

## DECREE LAW NO. 27/2011

OF 6 JULY

### REGIME TO REGULATE OWNERSHIP OF REAL ESTATE IN UNDISPUTED CASES

In its article 54, the Constitution of the Democratic Republic of Timor-Leste ensures that every citizen has the right to private ownership of land. The full exercise of this right is conditional upon clarification by the State of the situation of uncertainty as regards ownership of real estate in the national territory.

Since October 2008, the National Directorate of Land, Property and Cadastral Services of the Ministry of Justice has initiated an intense work of collecting information on ownership of real estate with the objective of establishing the National Register of Property and clarifying the factual and legal situation of real estate in our country.

That data collection exercise, referred to as cadastral surveying process, enables all citizens to claim their right to ownership of real estate by submitting “statements of ownership”. Such statements and the cadastral maps identifying each piece of land or real estate are published locally, on boards placed in easily accessed public places, as well as at the national level in newspapers, internet sites, and through radio and television campaigns. Such broad publication enables the authorities to verify the existence of possible disputes over rights of ownership of registered real estate as perceived by the population.

In April 2011, after surveying more than 35,000 (thirty-five thousand) pieces of real estate, the Government was able to verify that in 92% (ninety-two per cent) of the cases no dispute had occurred on the ownership of registered real estate. For this overwhelming majority of Timorese nationals, the right of ownership over their land or house is consensual. In other words, such right is not questioned by third parties at the hamlet, *Suco*, District or country level.

With the objective of extending the appropriate legal recognition to this vast majority of cases and regulating the status of the claimants in the undisputed cases introduced in the Cadastre database, this Decree Law intends to recognise the right of ownership of real estate whenever such right is not disputed.

Thus, pursuant to articles 54.1 and 115.1 (b) of the Constitution of the Republic, the Government enacts the following to have the force of law:

## Article 1

### Object

1. This Decree Law shall establish the regime for recognising the right of ownership over undisputed real estate for purposes of registration.
2. The objective of this regime shall be:
  - a) To recognise to national individuals, for purposes of registration, the right of ownership over real estate in relation to which no dispute exists;
  - b) To register real estate of the private domain of the State recognised by law; and
  - c) To definitely identify the claimants in the cases of disputed real estate.

## Article 2

### Definitions

For the purposes of this law, the following terms shall have the following definitions:

- a) *Statement of Ownership* shall refer to an act through which one or more individual peoples state to be the holders of the right of ownership of a real estate before the National Directorate of Lands, Property and Cadastral Services, in the framework of the cadastral surveying process;
- b) *Declarant* shall refer to the person who has submitted a valid and timely statement of ownership, either individually or in group, as an aspiring owner;
- c) *Undisputed claimant* shall refer to the sole claimant of ownership of a real estate or to a group of claimants in agreement;
- d) *Disputed case* shall refer to a case in which there is more than one declaration on one real estate, or to the cases on which no agreement exists between the limits of two or more real estates;
- e) *Real estate* shall refer to the soil and everything attached to it on a permanent basis, notably buildings, pursuant to the Civil Code.

f) *State Public Domain* shall refer to those areas defined by law which cannot be owned by private individuals;

g) *State private domain* shall refer to State immovable property which, pursuant to the law, may be the object of legal business.

### Article 3

#### National Property Cadastre

1. The National Property Cadastre is the database that contains the official information on real estate as collected through the cadastral survey process.
2. The National Property Cadastre is composed of the cadastral database and the property registry database.

### Article 4

#### Effects of recognition

1. Validation of statements of ownership in disputed cases shall serve as basis for registration, and the validated information shall be introduced into the property registry database.
2. Registration of the right to ownership with the property registration database shall be cause for presumption that the respective right exists and that it belongs to the registered holder.

### Article 5

#### Cadastral Surveying Process

Cadastral surveying is the collection of data on real estate conducted by the National Directorate of Lands, Properties and Cadastral Services in conformity with the specific procedural framework as provided for in a Ministerial Statute of the Minister of Justice. Its objective is to establish the National Property Cadastre.

### Article 6

#### Equality of rights

Recognition of the right of ownership for purposes of registration shall be assured equally to men and women, and any form of discrimination is prohibited.

## Article 7

### Property under State public domain

No right of ownership shall be granted to an ownership claiming a property located within the State's public domain.

## Article 8

### Undisputed cases

1. The right of ownership shall be recognised to uncontested claimants for purposes of registration.
2. The recognition of the right of ownership for purposes of registration in the cases referred in the preceding paragraph shall be conditional upon a Ministerial Order.
3. Save on cases provided for by law, such recognition may be the object of contestation in Court at any time.
4. The process of issuance of ownership certificates shall be regulated by Ministerial Order.
5. Agreements resulting from negotiation or mediation in which the parties have agreed on the final transfer of the right of ownership over the real estate shall be valid for purposes of declaration of ownership.

## Article 9

### Disputed cases

1. Litigious settlement of disputed cases shall be conditional upon specific legislation.
2. Disputed cases may be settled at any time depending on the will of the parties.
3. Recognition of the right of ownership for purposes of registration in the cases referred to in the preceding paragraph shall be regulated by Ministerial Statute.

4. The definite identification of claimants in disputed cases shall determine the possible claimants of ownership relating to each real estate, save the transfer of the statement.

## Article 10

### Up-dating of database for property registration

1. The property registration database shall be up-dated whenever an alteration exists in the ownership of a real estate either by *inter-vivos* transfer, inheritance, or by other acts permitted by law.
2. Formal requirements for transferring real estate ownership right shall be determined by Ministerial Statute.
3. The procedure for up-dating cadastral information and registration of ownership transfer shall be regulated by Ministerial Statute.
4. Procedure for up-dating shall observe the following principles:
  - a) Facts resulting in transfer of rights or creation of charges on real estate shall not be owned until the real estate is finally registered in the name of the person from whom the right is acquired or against whom the charges are created;
  - b) Registration shall be made against application submitted by a legitimate person;
5. Transfer of right of ownership recognised in the framework of this statute can only take place in favour of national individuals or the State.
6. Transfer in favour of national corporate bodies shall be conditional upon specific legislation.
7. Registration of transfer of real estate after granting of right of ownership by the present regime shall be subject to authorisation of the spouse, pursuant to the law.
8. Declaration of nullity or annulment of a juristic act relating to real estate shall not affect rights acquired on the same property, supported by valuable consideration, by a third party in good faith, if the registration of the acquired property occurred prior to registration of the action of nullity or annulment, or to the registration of the agreement between the parties on the invalidity of the juristic act.

9. The rights of third parties are however not recognised where the action is proposed and registered within the three subsequent years to the completion of the business.
10. Judicial actions and decisions implying the establishment, modification, or extinguishment of rights of ownership on immovable property shall be subject to registration.

## Article 11

### Judicial proceedings

1. Parties to a judicial proceeding involving ownership of a real estate shall be obliged to inform the Ministry of Justice of the existence of the judicial proceeding before the end of the deadline for submitting statements of nullity on pain of the registration being made in favour of the declarant party.
2. Final judicial decisions shall be entered in the property registration database against presentation of certificate of proof.

## Article 12

### Crimes

Active and passive corruption, falsification of documents, or presentation of false statements in the framework of the enforcement of this statute, shall be punished pursuant to the Criminal Code.

## Article 13

### Transitional provisions

1. Statements of ownership collected prior to the entry into force of this Decree-Law shall be valid once the demand to republish and reopen the deadline for submitting new statements has been observed.
2. Cadastral maps of areas included in the Cadastre database prior to the entry into force of this Decree-Law, as well as their respective list of declarants, shall be republished.

## Article 14

### Suspensions

1. Enforcement of subparagraph a) of article 37.3 of Decree-Law 3/2004, with the amendments introduced by Decree-Law 24/2009, is suspended, with this matter being provisionally regulated by article 10.2 of this statute.
2. Suspension shall be removed following approval of legislation expressly providing for such removal of suspension.

## Article 15

### Revocations

All Indonesian legal norms currently in force in Timor-Leste regulating the form of transfer of in rem rights are hereby revoked whenever they are applicable to immovable property that are already subject to registration procedure as provided for in this statute.

## Article 16

### Entry into force

This Decree-Law shall enter into force on the day after its publication.

Approved by the Council of Ministers on 4 May 2011

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Justice,

Lúcia M.B.F. Lobato

Enacted on 24 June 2011

For publication

The President of the Republic,

José Ramos-Horta