

# The Private Surveyor – Privileged Partner of the Belgian Cadastre

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**Key words:** Private surveyor, Professional code of ethics, Public Officer, Partner, Preliminary cadastration, Platform of knowledges

## SUMMARY

### *Introduction*

Origin of the Belgian Cadastre, Advertising of the property titles, Passive role of the private surveyor before the reform

### *Topic*

Reform of the public services

Digitizing of the Cadastral map of parcels

Agreement with the private surveyors (boundary markings plan/survey/boundary marking)

Collaboration with the private Surveyors (full time and part time)

Legal statutes of the Belgian Surveyor (law of May 11<sup>th</sup>, 2002)

Professional code of ethics of the private Surveyor

Obligation of a boundary markings plan for each act transferring the immovable property

Attribution of the quality of Public Officer for the private surveyor

Assignment of Public Service for the private Surveyor.

### *Conclusion*

Complementarity between the private Surveyor and the Belgian Cadastre

Partner with the private Surveyor for :

a preliminary cadastration

an online updating of the Cadastral map of parcels

the setting-up of a platform of knowledges

Partner with the Notaries and the Architects

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## 1. INTRODUCTION

The Belgian Napoleonic Cadastre had to be a legal and juridical cadastre <sup>1</sup>.

The cadastral registration of a cadastral parcel had to be probative for the rights and for the boundaries. The immovable files should be the proof of the property.

But it was not possible to consult all the titles needed. It was also not possible to do a preliminary survey of the parcels. It was only possible to survey the situations about ownership. So the Belgian Cadastre is not a juridical Cadastre.

The creation of a cadastre is first and foremost a business for the Surveyors. The part and the responsibilities of the Surveyors are explained in the “Recueil Méthodique”, the “Methodical Compendium” published in 1811. In the Early Middle Ages <sup>2</sup>, the Surveyor took part in the management of the city and he had prerogatives for the survey of the boundaries, the “boundary markings plan” and for the arbitrations of the inheritances, the damages and the appraisals.

Following the example of the Notary, the Surveyor has a double status, a status of Public Officer and a status of Private Surveyor <sup>3</sup>. In the beginning of the Napoleonic Cadastre, the Surveyor was a civil servant but he kept his private jobs <sup>4</sup>.

The “Immovable system” <sup>5</sup> in Belgium is :

- a personal system : the data are centered on the person;
- a negative system : the cadastral files have a passive character. The cadastral files assure the public nature of the titles. In case of litigations, only the courts are competent.

In this system, the part of the surveyor is active and passive:

- active when he surveys and authenticates the boundaries <sup>6</sup>;
- passive because, at present, the cadastre intervenes after the “boundary markings plan” made in accordance with the Civil Code, taking away the juridical character to a third party.

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<sup>1</sup> At this time the Belgian areas were a part of France.

<sup>2</sup> Status of the Surveyors of the city of Brussels (December 2<sup>nd</sup>, 1451) – Bulletin of the Royal Commission for the publication of the Ancient Laws and Edicts of Belgium, XLI, 2001.

<sup>3</sup> With « Private Surveyor », we mean the freelance Surveyor not working for a Public Service or a company.

<sup>4</sup> In fact, within the Belgian Cadastre 350 surveyors have permission to work supplementary like a private Surveyor.

<sup>5</sup> Whole rules govern the publicity or the proof of the immovable titles

<sup>6</sup> The prerogatives of the Surveyors appear in the law of May 11<sup>th</sup>, 2002 protecting the title and the profession of surveyor.

## 2. THE REFORM OF THE BELGIAN FEDERAL ADMINISTRATION

The federal Belgian Government has involved a deep reform of the Federal Administration. The principle of the reform is notably new methods of working.

For the Patrimonial Documentation it must permit <sup>7</sup> :

- the creation of a “Patrimonial Data Bank” (the Patrimonial Data of the Authorities, the Citizens and the Companies;
- the exploitation of this “Data Bank” by the diffusion of the Patrimonial Data to the Authorities, the Citizens and the Companies;
- the production for the Authorities, the Citizens and the Companies of services based on the Patrimonial Documentation <sup>8</sup>

Within this context, the Public Service established collaboration with the Stakeholders <sup>9</sup> notably, the Private Surveyors, so that they collaborate, notably on the improvement of the Cadastral Map of Parcels.

## 3. THE DIGITIZING OF THE BELGIAN CADASTRAL MAP OF PARCELS

The aim. of the project CADMAP is the digitizing management and digitizing updating of the Cadastral map of Parcels.

It's a essential and intermediate step for the realization of the CADGIS project that will consist on the integration of all the cadastral data in a Geographic Information System (GIS). For 2010, this Geographic Information System (GIS) will be the platform of the project PATRIS.

The project PATRIS will integrate all the patrimonial data ; the patrimonial data of the Cadastre (CADGIS), of the Registration (the Loose Registers) and of the Mortgage Service (the Registers) .

For the realization of the project CADMAP,

- the Cadastral Map of Parcels must be reprocessed and this without loss of data;
- the updating of the digitizing data must be assured.

For this, the Cadastre collaborates with

- the three “Regional Authorities” <sup>10</sup> of Belgium and this for the vectorial work, the digitizing and the “georeferenced map” work of the 28.300 maps of parcels ;

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<sup>7</sup> The « Patrimonial Documentation » is one of the three general administrations of the « Federal Public Service Finance ».

<sup>8</sup> The general administration of the Patrimonial Documentation (before the Reform Cadastre, Registration and Public Property administration is composed of five general departments : juridical security are services of the general administration of the Patrimonial Documentation.

<sup>9</sup> Person or cluster of persons with whom exist a relationship of symbiosis or interdependence.

- the Private Surveyors for :
  - the setting-up of procedures of supplies of data for the updating of the Digitized Cadastral Map of Parcels;
  - the setting-up, the management and the supplying of a Data bank of the “Boundary Markings Plan” of the Private Surveyors.

The participation with other Public Services and the Private Surveyors is also viewed for the realization of great works of making good like:

- cadastration of the State Administered Property;
- complete resurvey;
- assignment of agricultural or forestry regrouping of lands;
- assignment of compulsory purchase...and so on

#### **4. THE AGREEMENT BETWEEN THE PRIVATE SURVEYORS AND THE CADASTRE**

The Cadastre has signed an agreement with about 800 Private Surveyors.

According to the terms of this convention, the private Surveyor makes his maps in accordance with the norms and directly provides the Cadastre with an original copy of the map.

To this end, the Private Surveyors respects the following norms :

- To indicate on the map the coordinates of the vertexes of the property (local, Lambert or in another system coordinates). The coordinates permit an adjustment of the problems of angles and a rescue of the boundaries of the property;
- As far as possible, obtain the signature of the parties (the owners of the contiguous parcels and this to have after due hearing of the parties boundaries);
- To permit the identification of the signatories. For example with the insertion of a table containing by parcel, the results of the investigations (indication of the old maps and the “after due hearing of the parties” boundary) and a square for the signature.

Moreover, the map must include the following elements:

- the date of the survey;
- the scale of the map and the indication of the North;
- the complete designation of the concerned cadastral parcels: town, cadastral division, section, number;
- the localization of the part of the parcel concerned by the transaction in relation with the boundaries;
- in case of housing estate: the number of the lot, the date and the number of the “housing estate” permit ;

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<sup>10</sup> The Walloon Region, the Flemish Region, the Region of Brussels.

- if the property is next to the public property: the exact designation of the lane or of the stream;
- the succinct description of the kind of the boundaries;
- the common or private nature of the boundaries;
- the complete description of the vertexes of the boundaries;
- the length of the segments of the surveyed part, the coordinates of the vertexes, and all the geometric elements;
- the dimensions of the survey and the necessary elements for the drawing of the new parcel for the calculation of the area;
- the area to within about a square meter.

On the other hand of these services, the Private Surveyor who has signed the agreement, has a free access to some cadastral data or files (drawings of transfer, maps, “georeferenced files”).

For a better consultation, the Cadastre sets up a Databank of the maps of the Surveyors.

At the level of the cadastral map of parcels, a new procedure permits the integration of the map of the Private Surveyor.

Some maps of the Private Surveyors will be georeferenced and the Private Surveyors who has signed the agreement with the Cadastre will be able to use these georeferenced maps.

So the Private Surveyor will play an important part in the establishing of the property ownership. It’s an important step towards the Surveyor as a real Public Officer whose acts will be certified and centralized by the Cadastre.

## **5 LAW IMPOSING A MAP ATTACHED TO THE DEED LEADING TO THE MODIFICATION, THE DIVISION OR THE CREATION OF A CADASTRAL PARCEL**

The search for a better security for the signing of the deeds and a better reliability of the Public documentation impose on the administration a perfect understanding of the realized acts.

In view of the freedom of the parties allowed by the Civil Code are sometimes difficult to transfer the acts in the Public documentation.

In the matter of transfer of immovable titles, a substantial improvement is planned in compliance of the article 141 of the Mortgage Law of December 16<sup>th</sup>, 1851. This new article imposes for the deeds a precise, designation of the immovable and a recent cadastral extract. So there is no confusion possible with other immovable.

The second phase is a law taking in compliance of the Mortgage law that will impose the preliminary cadastration before the act transferring the immovable property and also a map when new boundaries are created.

The third phase will be a law that will impose for each act transferring the immovable property, a “boundary markings plan” made by a surveyor. This “boundary markings plan” will identify the cadastral parcels.

## **6. THE DELEGATION OF “PUBLIC SERVICE” GIVED TO THE PRIVATE SURVEYOR**

Already, in the Early Antiquity <sup>11</sup>, the Surveyor had an official function and he competes for the protection of the ownership.

He acts like a judge and intervenes for the neighborly discords.

It’s viewed to give at the Private Surveyor the quality of Public Officer in the context of his collaboration with the cadaster.

Following the example of the juridical cadastres, the Surveyor of the Administration of the Patrimonial Documentation will give to the boundaries the official character of a notarial deed.

For a preliminary cadastration before the act transferring, an immovable property must be made. The processes of the preliminary cadastration will be examined bilaterally with the professional unions <sup>12</sup>of Surveyors and this in the eyes of the “Federal Councils”<sup>13</sup>

## **7. UPDATING THE CADASTRAL MAP OF PARCEL AND PRELIMINARY CADASTRATION**

Within the context of the CADMAP project, the administration developped with the assistance of the ESRI <sup>14</sup>Company a local application permitting the re-using of the “boundaries markings plans “ of the Private Surveyors.

Later, within the context of the CADGIS project, the Private Surveyor will use the Digitized Cadastral Map of Parcels for the delivery of the new boundaries. But the using of the Digitized Cadastral Map for the delivery of new boundaries involves some risks, that’s the reason why the administration will proceed to the implementation of “Risk Management”.

With this viewpoint, the administration is also orientated towards collaboration with the Notaries and the Private Surveyors for the preliminary cadastration. This is the PRECAD project. So the new cadastral parcels will be identified before the act transferring the immovable property and the formality of the “Mortgage Service” <sup>15</sup>

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<sup>11</sup> The Egyptian « Harpedonapes » (name with a Greek origin), the Roman « Agrimensores », the Emborneurs « (Surveyors) jurors (cfr supra 2)

<sup>12</sup> In Belgium there are three professional Unions of Surveyors wich the Belgian Union Surveyors « UBG-BUL » official representative of Belgium by the « FIG ».

<sup>13</sup> Cfr the second law of the 11 may 2003 creating the « Federal Councils of Surveyors »

<sup>14</sup> [www.esribelux.com](http://www.esribelux.com)

<sup>15</sup> Articles 141 and 143 of the Mortgage Law of December 16<sup>th</sup>, 1851

This cadastral reference of the parcel consist's on the subject of the "UNIDENT project" .

The aim of the "UNIDENT project" is the univocal identification of an immovable or of a part of an immovable <sup>16</sup>. Moreover, the "UNIDENT project" includes an European commensurate within the context of the working party setted up a the level of the "Permanent Committee on Cadastre (PCC)<sup>17</sup>. The aim of this working party is the search of the common characters as regards identification of the immovable and this for the 25 countries of the European Union <sup>18</sup>

## 8. CONCLUSIONS

Within the context of the Federal Public Service, the Belgian Cadastre has different projects in hand compeeting for a better juridical security and this with a juridical and technical identification of the immovable.

For the end of this year 2004, the Cadastral Map of parcels will be digitized with the "CADMAP project". Afterwards, the "CADGIS project" will permit the setting-up of the Databank of the Patrimonial Documentation "PATRIS".

For this, a great number of private surveyors collaborate with the cadastre and this under an agreement that they have signed: giving swaps of informations with regard to the cadastral map of parcels. In this case, the Private Surveyor is a Partner of the Public Service and he has access to the necessary cadastral informations for the identification of the parcels, that must be surveyed and this for the putting-up of minutes as:

- boundaries marking's plan of an immovable;
- boundaries marking's plan of division;
- boundaries marking's plan of division up;
- boundaries marking's plan of sale;
- boundaries marking's plan of swap ...

The Belgian Cadastre wants to increase his partnership with the Private Surveyors for:

- the preliminary cadastration before the art transferring the immovable property;
- the updating on-line of the digitized cadastral map of parcels;
- the expansion of the access to the Geographic information's and this to make the collaboration between the users and the producers easier<sup>19</sup>.

This partnership with the Private Surveyor must be considered in an exhaustive viewpoint of a integrated partnership with the different stakeholders of the Patrimonial Documentation:

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<sup>16</sup> For example, for the immovables composing of several entities of dwelling

<sup>17</sup> Permanent Committee on cadastre : [www.eurocadastre.org](http://www.eurocadastre.org)

<sup>18</sup> In this case, in view of the historical and conceptual systems finded , it's no possible, at present, to elaborate an only european identifying

<sup>19</sup> In this matter the "Patrimonial Documentation" administration develops national and international partnership with the "National Geographic Institute"

- the Notaries;
- the Architects;
- the different Public Services as:
  - the “Regional Authorities”;
  - the “Provinces”;
  - the “Town Authorities”.

## **BIOGRAPHICAL NOTES**

### **Francis Gabele (57)**

*Studies:*

Surveyor certificated by the Belgian State Town Planner qualified by the Town Planning Institute

*Practice:*

- General Auditor, Section Head at the “Federal Public Service Finance” - Patrimonial Documentation (Cadastré, Registration, Public Property, Mortgage Service)
- in charge of the general inspection of the services of the cadastre for Brussels and the Walloon Region
- in charge of the International Relations for the Patrimonial Documentation
- Belgian Delegate to the PCC
- member of the National Council of the Belgian Association of Surveyors
- editor of the review “Surveyor”
- professor of property law (Engineer Surveyor)
- Scientist Adviser at the University of Liège (Geomatic Engineer Department).

*FIG:* Belgian Delegate to FIG Commission 7

### **Marc Vanderschueren (47)**

*Studies:*

Surveyor certificated by the Belgian State

*Practice:*

In 1982 – 1983, private surveyor in London, UK.

At present First Attaché at the “Federal Public Service Finance” - Patrimonial Documentation (Cadastré, Registration, Public Property, Mortgage Service). Human Resources Department.



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