

## **E-conveyancing in the Netherlands**

### **1. Legal system**

In the Netherlands, a land register for the recording of deeds and a cadastre for property tax was introduced during the annexation by France. This explains the resemblance of the existing legal system with the French deed system. Recording of a deed of conveyance in land registers does not, as in countries with a title system, guarantee a title. Through consultation of the deed everyone can assess for themselves who has what right. A third in good faith may trust on the validity of the agreement in the last recorded deed. In case of a conflict the judge decides whether or by whom rights are acquired. In practice this does not happen very often. This is because one registrar is responsible for recording in the land registers and the registration of supposed titleholder in the Cadastre. In practice these cadastre entitled persons are accepted as legal entitled.

Since 1948, the recorded copy or extract of a deed of conveyance must be a notarial deed. The notary also fulfils a clearinghouse function when the transfer of money is involved. The buyer and mortgage bank deposit their money in the account of the notary. Only once the notary is certain that the Registrar has received his deed of transfer, and has not received any other documents in relation to that same property, does the notary transfer the purchase price to the vendor. The notary also investigates the identities of the parties, the claimed acquisition of rights by the vendor and the restrictions by public law, such as the obligation to clean contaminated soil. According to the law the notary should set down the results of his investigations in his deed together with prescribed texts. The Registrar has a supervisory role in respect of notaries. He verifies whether the notary has included the prescribed texts and whether it is the titleholder as stated in the Cadastre who is making the transfer. If this is not the case he informs the cadastre titleholder and the supervisory board of notaries. The notary then withdraws his deed. In practice a deed of transfer is only recorded when the transfer is made by the titleholder that is stated in the Cadastre. Jointly between the Land Registry and the notarial profession, a Dutch polder variant has arisen with aspects of both a title system and a deeds system.

### **2 Computerization**

The Cadastre was computerized 25 years ago. Since 1999, the Land register is computerized. Paper documents are scanned on receipt. The paper documentation received before 1999 has previously been transferred to microfilm and, on request, can be transferred from microfilm and put into digital format using reader scanners. In 2005 the electronic recording of deeds started. The aim of electronic recording was to simplify work procedures and to accelerate legal matters. Mailing paper documents between the civil-law notary and registrar is no longer necessary. The cataloguing and filing of deeds has become much easier for the Registrar and since electronic dispatches are received a day earlier than paper documents, the notary can transfer the purchase price a day earlier. The underlying principle was that the same degree of legal certainty as in cases of paper recordings exists. This means that electronic copies and extracts must be delivered together with an advanced electronic signature that has the same evidential value as a written signature. The text in the deeds must be as comprehensive as that in paper deeds. The Registrar retains his supervisory role and the civil-law notary remains responsible for producing the deed. Therefore, notaries wanted to create the deeds using their own application. This made it necessary for separate Cadastre and Notary applications and to introduce a set compatibility protocol to enable communication between these two applications. This compatibility protocol included establishing that delivery is made by e-mail, that PDF-format is required and

that the technique of asymmetric encryption using 1024 bits keys must be used for electronic signatures. The notary can use his own application for electronic signatures and dispatches, but also he can download the system that the Land Registry has developed for that purpose. This is the Web-ELAN system, which is in general use in practice.

### **3. Introduction of electronic recording**

The introduction of electronic recording has gone relatively smoothly. Of great help to this was the fact that electronic documents are not signed by the parties themselves but only by the civil-law notary. Regional information meetings were arranged for notaries, and an introduction team provided notaries with support by e-mail during the first year. After a year, the recording fee for deeds on paper was raised 20 %. This proved to be the decisive factor for many notaries to supply documents electronically. At present, 90% of all documents are recorded electronically. Operational standards have improved considerably and registration is completed more quickly than before. This is also due to the fact that we have started to use a workflow management system to distribute work, enabling deeds to be directed to whichever regional branch has the most available personnel. Furthermore, there are no longer any regional registers. Documents are included once in a national register, unlike the situation that existed previously in which a deed concerning immovable property had to be recorded several times in different regions – a considerable improvement for Land Registry customers.

### **4 PKI-system**

Parties wishing to make electronic deliveries must report to the Registrar in advance. This is done by stating the name of the Certification Authority, for which certificates – a type of digital proof of identity – will be supplied with electronic signatures. The Registrar verifies whether this Certification Authority issues qualified certificates and provides an opportunity for verification of a C(ertificate) R(evocation) L(ist). A list of certificates the encryption key to which might have come into the possession of unauthorised parties. If these requirements are met, the option for electronic delivery is enabled.

Liability for transmission over the Internet remains with the sender up until the time of arrival in the Registrar's mailbox. The Registrar assists the sender by verifying whether the dispatch has arrived unchanged. This is done on the basis of a hash value control. Prior to dispatch, the notary's application calculates the hash value, this is then encrypted within the electronic signature and sent to the Registrar. The Registrar unencrypts the electronic signature and compares the hash value then displayed with the hash value in the received document. If they are the same, the document has clearly not been changed during transfer.

The Land Registry has considered a closed PKI system with own encryption keys for certificates issued by the Land Registry. However, in the end, the idea was rejected. . In the Netherlands there are only two Certification Authorities that issue qualified certificates and cooperate with the Land registry. "Land Registry Office certificates" would have the disadvantage for the Land registry of additional work and for the client of requiring an additional smartcard. After registration as an electronic presenter, valid qualified certificates of these two Certification Authorities can be sent to the Registrar. The Registrars then checks on the validity of the profession of the key holder and on the validity of the certificate by checking the CRL. In the land registers, the Registrar sets out the certification data from received electronic signatures, i.e. the name of the key holder and the certificate's hallmark. This is done because the factor establishing identity for digital signatures does not derive from encryption (an incomprehensible collection of symbols that differs from document to document) but from the certificate. The system differs between the signature of an electronic author that signs a deed and

an electronic presenter that presents a dispatch. Only the author has to use qualified certificates and only the name of the notary-key holder who was the author of the recorded copy is set out in the land register. Following receipt of an electronic dispatch, the Registrar sends back an electronic confirmation of receipt and, after processing the document, a confirmation of recording. Both are authenticated using an authorised digital signature from the Registrar. To produce this, the Registrar employs a crypto server, that being a type of digital hallmark. The Registrar can suspend suppliers whose delivered electronic dispatches regularly have to be rejected for technical reasons. This option to suspend as it is called in law replaced the permit system originally provided for in the Land Registry Act. It was rejected in a "notification" by the European Commission as being in breach of European legislation.

### **5. Computerized processing of documents**

Now that the electronic delivery of documents is occurring on a large scale, computerized processing becomes the next step. Under the existing deed system recording has to be performed by filing a complete copy of a deed. In standard cases, these deeds often have the same set texts. The question is how to identify such standard cases reliably. A system has been decided upon in which civil-law notaries can ask for an advance evaluation of a model containing set texts for the first part of deeds. The second part of the deed is free text. The model for the first section must conclude with an "irreversibility declaration". This is a declaration that rules out the first section being complemented or amended by a subsequent section of the deed. If the notary includes in his dispatch the data added to the model and the number of the model to which he has added that data, the Registrar's computer system can ensure that the deed is computer-processed. To achieve this, the model texts must be set out in a "style sheet" format. These are digital forms with text (selections) related to set entry fields. Following approval of a style sheet, the Registrar has the change functionality incorporated in his application for each piece of data to be entered. Style sheets can be divided into "legal act style sheets" and "parcel style sheets". In the first section, a legal act style sheet contains all of the text of relevance for Land register and Cadastre processing. There are entry fields for personal data, rights, shares and possible suspensive or resolutive conditions. The second section with freestyle text contains the content of the established rights, a summary of previously established servitudes, restrictions by public law and the contractual relationship between the parties. In the first part of the document, a "parcel style sheet" contains only entry fields for parcel numbers together with text stating that these are the sole parcel/s from an agreement included in the second section (as freestyle text). Computerized processing depends on the style sheet employed. A legal act style sheet will make it possible in the future to computer process the Cadastre and Land register in full. A parcel style sheet only makes computerized signalling in the Cadastre possible. The notarial profession is cooperating with this work method, because the contractual freedom of the parties and the role of the notary remain unaltered. The notary drafts the model text for the first section, the second section allows for the entry of freestyle text and there is no obligation to use such models.

### **6. Creation and completion of "style sheet documents".**

The Land Registry system for electronic recordings will be made appropriate for the creation of documents based on style sheets approved by the Registrar. "Minor suppliers", such as bailiffs for the registration of attachments, provinces for the registration of restrictions by public law and shipbrokers for the registration of ships will probably make use of this option. Notaries wish to remain personally responsible for the software that they use to produce their deeds and thus did not want to use the Land Registry application. Their

preference is to include style sheets approved by the Registrar in their own applications. Regarding this, the Land Registry will support suppliers of software wishing to adapt their software by offering them expertise.

Apart from the option to create "style sheet documents", this adaptation should also consist of the option to:

- Produce a separate change file for the data added to the first section;
- Send this file together with an application for recording that states the number of the style sheet used.

Following receipt, the Land Registry will complete the style sheet cited by the supplier using the received change file and make a computerized comparison of the result with the document simultaneously supplied for recording. If both are the same, the document can be automatically recorded in the Land register and used for updating the Cadastre. In cases of a "parcel style sheet", the text "under processing" will be stated automatically in the Cadastre for each parcel involved in the deed. In case of a legal act style sheet, the recording in the land register and the updating of the Cadastre will be completely automated. If style sheets are used on a large scale, the Land Registry will no longer need to close at 3.00 p.m. to signal in the Cadastre manually. Signalling will be computerized on the basis of style sheets. In the beginning, in case of using style sheets, recording will be performed by filing a copy of a deed supplied and signed entirely by the civil-law notary. I foresee an alternative of merely sending an XML file and the number of the style sheet used together with the electronically signed declaration that following amalgamation a copy from the original document will be created. The Registrar can then compose the document to be recorded by amalgamating the XML file and style sheet.

## **7. The watchdog system**

Working with style sheets is part of a total package of efficiency measures. An other is the introduction of a watchdog function. The civil-law notary preparing a document is given the option to combine his first consultation of the Cadastre with a request to set a "watchdog code". The "watchdog" afterwards notifies the notary automatically about amendments in relation to the requested parcel. As a result, the current practice can cease to operate with its 2 million repeated investigations in which the status from the first inspection is shown to be unchanged in 99.9% of cases. To help the notary build an adequate basis of evidence, the Registrar will proceed to issue a certified "watchdog statement" that no documents (other than those stated) have been received for the requested parcels since a certain date.

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