The protection of the environment by advertising real estate

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ÁLVARES, André de Carvalho Barbosa; CUNHA, Ricardo Henrique Alvarenga. The protection of the environment by advertising real estate. Multidisciplinary Core scientific journal of knowledge. 03 year, Ed. 07, vol. 01, pp. 31-56, July 2018. ISSN:2448-0959

Summary

Preserving the environment has become a concern recently on modern civilization according to the awareness that the natural resources are not infinite. In Brazil, the environment received special treatment by the constituent Assembly that the elevated to the status of constitutional rule, assigning responsibility for your preservation to the Government and to society as a whole. In this context, because it does not use the registry structure of buildings, through the registry, also advertising in issues related to the preservation of the environment? There was, too, a new understanding of the right to property, which after the 1988 Federal Constitution must meet your social function, making aspects arising from environmental obligations, as important as the property itself. On this new socio-environmental dynamics, new real estate Registrar's posture as the applicability of the principle of concentration, which requires that the greater the concentration of information on registration of real estate, the greater the protection of interested third parties and the environment.

Keywords: environmental preservation, real estate registry, Registry, Advertising the Social function of property, the principle of Concentration.
Introduction

This article, the theme "the protection of the environment by advertising real estate", aims to raise some questions regarding the use of the real estate registry as a tool for the protection of the environment through advertising registry.

Due to the evolution of the study of the environment, which was elevated to constitutional rule by the Federal Constitution of 1988, with reflections on the right to property, which ceased to be absolute and has to fulfill your social function, it is understood that the Record real estate agent, must adapt to meet the new demands and social, economic and environmental demands.

The structuring and the development of this article shall be grounded in reading and research of scholars that supports specific theories for this study, enabling an analysis of convergent and divergent works that deal with the issue at hand. The methodological procedure adopted will be the scientific method of descriptive and theoretical analysis in addition to the doctrine, the dogmatic statement of reasons in legal work will the Federal Constitution, in the law and in case law.

Such a study is justified by the importance that the acts performed in the real estate registry, as the registration, records and the authorizations, which are registrários institutes that allow public access to information concerning the property, both as legal environment, can be very useful both in protecting the environment and civil liability, in the case of your degradation, even though such information, although reflexively, may limit the right of property.

In the development of the work, demonstrate that although, the real estate registry holds an appropriate structure that could contribute to environmentally friendly, because it exercises a public function, is organised territorially, has relationship with all other the management bodies, still, was integrated by the national environmental System (SISNAMA) as fit to disclose environmental information.

But what prevents the real estate registry using registry advertising principle for the environment? There is no law governing the matter. Who is the competence to legislate on such a subject? The principle of concentration must be applied to interpret the article 246 of the law n°. 6,015/73 which allows the registration of any act that changes the registry, giving publicity to cases not expressly authorized by this law? The list of recordable acts listed in article 167 of the law n°. 6,015/73 are taxativos? Are issues that will be raised and analyzed over the course of the work.

The doctrinal approach will be made under the aspect of generalization, because the goal of this work is to awaken curiosity through the questions raised, because the subject still sparked controversy and was not pacified by the jurisprudence, by scholars by loggers and by law.
In conclusion, will be made final considerations, in order to organize the ideas brought to light throughout the article.

1. Initial considerations

The preservation of the environment is a recent concern in modern civilization. The man was familiar with the abundance of natural resources and a shortage was seen as a remote possibility. With the growth of the world population and industrialization, the demand for more natural resources also increased and became apparent the need for a reaction to the devastation and waste. The recovery and preservation of the environment started to deserve attention of the society and also of the Brazilian legislature. In Brazil, the environment received special treatment by the constituent Assembly, as it was the subject of a chapter in the Federal Constitution of 1988, becoming therefore a constitutional standard.

Is laid down in article 225 and its paragraphs of the Magna Carta that:

"Everyone is entitled to an ecologically balanced environment, common use of people and essential to healthy quality of life, and to the Government and the collective duty to defend it and preserve it for present and future generations."[3]

It is evident that the constituent Assembly blamed not only the public authorities as the society for the preservation and protection of environmental equilibrium. Well, that must be preserved to be enjoyed not only by the current generation as for the others to come.

According to the teachings of José Renato Nalini:

"There is an undeniable logic in the design of the constituent Assembly. The living world responsible for the future. Each generation takes on obligations to the future generation. Need to deliver to her the planet able to be equally enjoyed by those who succeed (NALINI, 2010, p. 91)."

Further clarifying your thoughts the judge Nalini concludes (Ibid., p. 92): "So, as everyone is entitled to an ecologically balanced environment, everyone has equal obligation to preserve the environment"

Based on the logic that the constituent Assembly gave the standard, the registration officer, who performs a public function, by delegation and on behalf of this State, has the obligation of environmental supervision, not only by the function it plays, but also by the fact that Brazilian, because the constitutional standard is imposed at all.

"The real estate Registrar, to play the public role and be a delegate of the State organ, is holder of public
faith, with its presumption of veracity, acts which justify your actions for environmental information in his books publicizar, acting together with the Public Administration. "[4]

With this thought, part of the doctrine has widespread homeland that the structure of the real estate registry, would allow the public access to any information pertaining to the property, whether factual or legal, including the environment, because it is possible to find a use in all Brazilian regions.

If the natural vocation of the real estate registry is advertising, is to inform, is to make public the legal and factual situation on the property, why not also include the environment, spreading through the registration if the property is in the area of protection, contamination, if has legal reserve, spring, woodlands, rivers, riparian forests, deforestation, reforestation, obligatory facts that may limit or restrict the right of ownership, without the need for other organs.

This position does not enjoy unanimous doctrine. For part of the doctrine the idea still needs to be developed and matured, it would be foolhardy to leave to the discretion of the Registrar the understanding of fact as relevant, that's what you think, for example, Anelise Irish Gerozaga Stfelman: "Thus, let the will of the real estate register or other agencies jurists the understanding of material fact legally to get publicity through registration is awesome for legal certainty ".[5]

This will be the keynote of this article that proposes a reflective and interpretive analysis of convergent and divergent works on the topic, raising debates which might lead to the understanding of the new dynamics of environmental law, with reflections in the real estate registry and Consequently the right to property.

2. Environment

The concern with the environment occurred more accentuated in the 19th century. Emerged as a reaction to the devastation of natural reserves, regarded until then as inexhaustible. In 1972, the United Nations warned countries to the gravity of the situation.

In Brazil, the Brazilian forest code (law n°. 4,771/65), was one of the first laws governing the subject. In 1967, was drafted the law regulating hunting, Laws and decrees regulating fishing and mining.

The law of National Environmental Policy (federal law n°. 6,938) was drafted in 1981, and this is the law in your article 3, subparagraph (I), which is regarded as "the set of conditions, laws, influences and interactions of physical, chemical and biological order, which allows shelters and governs life in all its forms". [6]
Marcelo Augusto Santana de Melo (2010, ob. cit., p. 19) believes that "Middle and environment are synonymous because" half "is exactly what it involves, i.e. the environment". Still alert the said author that:

[...]"the breadth of the concept, doctrine to subdivide in three study of the environment or environmental law, terming them natural, artificial and cultural. Natural environment is composed of the soil, by water, by the atmospheric air, the fauna and the flora. Artificial environment is connected by buildings, urban and community equipment, closing much of urban law. Finally, the cultural environment is that integrated by the artistic, historic, archaeological heritage, landscape and tourism. "

Of the three provinces made the doctrine to which matter to this article is the relationship of the natural environment with the real estate and the possibility of using the registry to advertising issues related to the preservation of the environment and their reflections in transmission of property.

The said Registrar Marcelo Melo, however, warns that to attract to the real estate registry the registration of legal situations that may generate environmental impact, certain precautions need to be taken:

"However that the information made available to the general public are clear and you need to make it easier to understand. Another caution that we need to develop is to substantiate advertising in current legislation to justify your ticket in the Folio real, as well as taking care with environmental bodies so that the information is relevant, reliable legal (MELO, 2010, p. 22). "

From this positioning, is evidence that the real estate Registrar in providing the service of service must meet the needs of society, making clear, intelligible, understandable by the common citizen does not have technical knowledge on the subject. In addition, must substantiate the information on existing legislation, since the goal is only to inform the environmental status of the property and does not cause damage to your owner, preventing untruths and facts without legal relevance be disclosed. The registration officer, the publicizar real estate data, will be exercising important role, not only in defense of legal security, expensive item to the constituent Assembly, but above all, will be taking care of environmental and health preservation human.

3. Real estate registry

3.1 Concept

Make yourself useful understanding of the word "record", widely used in everyday life, but which contains an amplitude unknown by many.
Record in the teachings of Mohamed Torrieri Guimarães (1999, p. 473):

"Release, transcript, integral or by extract, in a proper book, events or acts, deeds, securities or documents. Book where this is done. Registry where such special releases. The registry gives: authenticity, advertising and perpetuity to act or document. Can be mandatory, if the law itself is derived from the legal act and your effectiveness; and optional when it depends on the person concerned. The acts of the registry are: registration, registration, transcription and archiving. You can be civil and commercial matters."

Therefore, real estate registry: use for registration, transcription and registration of real estate property.

Article 246 of the law n°. 6,015/73 determines the processing, on registration or on the sidelines, registry of all occurrences which, in any case, produce changes in the legal situation of the well. Arises from the need to inform third parties about the existence of supervening facts or subject-related rights as well.

Traditionally, the real estate registry can be regarded as:

[...]"auxiliary body of the civil law for the settlement of public and private bonds, granting them opposability to third parties, with wide publicity and intended to control, effectiveness, safety and authenticity of legal relations involving real estate, ensuring them relative presumption of proof of ownership (MAO, 2004, p. 1)."

Completing the concept, the author adds: "the real estate registry is an institution which has emerged as the State's need to control the right to property and as an instrument of legal security to the real estate traffic".

With the advent of the Federal Constitution of 1988 (article 5, item XXIII), understand that the real estate registry "does not only the function of keeper of the law of property, but also the novel mission of guardian of the social function of property, in this included the"(MELO, 2010, p. 29).

According to the author: "the influence of the social function of property rights is undeniable; the exercise that was absolute now gives way to the accomplishment of a function, and the issues arising from urban and environmental obligations have become as important as their own property "(2010, ob.cit, p. 18).

Profound changes have occurred in society and the law. The property does not meet more just your interest owner, must also meet the needs of the collective. The preservation of the environment is of course a collective right which must overlap to individual. This is therefore the first category of individual goals interests deserve attention of society and therefore of the legislature. Is a right to be
safeguarded and that the real estate registry can contribute.

3.2 registration of real estate and the social function of property

The right to property is a constitutional guarantee (art. 5, XXII), as well as the is, item XXIII of article 5 which established: "the property will attend your social function".

That was not the intention of constituent predicting the social function of property, delete the right of private property. The property continues to maintain your private character, but, your use shall also serve the common good. The owner can continue to use, enjoy and dispose of your fine, but no more absolute manner, because the law requires the holder your obligations to the community.

But, warns the Minister Gilmar Ferreira Mendes that the legislature:

"Must preserve, however, the essential core (Wesensgehalt) of the right to property, the private utility and, crucially, by the power of disposal. The binding property that legitimate restrictions, cannot go so far as to put it, only and exclusively, the service of the State or the community "(MENDES, 2004, p. 157).

The Federal Constitution itself in your article 182, paragraph II, attempts to clarify the understanding of the topic when requires that: "the urban property meets your social function when fundamental requirements of Ordinance of the city expressed in the strategic plan.

With regard to rural buildings, the Federal Constitution provides for in your article 186:

"The social function is fulfilled when the rural property simultaneously meets criteria and degrees of requirement established by law, the following requirements:

I-rational utilization and appropriate;

II-proper use of the available natural resources and preserving the environment;

III. compliance with the rules governing work relations;

IV-exploitation that promotes the welfare of the owners and workers.

(...)"

It is possible to find expressly in the Civil Code (Law n°. 10,406/02) in article 1228, 1st paragraph, the
consecration of such design that determines:

"The right to property must be exercised in accordance with their economic and social purposes and so that they are preserved, in accordance with the provisions in law, flora, fauna, natural beauty, ecological balance and equity historical and artistic, as well as avoided air and pollution of the waters."

It is clear that one of the requirements to fulfill the social function of the property is the preservation of the environment by your owner, including legal and judicial decision forecast penalizing the homeowner, even if it's not the direct author of degradation, the restoration of the environmental damage.

"Damage to the environment-rural property-owner Mere claim ignorance of the exploitation by others-passive Legitimacy" ad "-causing environmental damages effectively recorded-" objective "liability."[2]

As reiterated jurisprudence State, and also of the Superior Court of Justice, civil liability for environmental damages is objective, i.e. your characterization is independent of fault and is based on the fact that the one that generates the risk must repair the damage from the activity carried out.

In the face of this reality of environmental degradation and of disrespect to the social function of property, it would be extremely important that the information pertaining to real estate were publicized by registration in registration in the registry of immovable property, enabling those in charge of the monitoring and environmental planning had real property situation science and can thus intervene in defence of this right of common use, in addition to preserve rights and private interests.

Therefore, there is no denying that the real estate registry is an excellent instrument for the verification of the requirements established in law through the publication of information relating to the environment that impact on the real estate.

Aware of the new challenges that require real estate registers, Flauzilino Araújo dos Santos says:

"The primordial nature of registrária activity stems from your vocation the sway social harmony, real estate and business relations of these incidents arising, by means of advertising which emerges of the grounds on which the registry State Democratic Right with effect erga omnes in search of replacement or maintenance of social peace. [...] It is within this context that the books of real estate registry are open as repositories, notorious and accessible, of acts and events that somehow can be repercussions in the property rights and on social function, whose announcement is marked by sign under the so-called peremptory principles registral (SANTOS, 2010, p. 327)."

It is possible to understand that the legal system has set aside important role to loggers in preserving the
environment, which, via the advertising endorsements made in the books of records, will offer relevant environmental information to society about the property, and you can also check, if the function is being fulfilled or not by the owner of the property.

On the new concept of property which imposes limitations to your use in function of social, environmental and economic requirements, also new posture of the registration officer, in that it has a responsibility to preserve the environment, which will provide better quality of life in view of the needs of current and future generations.

### 3.3 right to access to environmental information

The concern with the use of property in registrária advertising in issues related to the environment was aired in a study called "El Record de La Propiedad y Mercantil as al servicio de la sostenibilidad held by the College of registers of Spain to the European Environment Agency in 2002.

In Brazil, in 1992, in the Declaration of Rio de Janeiro, it was decided that:

"[...]the best way to deal with environmental issues is to ensure the participation, at the appropriate level, to all interested citizens. At the national level, each individual shall have appropriate access to information concerning the environment that have public authorities, including information on hazardous materials and activities in their communities, as well as the opportunity to participate of the decision-making processes. The States will facilitate and stimulate awareness and popular participation, putting the information out there for everyone to see[...]"[81]"

From the dissemination of this document, it was realized how important it is to provide access to environmental information which is held by the authorities, any person or entity. Is the right to be informed, the right to know, right to access to environmental information.

Some scholars believe that the Brazilian legislature, in drafting the Civil Code of 2002, lost a great opportunity to integrate the real estate registry on disclosure of environmental data and information contained in the System of agencies and entities National environment-SISNAMA. In your article 2 this Law regulates public access to data and existing environmental information in the bodies and in the entities members of AMAZONIA:

"[...]"the organs and entities of the Public Administration, direct, indirect and foundational, AMAZONIA, members are required to allow public access to the documents, files and admininistrativos processes that treat environmental and material provide all environmental information are under your guard, in written, visual, or electronic sound."[9]"
If not included in the thousands of service roads SISNAMA Records of buildings scattered over every nook and cranny in Brazil cannot simply deny the importance of real estate advertising relevant environmental information, but yes, exercise a prudential judgment of qualification with observance of the legal system as a systemic whole.\[^{10}\]

The Portuguese author Carlos Ferreira de Almeida qualifies "public records as the most perfect and evolved means of advertising, equating them to the technical and legal concept of advertising" (ALMEIDA, 1960. p. 163).

Among the instruments of National Policy on the environment, listed by Federal Law No. 6,938/81, item XI, included by law n. 7,804/89 discipline: "the guarantee of the provision of information relating to the Environment, forcing the Government to produce them, when non-existent".

According to Luciano Lopes Passarelli, (ob. cit., p. 215), "the legal text does not restrict how this information will be provided. On the contrary, should it be read in the light of the broad scope of protection of the environment that dessume of art. 225 of the CF\[^{11}\]."

There's no denying that advertising is the basic principle of real estate registry. The real estate registry has great range, you can find a notary public in every region, besides having a registry structure developed or in development (almost all are computerised offices) which enables easy access the registry information and consequently, the environment too. Whence it follows that the inclusion of real estate registry as a body for environmental publicity would be extremely useful and less costly.

One of the principles of environmental law informants is the "right to information". This law, also informs the registry law-real estate, which is intended to make known the collective "juris status" of real estate. [...]"Is that the effective advertising, I expect, is entitled diffuse collective, hence why it's time to overcome the old paradigms hermenêuticos restrictive of the acts and legal transactions liable to record" (2010, ob.cit, p. 215).

There is, therefore, plausible justification for the jettisoning of the registers of the legislation authorizing the disclosure by the registration of the environmental condition of the property registry object.

"Both the registration as registration are registrários that institutes should be used to ensure the effectiveness of the public access to environmental data and information of the given property, in order to ensure not only the safety of legal acts negotiated but also the establishment of guardianship of the environment in line with the principles that guide the environmental law (STIFELMAN, 2011, p. 580)."

Therefore, the information will not indiscriminately. The guiding principles of real estate registry should
be observed, as contributing to the maintenance of the irretorquível form legal certainty, another very dear to the legislature in 1988.

3.4 the registry system environmentally friendly real estate

For Marcelo Augusto Santana de Melo (2010, ob.cit, p. 29), the structure offered by the registry of Property is one of the most important aspects that must be taken into account for the availability of environmental information:

b) real estate Records are organized territorially. As I previously mentioned, this is one of the biggest advantages of real estate registry. Practically in all regions of the country it is possible to find a purpose. Proximity which enables access to registry and also environmental information by local people. According to the author, would facilitate a lot of exchange of information between the environmental agencies and real estate registry if all registries were computerized.

c) the real estate registry has relationship with all other agencies of the administration. The real estate registry maintains a close relationship with the Public Administration. There are agreements signed between various prefectures aiming at the exchange of information between the organs, especially tax matters. Also maintains a direct relationship with the internal revenue service in the statements about real estate operations (DOI)-in article 8 of law No. 426, 24.4.2002-that are held monthly on the internet and heritage Secretariat of the Union (SPU)-art. 3A of Decree Law n°. 2,398/87-in the case of acts carried out in the Union buildings.

d) the real estate registry offers services made by highly qualified technical professionals after passing proof contest and titles (art. 3 of law n°. 935/94). After passing proof contest and bonds real estate recorder is enabled for performance of the function, which gives legitimacy to the work related to the right to property, and also the environmental limitations.

and) the real estate registry is connected with the Brazilian geodetic system (SGB). The law n°. 267/2001 has created a new way of describing the real estate property that is called georeferencing system, which
uses geographic coordinates fixed with the aid of satellites. It is of vital importance when it comes to the environment, because it has the accuracy required to inspect and identify the owner for the civil obligations, criminal and administrative, and of course, to express with cadastral accuracy the situation the legal property.

Based on the teachings of Marcelo Augusto, were listed the main characteristics of the Brazilian real estate record which can be useful for the availability of environmental information. It is possible to notice that the structure offered by the real estate registry is adequate and that environmental conservation would win if the public registries organ was admitted as an aid for public administration, in publicity, through the registration of information on the environment.

3.5 Actions concerning environmental supervision subject to registration

Do remember that the mister roster of acts subject to registration in article 167, item II, combined with article 246 of the Public Records Law is merely illustrative. To back up this assertion, in 1980, the General Internal Affairs of the State of São Paulo authorized the registration of "terms of responsibility for the preservation of forests" (n° CG Process. 53,873/80) and more recently authorized the registration of contaminated areas and of tipping. Here's what says about internal affairs paulista: "the registration always fits since save relevance with the registry and represent changes in the elements that make up\[12\]."

And yet:

"[...]the real estate Registry also acts as an element of legal information of the property and, consequently, the higher the concentration of information relating to the property in Folio, the real protection of third parties interested in acquiring the building. Thus, the centralization of specific information in the registration of the property acts in order to increase traffic safety."

Based on the doctrine of Luciano Lopes Passarelli (2010, ob.cit, p. 212), in addition to the best-known hypothesis, as the areas of permanent preservation and legal reserve, will also list the following situations that, for specific environmental agencies act with Fulcrum on the laws and relevant resolutions, could by Act of registration be publicised on the admission of the property if incidents about him:

"the) restrictions on subdivision;
b) duty to prevent soil erosion;
c) restriction on the soil sealing;
d) sound emission limits (useful information for those who want to acquire the property for him to install a trade or industry);
and) limits or restrictions of visual pollution (in the same sense of what is pointed in the previous item, which can encompass, including limitation of build up of one point);
f) duty of Permanent protection areas recovery;
g) duty of maintenance of urban afforestation;
h) conservation unit;
I) environmental zoning (the fact that the property be located in, for example, Use Strictly Industrial zone or mixed use zone);
k) right of pre-emption in favour of the Municipality, the disposals private sales, with a view to the creation of protected areas or protecting other areas of environmental interest, and protection of areas of historical, cultural or landscape (art. 25, VI and VII of the Statute);
l) transfer of the right to build, when the property is deemed to be of historical interest, environmental, social or cultural landscape (art. 35 the city status);
m) non-availability of the art. 225, para. 5. the Federal Constitution of 1988, "are unavailable Dole lands or collected by the States, for discriminatory actions, necessary for the protection of natural ecosystems." (Important to the annotation of this unavailability on registration of the property that will act as the destination change control of the area by subsequent Governments);
n) restrictions relating to goods of cultural heritage;
the) areas of the watershed protection and recovery-APRMS "

As already mentioned above, the role of the acts liable to registration in the register of real estate is merely illustrative and the greater the number of registered information, the greater the protection of interested third parties and the environment.

4. Interconnection between environment and real estate registry

4.1 Competence

But what keeps the records of real estate using the principle of publicity in support of the environmental registry? There is no law governing the matter. Who is the competence to legislate on such a subject?

For some scholars, nothing prevents the real estate registry use the principle of registry for the advertising environment. Fabiano Comozzato Raymundi, second item II of article 167 of the law n°. 6,015/73 sets forth the acts subject to registration. However, that list is not exhaustive, but merely illustrative, in the face of the device in article 246 of the law: "art. 246, in addition to the cases expressly referred to in item II of article 167, shall be recorded on the registration the subrogation and salvage and other occurrences which in any way, alter the registry [13]."

Article 246 of the law n°. 6,015/73 establishes the sample character article 167, item II of the same law. Indeed, the range of possibilities to take any situation that is embodied in official documents and in possession of relevant information with respect to the property or your owner.
By a decision of the Superior Court of Justice, dated 22 February 2011, substantiated in Judgment from the RESP nº. 1,161,300/SC, being appellant Habitasul Empreendimentos Imobiliários Ltda., defendant the Federal prosecutors and the Minister Benjamin Herman Rapporteur is possible to envision a number of elements which confirm the importance and the purpose of the filing of the environmental restrictions on the admission of the property and the sample character article 167, item II of law No. 6,015/73. The applicant contends, in short, the existence of res judicata and the lack of legal provision for the registration in the judgment of the judgment a quo, with the following menu:

"Administrative. PUBLIC CIVIL ACTION. DRAINAGE WORKS, Grounding And Construction. ENVIRONMENTAL IMPACT, ACAUTELATÓRIAS MEASURES, PRESERVATION AREAS. HOTEL VENTURE. REGISTRATION OF THE DEMAND IN THE REAL ESTATE REGISTRY OFFICE. CONSUMER PROTECTION: in the case of works with environmental questions, and having your progress been conditioned the implementation of acautelatórias measures, the registration of the demand in the real estate registry office is as pertinent in attention to the right to consumer protection. Interpretation of arts. 125, III, of the CODE of CIVIL PROCEDURE, art. 247 of Law 6,015/73 and art. 6, IV, of the CDC. "

In this respect the Rapporteur expressed so Minister Herman Benjamin:

"Rebound that, contrary to what the applicant maintains, the legal basis for registration is not restricted to art. 167, II, 6015/73 law, considering that the list is not exhaustive, it established and Yes example. This conclusion stems from the standard contained in art. 246 of the law, which reads as follows: art. 246-beyond the cases expressly referred to in item II of article 167, shall be recorded on the registration the subrogation and salvage and other occurrences which in any way alter the registry. In the event, I insist, the registration serves to make complete and adequate information on the actual situation of the enterprise, which is in line with the purpose of the registry system and the rights of consumers, as elucidated elsewhere. "[14]

Contrary to this positioning, Marcelo Augusto Santana de Melo, asserts:

"Only the Union fit legislate on public records (art. 22, XXV, CF). It is, in our view, the main problem for the interconnection between environment and real estate registry because there is a possibility of three political entities set up mechanisms or environmental protection institutes; However, only the Union may legislate to provide for the possibility of entry of titles in the real estate registry (2010, ob.cit, p. 20). "

For this author, both the Union and the State and Municipality can legislate regarding environmental protection and combating pollution, but only the Union may legislate about public records. Completing your thought, the Registrar asserts: "in protecting the environment becomes impossible not to restrict or
regulate use of the property, however, the advertising of restrictions is not perfectly delimited in our right, deserving study in that sense for legal certainty, pillar of our right, is not threatened (2010, op.cit., p. 33).

It is known that the real estate registry, is structured in strict legal principles and the behavior of its professionals cannot jeopardize the system of transfer of property and the legal certainty of transactions of real estate, offering, by registration, environmental information pertaining to property, if there is no express legal provision governing the matter.

4.2 Controversy in the doctrine and jurisprudence

As recorded above, there are divergent positions on the subject. For some scholars, the rule that authorizes the disclosure of environmental information for the registration in the registration of the property is already embedded in article 246 of the law n°. 6,015/73, which says: "in addition to the cases expressly referred to in item II of article 167, shall be recorded on the registration the subrogation and salvage and other occurrences which in any way, alter the registry".

This is the positioning of João Pedro Lamana P and Fabiano Comozzato Raymundi that underlie your doctrinal stance on the principle of Concentration, which will be developed in the next item. Similar position adopted by the Minister of the Superior Court of Justice Herman Benjamin, who, the article 246 of the law n°. 6,015/73 has only sample character.

Different than you think Marcelo Augusto Santana de Melo, Ricardo Henry Marques Dip and Francisco José Rezende dos Santos to whom the facts susceptible of registration are also provided so definite in Public Records law-not infer from premises. Such positioning comes from the taxatividade of the acts, which will be developed in the registral next item.

4.3 the principle of concentration and the acts taxatividade registrários

4.3.1 the principle of concentration

The real estate John Peter Lamana P argues that:

"any fact or legal act jurígeno concerning the legal status of the property or the subjective mutations can remain indifferent to the inscription on the plate. In addition to the translativos acts of property, property rights institutions, she must come the judicial acts, the acts which restrict the property, constrictive acts (foreclosures, foreclosures, sequestrations, embargoes), even of acautelatório character, the Predictive statements, personal actions reipersecutórias and the real, the decrees of public utility, the susceptibility in expropriations, the decrees, the rollovers, lending, the administrative obligations, the
protests against the alienation of the leases, partnerships, anyway, all the acts and facts that might entail the amendment of the legal thing, even in a secondary character, but that may be applicable, without the need to seek other information elsewhere, which conspires against the life Dynamics (P, 2000, p. 2). 

The explanation above refers to as the principle of concentration that proclaims that the right only protects what is allowed to be known by people, especially for those people, who have real interest in relation to the particular legal situation of a well.

How thoroughly developed in the previous items, the real estate law, Brazilian law, part of the category of law which requires the broadest and total advertising.

In the real estate registry system, the principle of concentration, can be understood by acts of registration, and the registration of the property should be should support publicizar any condition that may affect the property or person of your holder, dismissing other efforts that would be needed to achieve the actual legal status of the property.

The principle of concentration, the real estate registry believes that only will be opposable to third parties, rights, facts or situations that appear expressly to your records. Where it is presumed, legal certainty, would extend only to acts registered or recorded on the property registration, that is, only the situations listed in the registry.

In the words of Fabiano Raymundi Comozzato:

"The principle of concentration ally to the principles of legal certainty and the registry, advertising applied in environmental sphere, resulting in a new dimension of real estate registry, opening up a new range of your expertise, through the registration of restrictions property registration environment (2011, op. cit. 130). "

Besides, concludes the author, this new range of performance turns out to highlight even more the social function of the real estate registry, which is no longer seen as a body that has as its object the administration of private interests, to turn into an instrument of legal certainty for the administration of collective interests.

To João Pedro Lamana Paiva, the principle of concentration it is possible to any registry, this release there is relevance with regard to your object or your holder. 

It turns out that, the roster of acts likely to entry in the registry of immovable property through registration is merely illustrative, as concluded by the simple reading of the article 167 c/c Article 246,
This notion of not taxatividade the acts registrários focuses on the actual situation of the property and, consequently, the higher the concentration of information in the registry of immovable property, the greater the protection of interested third parties and the environment. In addition to that, the concentration of all the acts and facts that might entail the amendment of the legal thing on registration of real estate registry, provide reduced costs of real estate transactions, eliminating birth certificates and documents.

### 4.3.2 the regisral acts Taxatividade

Marcelo Augusto Santana de Melo (2010, op. cit., p. 39) proclaims that the idea of the principle of concentration need to be developed because it attracts to the real estate registry any relevant information of the property, legal and factual even, even if for purpose merely declaratory. The principle is not fully accepted and widespread as it is treated as effect or characteristic of real estate registry since about natural vocation of the organ and advertising of legal suits related to the property, that corroborated by virtue of effect territoriality, so that we understand impossible remove the discussion of taxatividade of the registrários acts.

Concludes that: "Thus, let the will of the real estate Registrar or other agencies jurists the understanding of material fact legally to get publicity through recordal, is fearful for legal certainty and must be away from ready."

With respect to the understanding that the rule allowing the principle of concentration is already embedded in article 246 of the law n°. 6,015/73, Francisco José Rezende dos Santos, says: "But, in our opinion, lack the dimension to this Act of obligation and legal certainty, that if only the commandment was absolute and imperative. If not registered or recorded on the registration of the property, the Act "inexistiria" to the right 16]."

Trying to solve the problem, suggests that the best proposal would be a legislative modification was mandamental, in the sense that if evidence in the legal text the determination, that is, with accuracy of the legal transactions concluded on the basis of the real estate registry information would be protected by the principle of good faith and that the information would be sufficient to establish that both ownership as the charge, charges or encumbrances that exist on the property.

So, it would fit the new law explicitly and clear the principle of concentration in your extension, demonstrating your range and their legal consequences. In addition to clarify that as a result of the principle of concentration not be opposable to third parties and business legal acts that are not included in the registration of property, protecting the community regarding acts that remain hidden in relation to the
property or are being hidden on the real situation of the property, to the detriment of any interested in the purchase of the goods.

The legal provision came with law No. 13,097, of 19 January 2015:

"Art. 54. The legal transactions that have finally constitute, transfer or modify rights in rem in immovable property are effective in relation to previous legal acts, on the hypotheses on which they have been registered or registered in the registration of the property the following information:

I-real stock quote record or personal reipersecutórias;

II-registration, at the request of the person concerned, of constricting judicial filing of action or execution of sentence compliance phase, and pursuant to art. 615-the law in 5,869, of 11 January 1973-code of Civil procedure;

III-registration of administrative or conventional restriction to the enjoyment of rights registered, unavailability or other charge when provided for by law; and

IV-registration by judicial decision, the existence of another type of action whose results or patrimonial responsibility can reduce your owner to insolvency, pursuant to item II of art. 593 of the law at 5,869, of 11 January 1973-code of Civil procedure.

Sole paragraph. Cannot be opposed legal situations not listed in the registration in the register of real estate, including for the purpose of eviction, the third in good faith who acquires or receives as guarantee real rights on the property, except as provided in arts. 129 and 130 of the law on 11,101, 9 February 2005, and the chances of acquisition and extinction of property independam property title registration."

The law does not expressly brought the filing environmental forecast on registration of the property, but the doctrine understands that the item III would fulfill this role by implementing within what is defined as legal principle of concentration. However, the following year came the new code of Civil procedure, law No. 13,105, of 16 March 2015, which didn't take into account Act, weakening your application in practice.

In this respect, the real estate registry holds an important role in the systematic transmission of data related to property liable to generate predictable environmental damage and imminent, and the monitoring of such information certainly would allow the adoption of concrete measures in a timely manner to prevent the damage or the aggravation of environmental degradation (STIFELMAN, 2012, p. 583).
In this way, the Registrar to make available to the general public the relevant information in respect of certain property by applying the principle of concentration, must do so based on existing legislation, a legal text incisor, which gives the breadth and recognition that he really needs to promote a real revolution in the Brazilian real estate Registry law.

**Final considerations**

Preserving the environment has become a concern recently on modern civilization, in the light of awareness, that natural resources are not as plentiful and perennials.

In Brazil, the environment received special treatment by the constituent Assembly, that raised the condition of constitutional rule, assigning article 225 the shared responsibility for preserving your to the Government and to society as a whole.

From this logic, the registration officer who performs a public function, by delegation and on behalf of this State, also has the obligation for environmental supervision, not only by the officiating, but also by the fact of being Brazilian and be inserted in society.

The real estate registry is an institution which has emerged as the State's need to control the right to property and as an instrument of legal security to the real estate traffic

With the advent of the Constitution of 1988, the real estate registry left to perform only the function of guardian of the right to property, but also went on to pursue the important mission of guardian of the social function of property.

The Federal Constitution and the Civil Code of 2002 to incorporate the right to property the obligation to fulfill a social function, pegged to this, specifically, environmental preservation. So, one of the assumptions of social function is to preserve the environment.

On this new social and environmental dynamics, the legal system has reserved an important role in the real estate registry, to make relevant environmental information about the property, giving it greater publicity and checking compliance environmental and social due to your structure and reliability.

Besides, the real estate registry offers wide structure that facilitates the access of local people to the registry and also environmental information, which must be clear and precise to facilitate understanding. Noting that, the publication of facts relating to the property must be based on existing legislation, be reliable and legal relevance.
Access to information on the environment is one way the State facilitate and stimulate awareness and participation in environmental preservation.

For some scholars, the rule that authorizes the disclosure of environmental information for the registration in the registration of the property is already embedded in article 246 of the law n°. 6,015/73, giving publicity to cases not expressly authorized in the law, understand the role of the article 167 of the law n°. 6,015/73 is merely illustrative. This is therefore the principle of concentration, the greater the concentration of information in the registry of immovable property the higher the protection of interested third parties and the environment.

For others, the standard size and legal certainty, which would occur if the commandment was imperative and absolute.

To resolve the deadlock, came the law nº 13,097, of 19 January 2015 clarify and explaining the principle of concentration, delimiting all your extension, your range and their legal consequences. However, the following year came the new code of Civil procedure, law No. 13,105, of 16 March 2015, which didn't take into account Act, weakening your application in practice.

Despite the lack of consensus among scholars and in own jurisprudence, the great merit of the principle of concentration is to offer special protection to the real estate business, which stems from the advertising character conferred by the real estate registry to acts and facts relating to the property, to have to resort to other sources for obtaining information for a real estate transaction safe.

The questions for this work encourage other researchers to reflect on the importance of using the real estate registry as a tool for the control of preservation of the environment.

On the scope of the topic, it can be said that this conclusion does not work, since other questions were arising during your performance, making the prospect of new studies.

References


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