the notary researches: - all changes of property for the last 30 years - seller’s marital status - existing leases.	hidden defects only	Before concluding the contract, the notary - researches the certificat d’urbanisme, - asks for the necessary permits.
<b>Germany</b>	no preliminary contract invalid, if not in notarial act (§ 311b BGB) notary	transfer requires: - agreement on transfer of ownership (Auflassung, (§ 925 BGB) - registration (§ 873 BGB)  Application for registration is made only after payment is effected	Payment is made after the contract.  Usually, payment is made by bank transfer after the notary certifies that: - priority notice is registered for buyer, - notary has got all documents for erasing existing encumbrances, - notary has got all necessary permits.  A notarial instrument is enforceable only if there is an explicit submission to enforcement	check of land register (Before concluding the contract, the notary researches only seller’s registration as owner).	statutory liability for all physical defects (§§ 434 ss., 442 BGB)	For the sale of residential property: Municipality must state that it does not have or use a right to buy (§ 28 BauGB).  For agricultural land: GrdStVG Former GDR: GVO  Notary advises the parties, if a permit might be necessary.
<b>Greece</b>	sales contract (notarial act, art. 369 CC)	sales contract (notarial act, art. 369 CC) + agrrement on transfer of ownership (notarial act, art. 1033 CC) + registration (constitutive)		title search		
<b>Ireland</b>	signed and witnessed deed	registration is the right	escorw account	check of land register	caveat emptor	
<b>Italy</b>	preliminary contract sales contract (notarial act)	sales contract (notarial act) transfers ownership declaratory registration	payment during signing of authentic act	title search	statutory liability for all physical defects	
<b>Luxembourg</b>	preliminary contract sales contract (notarial act)	sales contract (notarial act) transfers ownership declaratory registration	payment during signing of authentic act	title search (30 years)		
<b>Netherlands</b>	sales contract	sales contract + agrrement on transfer of ownership (notarial act, art. 3:31 BW) + registration (constitutive)	escrow account	title seach		notary checks debts with apartment coowners
<b>Poland</b>	preliminary contract sales contract (notarial act)	sales contract (notarial act) transfers ownership declaratory registration	payment during signing of authentic act or escorw account	check of land register		
<b>Portugal</b>	preliminary contract sales contract (notarial act)	sales contract (notarial act) transfers ownership declaratory registration		check of land register	statutory liability for all physical defects (art. 911 ss. CC)	
<b>Scotland</b>	signed and witnessed deed	registration is the right	escorw account	check of land register	caveat emptor	
<b>Spain</b>	preliminary contract sales contract (notarial act)	sales contract (notarial act) transfers ownership declaratory registration	payment during signing of authentic act	check of land register	hidden defects only (art. 1484 ss. CC)	notary checks debts with land taxes
<b>Sweden</b>	sales contract	sales contract transfers ownership declaratory registration	payment during signing of sales contract (e.g. in bank)	check of land register	statutory liability for all physical defects	
<b>Switzerland</b>	sales contract (Art. 216 OR, 657 ZGB)	sales contract + application (unilateral) for transfer of ownership + registration (constitutive)		check of land register		

**Sale of a House or Apartment by the Building Company**  
**(Vente d'immeuble à construire/Bauträgervertrag)**

Country	Terminus technicus Statutory Basis	Conclusion of Contract: - form - preliminary contract - waiting period - right to withdrawal	Payment due	Security for Termination of the Building	Warranties for material Defects
<b>Europe</b>	No uniform standard	Notarial act or written form is required or common  Preliminary contract in accordance with the general law of conveyancing  Waiting period or right to withdrawal is exceptional	Normally payments in instalments according to the progress of the building.  In a number of countries down payments are common.  Often the balance is paid on completion.	In most countries there are no mandatory guarantees or insurances providing for claims against third parties  Mandatory guarantees or insurances in respect of the completion of the building and/or repayment in France, Belgium and Spain.	In most countries, the buyer has a claim only against the builder.  In a number of countries, the seller has to procure adequate security (Belgium, France, Spain, Sweden).  In England, Scotland or the Netherlands there is a guarantee under the NHBC or the GIW, if builder is member
<b>Austria</b>	Bauträgervertrag BTVG (Bauträgervertragsgesetz 1997)	Written form  No preliminary contract  No waiting period  No general right to withdrawal	§ 10 BTVG: payment in instalments according to the state of construction	(Alternative) possibility to deposit a bank guarantee with the escrow agent (§ 8 BTVG)	Claims against third parties, if the builder goes bankrupt or warrant claims cannot be brought forward against him (§ 16 BTVG)
<b>Belgium</b>	Law „Breyne“ of 7/9/1971 (Wet tot regeling van de woningbouw en de verkoop van te bouwen of in aanbouw zijnde woningen) Royal Decree of 10/21/1971	No particular form required  Preliminary contract  No waiting period or right to withdrawal	Payment in instalments according to the state of construction	Seller has to provide a security of 5 % or 100 % depending on whether he is „recognised“	Mandatory insurance
<b>England</b>	No special provisions apply NHBC may provide for protection	No particular form required  No preliminary contract  No waiting period or right to withdrawal	Payment of deposit and balance on completion	No mandatory guarantee or insurance Buildmark warranty under NHBC	Buildmark warranty, if builders are members of the NHBC
<b>Finland</b>	Housing Transactions Act 1994, as amended 1997	Written form  No preliminary contract  No waiting period  No right to Withdrawal	Payment in instalments according to the state of construction	Under the RS-system the founding shareholder has to put up security for the benefit of individual share buyer	Only claims against the builder
<b>France</b>	Vente d'immeuble à construire Art. 1601-1, 1642 CC C Constr Hab (Code de la Construction et de l'Habitation)	Notarised deed  Preliminary contract  Seven-day let-out clause after conclusion of preliminary contract or before signing the notarial deed	<i>Vente à terme</i> : payment is due after construction is finished  <i>Vent en l'état futur d'achèvement</i> (VEFA): payment in instalments according to the state of construction (usual in practice)	VEFA: builder has to provide a surety ( <i>garantie d'achèvement</i> or <i>garantie de remboursement</i> ).	Mandatory insurance policy

<b>Germany</b>	Bauträgervertrag MABV (Makler- und Bauträgerverordnung)	Notarial act (§ 311b BGB) No preliminary contract Consumer has to get draft 2 weeks before concluding the contract (§ 17 par. 2a BeurkG) No right to withdrawal	§ 3 MaBV: payment in instalments according to the state of construction (usual in practice) § 7 MaBV: full payment may be agreed upon if builder provides a bank surety Combination of §§ 3 and 7 MaBV: A bank surety is required for payment in installments, if there is not yet a priority notice for buyer in the land register	§ 3 MaBV: only claim against the builder § 7 MaBV: repayment by bank if contract is rescinded	§ 3 MaBV: only claims against the builder § 7 MaBV: bank surety may be used, if defects claimed at termination of the building at latest
<b>Greece</b>	No special rules apply at present	Notarial act No preliminary contract No waiting period or right to withdrawal	Payment in instalments according to the state of construction common	No mandatory guarantee or insurance	Only claims against the builder
<b>Italy</b>	No special rules apply at present	Written form Preliminary contract No waiting period or right to withdrawal	All kinds of payments occur	No mandatory guarantee or insurance	Only claims against the builder
<b>Netherlands</b>	Art. 7:765-770 BW GIW may provide for protection	Written form No preliminary contract Right to withdrawal within 3 days	Payment in instalments according to the state of construction (Art. 7:767, 7:768 BW)	No mandatory guarantee or insurance Guarantee under GIW	GIW guarantee, if builders are members
<b>Poland</b>	Art. 9 Law on the Ownership of Premises; Law on Housing Co-operatives of 12/15/2000	Notarial deed No preliminary contract No waiting period or right to withdrawal	Payment in instalments according to the state of construction common	No mandatory guarantee or insurance	Only claims against the builder
<b>Portugal</b>	Decree Law 267/94 of 10/25/1994; Art. 29 Decree Law 12/2004 of 01/09/2004; Art. 1225 CC	Written form Preliminary contract No waiting period or right to withdrawal	Down payment and balance paid in the moment of acceptance	No mandatory guarantee or insurance	Only claims against the builder
<b>Scotland</b>	No special provisions apply NHBC may provide for protection	No particular form required No preliminary contract No waiting period or right to withdrawal	Payment due on the date of entry	No mandatory guarantee or insurance Buildmark warranty under NHBC	Buildmark warranty, if builders are members of the NHBC
<b>Spain</b>	ley n° 57/68 (27.7.1968) decreto n° 515/89 (21.4.1989) ley n° 38/99 (5.11.1999)	Preliminary contract No waiting period or right to withdrawal	Down payment and balance paid on the execution of the notarial act	Guarantee of repayment (Art. 2 ley n° 57/68)	Mandatory insurance in respect of substantial defects
<b>Sweden</b>	§§ 51-61 Consumer Services Act	No particular form required No preliminary contract No waiting period or right to withdrawal	Payment in instalments according to the state of construction common	Insurance under standard contract ABS 95	Mandatory insurance in respect of construction, material used and repair costs

## Mortgages

Country	Types of mortgages statutory source	accessory or non-accessory (or relaxed accessoriness)	Formal requirement	Effect of registration	Certificated mortgage (letter right)	Transfer
Austria		accessory	certificate of signature (for registration only)	constitutive		constitutive registration
Belgium	hypothèque	accessory	authentic act	opposability		opposability
Czech Republik		accessory	certificate of signature (for registration only)	constitutive		constitutive registration
Denmark		accessory		opposability		opposability
England/Wales	legal mortgage equitable mortgage	accessory - „all moneys claim“	signed and witnessed deed	constitutive (for legal mortgage)		in practice rarely any transfer (out of fear of doctrine of consolidation)
Estonia		non-accessory		constitutive		constitutive registration
Finland		accessory		opposability		opposability
France	hypothèque	accessory	authentic act	opposability		opposability
Germany	accessory Hypothek (§§ 1113-1190 BGB) non-accessory Grundschuld (§ 1191-1198)	both types: accessory and non accessory	certificate of signature (for registration only) (in practice mostly authentic act)	constitutive	Briefgrundschuld (§ 1116 BGB)	registration required for Buchgrundschuld (§ 1154)  transfer of certificate required for Briefgrundschuld
Greece	ipothiki	accessory		constitutive (art. 1260 CC)  mere prenotation used for some types of loans		constitutive registration
Hungary		both types: accessory and non accessory	certificate of signature (for registration only)	constitutive		constitutive registration
Ireland		accessory	signed and witnessed deed	opposability		opposability
Italy		accessory	authentic act	constitutive (for limited rights only)		opposability
Luxembourg	hypothèque	accessory	authentic act	opposability		opposability
Netherlands		accessory	authentic act	constitutive		
Poland		accessory (proposed law for non-accessory mortgage)	authentic act	constitutive (for limited rights only)		opposability
Portugal	hipoteca articles 686 - 732 CC	accessory	authentic act	opposability		opposability
Scotland		accessory	signed and witnessed deed	opposability		opposability
Slovakia		accessory	certificate of signature (for registration only)	constitutive		constitutive registration
Slovenia		both types: accessory and non-accessory	certificate of signature (for registration only)	constitutive		constitutive registration
Spain		accessory – also for current account	authentic act	constitutive (for mortgages only)		opposability
Sweden		accessory - also for promissory note		opposability		opposability
Switzerland		non accessory	authentic act	constitutive	Schuldbrief (certificated mortgage)	constitutive registration  letter right: transfer of certificate