

Usufructs in the Finnish Juridical System

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SUMMARY

In Finland, usufructs are related to real estate. Usufructs may be part of one real estate or may be common to many real estates. Usufructs were established in Finland before the numerus clausus principle for easements was enforced by statute in 1895. Usufructs are similar to easements but are more onerous. The usefulness of an easement arises from the real estate's customary use, whereas the usefulness of an usufruct arises from a special use. Usufructs are based on an administrative decision or immemorial enjoyment. Usufructs authorise the use of a predetermined area of another register unit for a specific special purpose. Usufructs include certain rights to gather natural products or use hydroelectric power. The meaning of the word "usufruct" has changed over time. The current meaning was introduced in the 1980's. The requirements for which usufructs were originally established can be satisfied in a different manner nowadays. Today, it is no longer possible to establish new usufructs. Usufructs are registered to the cadastre, but entries are incomplete nowadays. Registration within the cadastre is not a precondition for the existence of a usufruct. The existence of an usufruct, relevant discrepancies and shares in a common usufruct are solved at the property definition stage. Not even professionals are thoroughly familiar with usufructs, nor is the exact number of usufructs in existence in Finland known.

TIIVISTELMÄ

Erityiset etuudet kuuluvat Suomessa kiinteistöön. Ne voivat kuulua yhdelle kiinteistölle yksin tai olla useiden kiinteistöjen yhteisiä. Erityiset etuudet ovat syntyneet ennen kuin rasiitteille säädettiin Suomessa tyyppipakko vuonna 1895. Erityiset etuudet muistuttavat rasiitteita, mutta ovat luonteeltaan niitä rasittavampia. Kun rasiitteen hyöty tulee kiinteistön tavanomaisessa käytössä, erityisen etuuden hyöty tulee erityiskäytössä. Erityiset etuudet perustuvat joko hallinnollisen päätökseen tai ylimuistaiseen nautintaan. Ne oikeuttavat käyttämään toisen rekisteriyksikön aluetta tiettyyn erityistarkoitukseen. Erityisiä etuuksia ovat eräät oikeudet luonnontuotteiden ottamiseen ja vesivoiman käyttämiseen. Erityisen etuuden käsitteen sisältö on vaihdellut eri aikoina ja vakiintunut vasta 1980-luvulla nykyiseksi. Tarpeet, joita varten erityisiä etuuksia on aikanaan perustettu, voidaan nykyään tyydyttää muulla tavoin. Uusia erityisiä etuuksia ei voida enää perustaa. Erityiset etuudet merkitään kiinteistörekisteriin, mutta merkinnät ovat nykyisin puutteellisia. Merkintä kiinteistörekisterissä ei kuitenkaan ole erityisen etuuden olemassaolon edellytys. Erityisen etuuden olemassaolo, siihen liittyvät epäselvyydet ja osuudet yhteiseen erityiseen etuuteen ratkaistaan kiinteistön määritysoimituksessa. Erityiset etuudet eivät ole tuttuja ammattilaisillekaan eikä niiden määrästä ole tarkkaa tietoa.

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1. BACKGROUND

In Finland, usufructs are related to real estate. Usufructs may be part of one real estate or they may be common to many real estates. Usufructs authorise the use of a predetermined area of another registered unit for a specific special purpose.

In Finland, usufructs are historical. They were established before the *numerus clausus* principle for easements was enforced by statute in 1895. In earlier times, usufructs differed from easements on grounds of profit and tax on this profit. Today, it is no longer possible to establish new usufructs. The requirements for which usufructs were originally established can be satisfied differently nowadays.

Usufructs do not provide exclusive rights of use. They exist alongside the rights of the owner of a usufruct area. There may also be several usufructs related to the same area. Usufructs have a specific use, location and scope. The scope means the area covered by a usufruct and its relation to the owner's rights to use the same area.

The Finnish Cadastral System is completely numeric and it includes a land register, a cadastre and a cadastral map. Usufructs and interests in joint usufruct units which have been processed in a legal cadastral survey have to be registered to the cadastre. Registration within the cadastre is not a precondition for the existence of a usufruct. Usufructs have not necessarily been established as part of a legal cadastral survey, or they may not have been registered to the cadastre. The exact number of usufructs in existence is not known. Most of them are related to fishing in the northern part of Finland.

2. RIGHTS TO LAND WHICH RESEMBLES USUFRUCTS

2.1 Easements

Easements are permanent or temporary rights to use an area of another register unit for a purpose as prescribed in the law. Easements are related to real estate and a municipality is sometimes entitled to use an easement. Easements serve the real estate's customary use. The purposes of easements have changed over time. Previously, they were established for agricultural purposes but their purposes are mostly technical nowadays. The use of a usufruct is similar to the use of an easement. Usufructs are not subject to the same *numerus clausus* principle as easements due to their different and more onerous nature. Easements covering extraction of resources are very similar to usufructs because of their purpose.

2.2 Joint property units

In Finland, some land areas and most water areas are jointly owned by village real estates. Real estate owners jointly decide on the use of these areas. Joint property units are registered to the cadastre. Conveyancing and title registration of usufructs or interests in a joint usufruct unit are done in the same way as conveyancing and title registration of interests in joint property units. A usufruct and an interest in a joint usufruct unit have to be transferred from one real estate to another just like interests in a joint property unit. In practical terms, a jointly owned area may also have a usufruct.

3. SOME OTHER RIGHTS TO LAND

3.1 Special rights

Not all rights to land which are established by judicial acts can be registered in the land register (numerus clausus principle for land register data). There is no obligation to register all rights that could be registered in the land register. Special rights which can be registered in the land register are leasehold, other rights of use, traditional life annuity, the right to extract resources and the right to take timber. These rights can be registered if they are not permanent, related to real estate or established by administrative decision.

3.2 Everyman's right

There is what is known as everyman's right in Finland. This everyman's right gives everyone the right to roam freely in the countryside and pick berries, mushrooms and flowers freely. Everybody has the basic right to walk, ski, cycle or ride freely in the countryside as long as this causes no harm to property or nature. Everybody is entitled to row, sail, swim or wash in inland waters and in the sea. Everyman's right includes the right to fish with a rod and line or fish through a hole in ice in wintertime in most inland waters and in the sea free of charge. The profit derived from everyman's rights is smaller than the profit derived from a usufruct.

3.3 Rights from further back in history

There are some real estate encumbrances in Finland. Rights to free electricity, sawing or grinding are included in the cost of the right to water power. These rights cannot be registered anywhere. If the right to water power has been registered in the land register, information concerning the real estate encumbrances can be found in the registered deed.

Firm right of possession is a permanent exclusive right of possession and use. Firm right of possession lies between ownership and a restricted right of use. It has to be registered in the land register.

Crown fishery is either an ownership unit or a right-of-use unit for fishing. Crown fishery right-of-use units are similar to usufructs for fishing, but the State is entitled to use them.

4. USUFRUCTS IN PRACTICAL TERMS

4.1 Types of usufruct

Usufructs may be related to fishing, hunting, extraction of resources, gathering of natural products and use of hydroelectric power. Usufructs for fishing can be divided into rights to fishing sites and fishing rights. A fishing site may be a fishing ground or a salmon weir, for example. Fishing rights mean 1) a right to fish predetermined type of fish; 2) a right to fish on a predetermined date or 3) a right to fish with predetermined fishing tackle in a specific lake or river, for example. Rights to gather natural products include use of pasture, rights to gather plants for livestock and rights to gather firewood for household use. Usufructs related to hunting seem to be rare. Rights for extraction of resources may be usufructs if they have been established for a special purpose, but they are mainly easements or other kinds of rights. Rights for the use of hydroelectric power are mainly based on other grounds.

4.2 Origin

Usufructs were established in Finland before the *numerus clausus* principle for easements was enforced by statute in 1895. Usufructs are based on an administrative decision or immemorial enjoyment. Administrative decisions are legal cadastral surveys, court orders or orders from other authorities.

4.3 Conveyancing

Usufructs are conveyed with the real estate if there is no contradictory covenant in the deed. In terms of parcelling, the subdivided real estate is granted an interest in a usufruct if there is a suitable covenant in the deed. In terms of land division, a usufruct is usually only available to one real estate unit. An interest in a joint usufruct unit can also be conveyed alone without any piece of land, but it has to be transferred to another real estate.

4.4 Abolition

A usufruct may be abolished based on a decision in a legal cadastral survey or it may be repealed by law. A usufruct may be abolished in a legal cadastral survey on grounds of its minor importance to the real estates involved or if the burden resulting from use of the usufruct becomes excessively heavy compared with the profit gained from it. Some rights to gather natural products have been repealed by law, namely the use of pasture and the right to gather leaves for livestock. Usufructs based on immemorial enjoyment are abolished if they are not used.

4.5 Usufructs in the cadastral system

There has not been a uniform manner of entering usufructs to the cadastre. There are only a few verbal references to them within the cadastral data. Nowadays, when usufructs are registered to the cadastre they are assigned an identification number and a location where the usufruct may be exercised, just like easements. Joint usufruct units are registered to the cadastre as register units with no specific area together with a list of those real estates which have interest in this joint usufruct unit. A right-of-use unit with an identification number and a location is then registered for the joint usufruct unit.

REFERENCES

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