

## REAL ESTATE: LEGAL REGULATION AND TRANSACTION FLOW IN THE REPUBLIC OF NORTH MACEDONIA

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### Abstract

The subject of this research is real estate. In that classification of property into movable and immovable, today it has become a practice to identify immovable property with real estate, which primarily addresses property that includes land and buildings or structures on it, including natural resources and air rights. It is a broad term encompassing both residential and commercial properties. This study aims to deal with real estate, with the main focus on the case of the Republic of North Macedonia. Today, it remains a key sector in the economy, involving activities like buying, selling, leasing, and developing properties. The treatment is done in two directions. On the one hand, from the perspective of the importance of real estate, this has imposed the need for national and international legal regulation, including the constitution, laws, and conventions. On the other hand, from the perspective of the importance that real estate has gained, there is a continuous increase in the volume of transactions from year to year. Through the data processing method, the results of transactions made based mainly on two forms are presented: sale and lease. The data provided from 2016, when the Register of Prices and Leases was established, shows that only in the years 2017 and 2020 there was a stagnation in the increasing volume of transactions, while in all other years the growth is evident, with reliable premises to continue the upward trend.

*Keywords:* property, real estate, residential, commercial, economy, Republic of North Macedonia, volume, transactions, sale, lease, growth.

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### 1. Introduction

The right to own property historically has a distant origin, but it has gained institutionalization with its inclusion in the Universal Declaration of Human Rights (UDHR, 1948) as a landmark document in the history of human rights. It contains one of the cornerstones for guaranteeing the right of private ownership by providing that: "Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of their property" (Article 17). In this regard, one of the most important documents on human rights and fundamental freedoms at the European level followed: the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950). Thus, Protocol Number 1 to this Convention provides the guarantee of protection of the right to own property: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law" (Article 1). The right to property being available to "every natural or legal person", so that companies and building societies may seek protection just as much as any individual. The content of these articles gained fame because a large number of constitutions, national laws, and legal acts of international organizations have taken it as a model for guaranteeing the right to ownership.

Real estate is a form of real property, meaning it's something you own that's attached to, built on, or reinforced with a piece of land (above or below it). As such, it can be used for personal, commercial, or industrial purposes. Given this importance, immovable property is commonly

differentiated from movable property, which has led legal regulations to place emphasis on immovable property more rigorously than on movable property. This is confirmed by the Organization for Economic Co-operation and Development (OECD), which considers that real estate plays a key role in people's lives, taking a large part of family income, while directly affecting personal health and well-being. At the national and global level, real estate, primarily in the role of housing, also has important consequences for both the environment and the economy (OECD, 2024).

Real estate transactions have strengthened what is now known as the real estate industry. This branch contributes significantly to new employment and economic development. From construction workers, architects, and engineers, to real estate agents and property owners, and representatives, a number of people from different professions rely on this industry for earning opportunities. In addition, real estate contracts provide stimulus in the form of financial infusion to the local economy. Buying houses often involves the process of renovating and improving them, increasing the need for the supply of construction materials and construction services. From the point of view of the economic interest of the local authorities, all these activities related to real estate in the concrete case in the form of a house, are accompanied by the payment of the relevant taxes and fees.

## **2. Legal regulation**

The right to ownership in general and real estate in particular is guaranteed in the Constitution of the Republic of North Macedonia (Constitution, 1991). This proves the determination of the local legislator to raise and emphasize the level of the guarantee of the right to ownership to the level of the highest act in the hierarchy of legal regulation. In this regard, the Constitution counts the legal protection of property in the so-called fundamental values of the constitutional order of the North Macedonia (Article 8). Further, the Constitution strongly guarantees the right to property by expressly stating: "The right to property is guaranteed" (Article 30). Subsequently, the same article emphasizes the social function of the right to property, so its use must serve the good of the community: "Ownership creates rights and obligations and must serve the good of the individual and the community". In order to liberalize the property market, the local legislator has determined that the right of foreign entities to acquire ownership is guaranteed in the Constitution: "Foreign entities in the North Macedonia may acquire the right to ownership of property under conditions determined by law" (Article 31). This constitutional provision makes foreign entities equal to local entities in terms of acquisition and ownership disposition, under the conditions stipulated by legal provisions.

Additionally, the rights and concrete issues regarding real estate are regulated primarily by the Law on ownership and other real estate rights (2001) as a *lex generalis*, and others as *lex specialis*, exclusively: Law on construction land (2015), Law on agricultural land (2007), Law on Real Estate Cadastre (2013), Law on housing (2012), Law on obligations (2001), Law on construction (2009), Law on international private law (2020), and the Law on concessions and public private partnership (2012).

## **3. Real estate and the need for its recordation**

The Law on ownership and other real rights determines that: "The subject of the right to ownership is all items which can belong to individuals and legal entities, except those that, based on their nature or based on a law, cannot be an object of this right. An item, in this sense, is a part of the material nature that can be governed by man and which can be individualized. There are different kinds of items depending on their nature, position in space, composition,

purpose, and other characteristics over which the right to ownership is determined in various ways, considering the general nature of the right to ownership” (Article 12)

With regards to their spatial position, items are movable and immovable (Article 12):

- Movable items are those that in their entirety can move or be moved from one place to another without, at the same time, damaging their essence.
- Immovable items are those items that cannot move or be moved from one place to another, without damaging their essence at the same time.

Immovable items, in the sense of the Law on ownership and other real rights, are: lands (agricultural, construction, forest, and pasture) and buildings, as well as installations raised over them or under them and which are permanently connected to them, if it is not otherwise determined by law. In addition, according to the Law on Real Estate Cadastre “infrastructure object” refers to an object in the field of traffic (land, water, and air traffic), underground or aboveground installation (line) and electronic communication networks and means, with all accompanying installations (Article 2(8)). Furthermore, items that are, according to their nature, movable can be considered in a legal sense immovable, if they are components of a certain immovable item or if the law equates them to immovable items. Finally, in the case of a dispute as to whether the thing is movable or immovable, according to the Law on property and other real rights, it is considered movable (Article 13).

Modern legal systems determine the composition of real estate according to the principle of the uniqueness of real estate, according to which real estate is made up of land (a parcel of land) with everything connected to it. It is about the principle that originates from the tradition of Roman law that *superficies solo cedit* (Frier, 2021). Thus, a house or other structure that cannot be removed without demolition or destruction is presumed to have been intended to ‘form part of the realty’ (Gray & Gray, 2011). Whether any particular construction is intended to be annexed to, and thereby become ‘part and parcel’ of, the realty falls to be determined, not by reference to the subjective intention of the builder, but by the objectively understood purpose of the construction (Gray & Gray, 2011).

Immovable property rights in order to act on everyone (*erga omnes*) and in order to be able to defend and oppose all persons must be public in a way that enables everyone to have knowledge of them. If these rights, their content and scope, and their authorizations are known and visible to all, anyone has a chance to understand that those rights exist and that anyone can be required to respect, respectively, refrain from harming them (Gavella et al., 2007). Recordation is an almost inevitable consequence of having a large number of interests in immovable property. Further, recording plays an important role in recording and simplifying the often-complex documentation used in this kind of property transaction (Smith, 2010). Despite the distinctive features of the various systems, it is common to all that the publication of immovable property rights is organized into separate records of the public real estate rights registers, which, where provided, represent the only instruments, and are exclusive for the registration and publication of immovable property rights. The external overview of these rights is given in the public records, from which everyone may understand what rights, to what extent, and to whom the rights to certain immovable property rights exist (Gavella et al., 2007). The so-called land registers are public registers in which immovable goods and immovable property rights are registered, as well as other legal relations and actions related to the legal circulation of the immovable property in question (Klarić & Vedriš, 2009). Yet the recordation rules themselves distinguish between legal and equitable rights. In particular, they are entered on the register in different ways; the different forms of entry have differing effects (Smith, 2010). As such, these registers in North Macedonia are represented through the real estate cadastre (Shabani & Zejneli, 2020).” Real estate cadastre” is a public book which records the right to ownership and other real property rights, real property rights data, as well as other rights and facts whose registration is defined by law (Article 2(2), Law on Real Estate Cadastre, 2013). Thus, the task

of land registers is not only to serve as simple evidence of their real estate and real property rights. They must provide the legal way provided for the acquisition of the immovable property rights. Also, such registers enable the provision of security in the process of legal circulation of immovable property (Klarić & Vedriš, 2009).

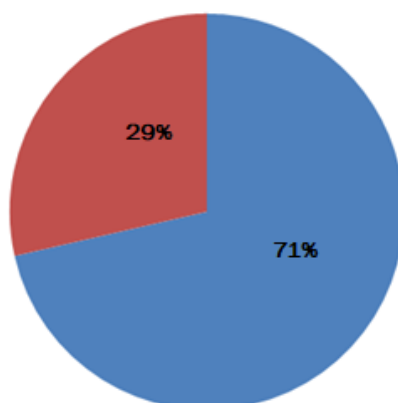
The Agency for Real Estate Cadastre has been established to perform the tasks of establishing and maintaining the real estate cadastre, managing the geodetic and cadastral information system, as well as establishing, maintaining, and providing public access to the National Spatial Data Infrastructure. In addition, the Agency is a legal entity with rights, obligations, and responsibilities determined by the Law on Real Estate Cadastre, and is accountable to the Government for its work. The Law on Real Estate Cadastre determines that the headquarters of the Agency is in Skopje (Article 6). In order to increase the transparency of the real estate market, changes were made to the Law on Real Estate Cadastre adopted in August 2014, with which the Agency became responsible for establishing and maintaining the Register of Prices and Leases. This register has the objective of implementing mass valuation of the real estate value. The calculation of the value of the real estate which is registered in the real estate cadastre is performed based on the mass valuation model. The mass valuation of the real estate is conducted by the Agency *ex officio*. Such data are recorded in the Geodetic Cadastral Information System (GCIS). The Register of Prices and Leases keeps record of the prices of the real estate contained in the legal documents for trading the real estate, which are submitted enclosed to the applications for registration, i.e. for implementing the changes to the real estate cadastre, including the base value of which the tax for the sale of real estate is calculated, but also other important data related to the real estate contained in the statement provided by the seller and verified by a notary act. This Register also keeps a record of the leases based upon the data provided in the documents for a legal basis establishing the lease of real estate.

#### **4. Transaction volume**

The Agency, in accordance with the Law on Real Estate Cadastre, fills the database of the Register of Prices and Leases, and works on establishing a mass assessment system in the North Macedonia. Every real estate registered in the real estate cadastre gets its own market value that can later be used for different purposes. The mass assessment system is a complex system made up of several registers and subsystems through which the market value of each real estate is obtained with accurately determined assessment models in an accurately determined time period. The mass assessment system is one of the leading systems developed by all advanced land administrations and is one of the key systems with which it is necessary to supplement the real estate cadastre. This system is used, above all, for the calculation of property tax, but also in cases of expropriations, expert assessments, collection of sales tax and wherever information is needed about the market value of a certain property, but it also serves as a necessary tool in the work of appraisers, real estate agencies, during investment, that is, wherever it is necessary to analyze the real estate market or analyze the possibilities for opening new businesses (Annual Report, 2022).

In the past period, the Agency made efforts to improve the quality of the data in the Register of Prices and Leases, as well as to verify the data from the statements made by the seller/lesser certified by a notary in the database of the Register. Since 2016, after the Register was established, the Agency on an annual basis publishes the data on sales and leases carried out in the January-December period in the Annual Report on the work of the Agency. The total number of transactions is the sum of the total number of sales and the total number of leases, as long as the total number of sales includes: sales, auction sales, sales from an investor and purchase from the North Macedonia.

The annual report of the Agency for 2023 provides data according to which in the period January-December 2023, 32,971 transactions were entered into the database of the Register, of which 23,545 were sales and 9,426 real estate leases (Annual Report, 2024).

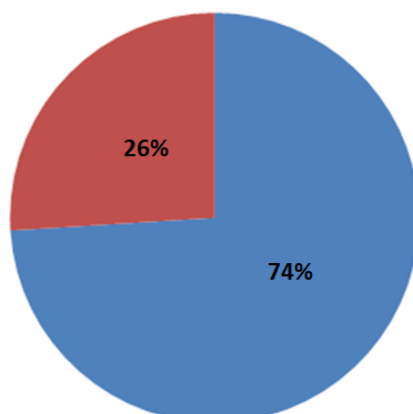


▪ Sales ▪ Leases

*Chart 1. Percentage expression of the total registered sales and leases in 2023*

*Source:* Annual Report on the work of the Agency for Real Estate Cadastre for the period January-December 2023, 38.

During 2022, 33,243 transactions were entered into the database of the Register, of which 24,629 were sales and 8,614 leases of real estate (Annual Report, 2023).

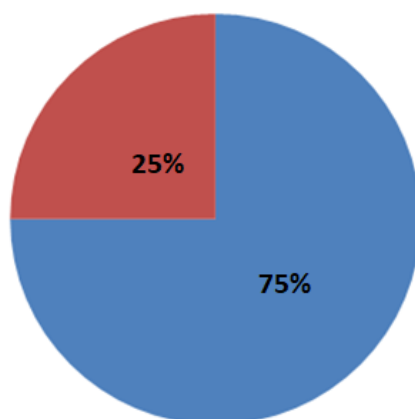


▪ Sales ▪ Leases

*Chart 2. Percentage expression of the total registered sales and leases in 2022*

*Source:* Annual Report on the work of the Agency for Real Estate Cadastre for the period January-December 2022, 39.

In 2021, a clear recovery was observed after the Covid-19 Pandemic in terms of the volume of related real estate transactions. 33,270 transactions were entered into the database of the Register, of which 25,010 were sales and 8,260 real estate leases (Annual Report, 2022).

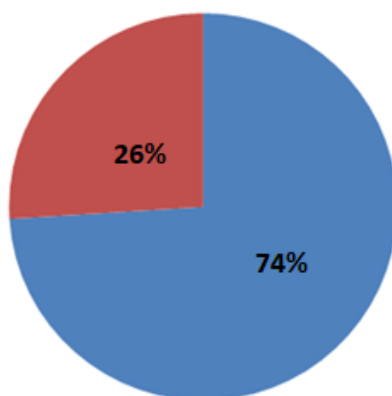


▪ Sales ▪ Leases

*Chart 3.* Percentage expression of the total registered sales and leases in 2021

*Source:* Annual Report on the work of the Agency for Real Estate Cadastre for the period January-December 2021, 44.

In 2020, due to disruptions caused by the Covid-19 pandemic, it was expected that at the end of the year the total number of connected transactions would be lower. The total number was 25,232, of which 18,755 were sales and 6,477 leases of real estate (Annual Report, 2021).

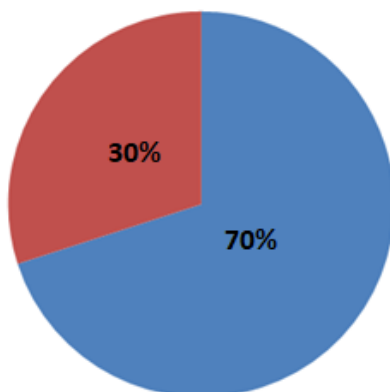


▪ Sales ▪ Leases

*Chart 4.* Percentage expression of the total registered sales and leases in 2020

*Source:* Annual Report on the work of the Agency for Real Estate Cadastre for the period January-December 2020, 40.

In the period from January to December 2019, 28,901 transactions were entered in the Register, of which 20,124 were sales and 8,777 were leases of real estate (Annual Report, 2020).

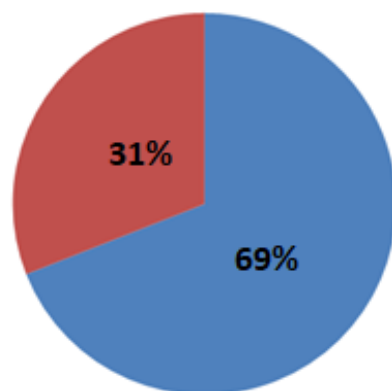


- Sales ▪ Leases

*Chart 5. Percentage expression of the total registered sales and leases in 2019*

*Source:* Annual Report on the work of the Agency for Real Estate Cadastre for the period January-December 2019, 44.

In 2018, the total number of transactions registered in the Register was 21,006, of which 21,006 were sales and 9,536 were leases of real estate (Annual Report, 2019).

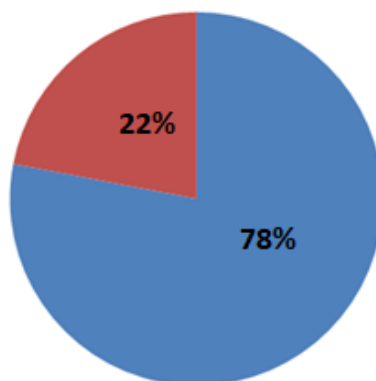


- Sales ▪ Leases

*Chart 6. Percentage expression of the total registered sales and leases in 2018*

*Source:* Annual Report on the work of the Agency for Real Estate Cadastre for the period January-December 2018, 26.

In 2017, 14,502 transactions were registered in the Register, of which 11,363 were sales and 3,139 were leases (Annual Report, 2018).

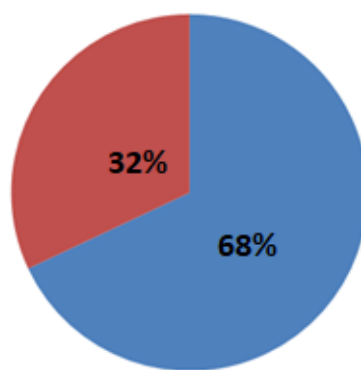


- Sales ▪ Leases

*Chart 7. Percentage expression of the total registered sales and leases in 2017*

*Source:* Annual Report on the work of the Agency for Real Estate Cadastre for the period January-December 2017, 31.

In 2016, 25,152 transactions were verified in the database of the Register, of which 14,167 were sales and 8,170 were leases (Annual Report, 2017).



■ Sales ■ Leases

Chart 8. Percentage expression of the total registered sales and leases in 2016

Source: Annual Report on the work of the Agency for Real Estate Cadastre for the period January-December 2016, 16.

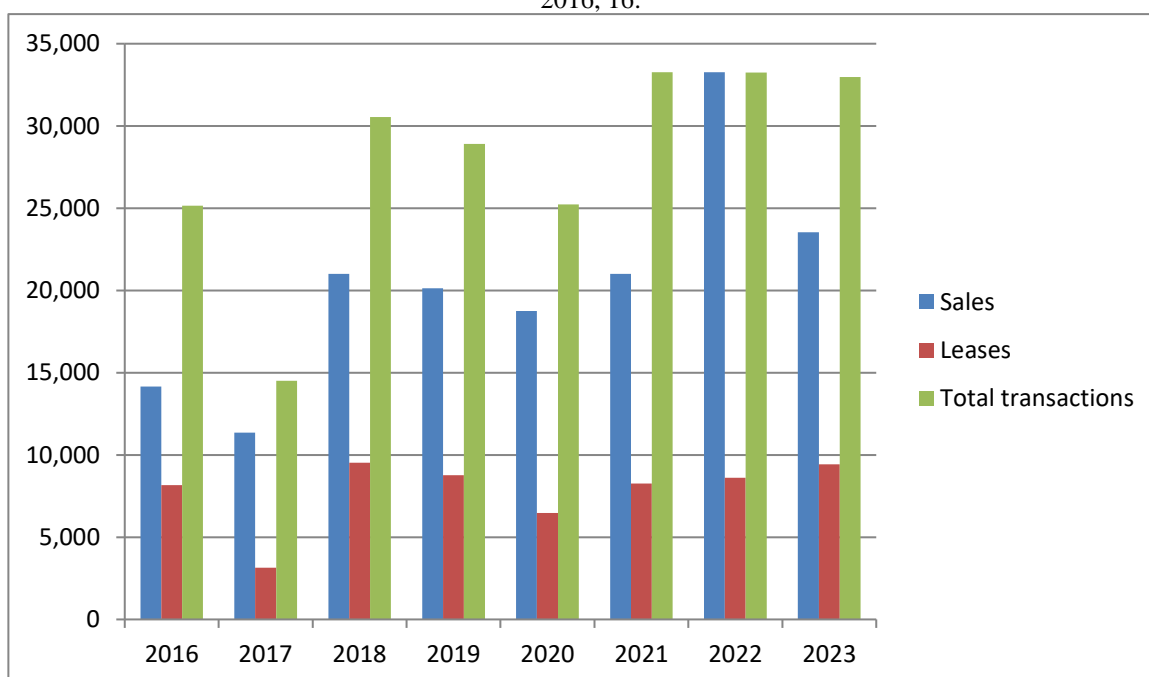


Chart 9. Graphic overview of sales, leases and total transactions in the period from 2016 to 2023 in the Republic of North Macedonia

Source: Annual Reports on the work of the Agency for Real Estate Cadastre during 2016-2023.

From the processing of the data and their presentation, several conclusions result:

- Total sales and leases transactions in number were lower in 2017 (14,502 transactions), while in 2021 their number was higher (33,270 transactions). After 2017, there is a continuous increase in transactions generated for each subsequent year. The exception here is expected to be the year 2020, where this number is in a noticeable decrease as a result of the situation created by the Covid-19 Pandemic.
- The lowest number of sales was in 2017 (11,363 transactions), while the highest number was in 2021 (25,010 transactions).
- The lowest number of leases was in 2017 (3,139), while the highest number was in 2018 (9,536).



## Conclusion

Real estate includes various forms of property, including but not limited to land and buildings on it. This notion refers to material or physical property, which means that the same can be the subject of sales and lease transactions. The reason why real estate development is important is that it supports progress in our society. Such importance is also reflected in the legal platform that guarantees and regulates the issue of ownership and disposal of real estate in the country. A cornerstone in this direction is the constitutional equalization of foreign entities with local ones in terms of acquisition and ownership disposition under the legal conditions. The study highlights the need for having a clear overview of real estate and transactions of real estate in the Republic of North Macedonia. The period of the last eight years was not randomly selected for research, but was dictated by the fact that exactly eight years ago, the Agency for Real Estate Cadastre, through the establishment of the Register of Prices and Leases, began to publish on an annual basis the report with the statistical data of the transactions carried out within the country, mainly in the form of sales and leases. Overall, the research underscores the gradual increase in transactions that have real estate as their subject.

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