

NEWS

NO. 3 · VOLUME 3 · JULY 2009

CONSTRUCTION & REAL ESTATE

DIGITALISATION OF THE DANISH LAND REGISTRATION SYSTEM

The Danish land registration system is currently undergoing a revolutionary metamorphosis, not only in Danish terms, but also on a European scale. As of 8 September 2009, the registration of land (real estate) in Denmark will almost be a completely paperless system, replaced by an advanced digital registration system, entitled *e-Tinglysning* (e-TL) or electronic registration.

The driving force behind the digitalisation of the Land Registry system is the desire to modernise and make more efficient the land registration system in Denmark. It should be possible to register most straightforward applications for registration, almost immediately, via the Land Registry's website, www.tinglysning.dk, by the use of a digital signature.

Instead of a process by which applicants and Danish Land Registry (*Tinglysningsretten*) employees communicate manually, and the registration of rights in land results in the acquisition of a physical paper document recording such rights, most communication will be digital and the applicant will no longer be issued with a physical paper document recording his rights.

Where a registration has been unproblematic, the system will automatically generate a message to the applicant advising him that his application has been registered. This represents an enormous change to current practice, whereby an applicant can often wait days, and in some case, weeks, before receiving final confirmation that his application has been registered.

It is expected that 70% of all typical applications for registration to the Danish Land Registry, for example ordinary loan conversions and deeds of conveyance, can be dealt with digitally instead of manually, once the new system is operational.

In preparation for this digitalisation process, over 70 million pages from 82 judicial districts have already been scanned. The Land Registry will be centralised in Hobro, in Jutland, so the registration of rights via district courts, which is the current practice, will no longer be possible.

The digitalisation of the remainder of the Danish property registry system (except the registration of ships and aircraft), i.e. the motor vehicles register (*bilbogen*), the register of marriage contracts, chattel mortgages and declarations of legal incapacity (*personbogen*) and the register of cooperative dwellings (*andelsboligbogen*), is expected to follow suit during the course of 2010.

Safeguards

e-TL is set up to review an application for registration, effectively, in the same way as such review is currently conducted by Land Registry employees.

On receipt of an application, the e-TL checks whether the formal requirements for a registration document are fulfilled, whether the stated owner of the property is correct, and whether the information contained in the application for registration matches the information registered on the property at the Land Register (*e-Akten*).

The e-TL will also calculate the stamp duty to be paid on the registration of the document and compare it with the stamp duty suggested to be paid by the applicant. If the conclusion reached by the applicant and the e-TL is not the same, the application will be taken aside for a manual review of the stamp duty to be paid.

Following the review process by the e-TL, the application can either be (i) registered immediately; (ii) registered subject to compliance with a time limit, within which the applicant must provide outstanding information or documentation; (iii) rejected outright, in which case the applicant must be advised why the application was rejected; or (iv) sent for processing manually.

Registration date

In accordance with the current registration system, the priority given to a registration depends on the date upon which it was registered. From 8 September 2009, the date upon which a registration is said to have legal effect will be the date and the time upon which the application for registration is received.

The e-TL will register the precise time and date an application for registration is received, and it is this date and time from which such registration is deemed to have legal effect, irrespective of the time it actually takes to process an application.

Digital signatures

As part of the current manual registration process, the signatory of each applicant for registration is reviewed to determine whether the person purporting to register a right is, in fact, entitled to do so.

The same review will be conducted as part of the digital process by the employment of digital signatures. Three types of digital signatures will be recognised by the Land Registry:

Business digital signature (*virksomhedssignatur*)

A business, for example a mortgage institution, can give one or more employees the right to execute documents on its behalf by the employment of a business digital signature.

The employment of such business digital signature requires permission from the Land Registry and its exercise may be subject to certain limitations, for example, as regards the types of documents which can be filed for registration on behalf of the business by the employee entitled to employ such business digital signature.

Where a business digital signature is employed, one can only identify the business that has lodged the application for registration, not the employee who has filed the application by the employment of the business digital signature.

Employee digital signature (*medarbejdersignatur*)

A business can also issue one or more employees with an employee digital signature. Unlike a business digital signature, when an application for registration is filed by the employment of an employee digital signature, one can identify which employee filed the application, as well as the business such employee represents.

Personal digital signature (*privat signatur*)

Private individuals must employ their own personal digital signature when filing applications for registration at the Land Registry.

Attorneys and notifiers

Where a person or business does not want to or cannot employ a digital signature, provision has been made for two additional methods of signature, a Power of Attorney system (*fuldmagtsordning*) and a notifier system (*anmelderordning*).

The Power of Attorney system

The Power of Attorney system enables persons or businesses without a digital signature to give other persons or firms, for example professional advisers, the authority to apply to the Land Registry for the registration of a document on his/its behalf.

A Power of Attorney must be issued on a standard form, and must be executed by the grantor either (i) manually, following which such Power of Attorney is physically sent to the Land Registry, or (ii) by way of the grantor's digital signature, following which such Power of Attorney is sent electronically to the Land Registry.

The grantor of a Power of Attorney may limit the acts which the attorney is empowered to do on his/its behalf, for example, the attorney may only register the removal of entries from the Land Register, or he/it can only register documents where the value is below a certain value.

Assuming that the Power of Attorney is in order, the Land Registry will then register it at the Land Registry and store it in the Power of Attorney database (*fuldmagtsdatabasen*). Thereafter, the attorney by the employment of his/its own digital signature can file documents for registration at the Land Registry concerning the property of the person/entity who issued him/it with such Power of Attorney.

The notifier system

The notifier system enables specially authorised notifiers, both individuals and firms, and whether Danish or foreign, to file applications for registration at the Land Registry on behalf of other persons/entities, by the employment of the notifier's own digital signature.

The notifier has to be approved in advance by the Land Registry, and following such approval he/it will be registered by the Land Register in its notifier database (anmelderdatabasen). It should be noted that a Power of Attorney issued to the notifier by the person/entity who appointed the notifier does not need to be submitted to the Land Registry.

The person/entity who appoints the notifier may, similar to the Power of Attorney arrangement, limit the actions which such notifier can take on his/its behalf.

The actions which a notifier can take on behalf of the person/entity which authorised him/it to act on his behalf will initially be limited to the registration of mortgages. Accordingly, a notifier cannot register a new title or easements in/over a property. However, it is expected that such limitation will be removed in due course.

The Land Registry must notify the person/entity who appointed the notifier of any registrations registered at the Land Registry by the notifier on his/its behalf. A fee is payable for this service.

Manual applications and original documents

The Land Registry will, despite the digitalisation process, still accept some paper based applications for registration from persons without a Central National Register (CPR) number and businesses without a Central Business Register (CVR) number, for example foreign persons or businesses in the process of being established.

Moreover, the original of certain documents must still be sent to the Land Registry, for example, general assembly documentation of an association (*forening*) concerning who can bind the association, as well as an association's articles of association, and certain judgments on property, etc.

It is, further, a requirement that other documents must be scanned and stored in the schedules bank (*bilagsbanken*) at the Land Registry, for example, the title plan/index map of a property, title documents acquired as a result of a forced sale of a property, certificates of a trustee in bankruptcy, and the constitutional documents of a company being established, etc.

Issues which are expected to result in the manual processing of an application for registration include checking the validity of a digital signature, assessing special phraseology employed by the applicant, checking scanned material attached to an application, etc.

Should the digital registration of a right in property give rise to problems, the applicant will receive a message that his application has been sent for manual processing to the Land Registry.

Access to e-TL

Private individuals, who wish to access the Land Register, can do so via the external portal (*den eksterne portal*). Via the external portal, private individuals (and in principle, anyone else) can, among other things, file applications for registration in the Land Register, make enquiries as to information contained in the Land Register, save draft documents in e-TL's electronic post box and obtain access to his/her Power of Attorney.

Professional users, such as lawyers, banks, accountants and real estate agents, have been invited to link their IT systems with e-TL, so that their own IT systems can directly deliver digital registration documents to e-TL.

To ensure that the information provided by professional users in the digital registration documents is the same as that registered in the Land Register, it is possible for professional users to obtain all relevant information contained in the Land Register for use in their drafting of digital registration documents.

Linking to public computer systems

e-TL is linked up to various public computer systems, which can provide information necessary for the processing of an application for registration by the Land Registry.

For example, e-TL can obtain the names and addresses of private individuals from the CPR, information about companies, etc., from the CVR, information concerning the matriculation number of a property, etc., from the National Survey and Cadastre (*KMS*) and information concerning the persons/businesses which own a digital signature from the Danish telecommunications company TDC.

Obligatory conversion of paper documents

The registration of any right in any existing mortgage, charge or charge certificate will, as from 8 September 2009, automatically require the conversion of such document into digital form.

It is also required that all owner's mortgage deeds are converted **within 5 years** of such digitalisation. This requires the physical delivery of such paper documents to the Land Registry. The Land Registry will (at no cost to the applicant) register that such documents have been converted to digital form and will shred the paper documents it has received.

All owner's mortgage deeds, which have not been converted, will be automatically deleted from the Land Register on the expiry of the 5-year time limit. Accordingly, it is crucial that the required conversion be undertaken within the given time frame.

Closing of the Danish Land Registry

In order to implement the new digital registration system, the Land Registry will be closed from 12 noon on Thursday, 20 August and will not reopen until 9 am on Tuesday, 8 September

2009. During this period, it will not be possible to process any applications for registration at the Land Registry.

Accordingly, any applications, which it was envisaged could be processed during this period, need to be submitted to the Land Registry **no later than 12 noon on 20 August 2009**.

Transitional period

Although it is the ambition of the Land Registry system that the new digital land registration system is up and running on 8 September 2009, it is to be expected that the implementation of the new system will have its share of teething problems.

These can result, among other things, from the malfunctioning of the new IT system, the realisation that the new system does not accommodate all the matters that it ought, and/or from the inexperience of the users of the new system, both Land Registry employees and external users of the system.

Accordingly, it would be misguided to assume that the system will function optimally from 8 September 2009, notwithstanding the best efforts of the Land Registry to ensure that it should.

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