

**PROPERTY REGISTRATION AND ENVIRONMENTAL PROTECTION IN BRAZIL:  
CONTRIBUTIONS TO THE IMPLEMENTATION OF THE PRINCIPLE OF THE SOCIAL  
FUNCTION OF PROPERTY**

**O REGISTRO DE IMÓVEIS E A PROTEÇÃO AMBIENTAL NO BRASIL:  
CONTRIBUIÇÕES PARA EFETIVAÇÃO DO PRINCÍPIO DA FUNÇÃO SOCIAL DA  
PROPRIEDADE**

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CONTRIBUCIONES A LA IMPLEMENTACIÓN DEL PRINCIPIO DE LA FUNCIÓN  
SOCIAL DE LA PROPIEDAD**



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**Guiomar Rocha Pereira Magalhães Bittencourt<sup>1</sup>, Luciana Turatti<sup>2</sup>**

**ABSTRACT**

The Real Estate Registry emerged, in Brazil, as a way to guarantee the legal security of real estate relations and the right to property, taking as inspiration the French and German real estate registration systems. In 1988, the Federal Constitution dealt with the right to property, conditioning its exercise in the service of the social function, and this, in turn, covers the protection and defense of the environment. In other words, there must be a conditioning between the exercise of the right to property and the preservation of the environment. The combination of environmental standards with the registration principles, in turn, favors the publicity and security that are expected of legal businesses whose object is immovable. Thus, the aim of this study is to analyze the reflexes derived from the Forest Code in real estate records. The methodological procedures adopted are bibliographic and documentary research. The method was deductive and the qualitative approach. This research aims to contribute to the elucidation of practical aspects of environmental legislation applicable to the registration of Brazilian real estate, serving as a basis for further studies and consisting of a catalyst for changes in the public records area.

**Keywords:** Real Estate. Environmental Law. Social Role. Real Estate Registrar. Legal Certainty.

**RESUMO**

O Registro de Imóveis surgiu, no Brasil, como forma de garantir a segurança jurídica das relações imobiliárias e o direito de propriedade, tendo como inspiração os sistemas registrares imobiliários francês e alemão. Em 1988 a Constituição Federal tratou do direito de propriedade condicionando seu exercício ao atendimento da função social, e esta, por sua vez, abrange a proteção e defesa do meio ambiente. Em outros termos, deve haver um

<sup>1</sup> E-mail: [guiomarbittencourt@yahoo.com.br](mailto:guiomarbittencourt@yahoo.com.br) Orcid: <https://orcid.org/0009-0008-8689-1911>  
Lattes: <http://lattes.cnpq.br/4073862295365523>

<sup>2</sup> E-mail: [lucianat@univates.br](mailto:lucianat@univates.br) Orcid: <https://orcid.org/0000-0002-6684-1422>  
Lattes: <http://lattes.cnpq.br/5819588394882211>

condicionamento entre o exercício do direito de propriedade e a preservação do meio ambiente. A conjugação das normas ambientais com os princípios registrares, por sua vez, favorece a publicidade e a segurança que se esperam dos negócios jurídicos cujo objeto seja bem imóvel. Em assim sendo, o objetivo deste estudo é analisar os reflexos oriundos do Código Florestal nos registros de imóveis, orientando a abordagem do presente estudo sob a perspectiva desse Diploma. O problema que envolve o desenvolvimento dessa pesquisa é esclarecer se, na prática, as funções desenvolvidas pelo Registro de Imóveis consagram e influenciam, de fato, na efetivação da função social da propriedade. Os procedimentos metodológicos adotados são a pesquisa bibliográfica e documental. O método foi o dedutivo e a abordagem qualitativa. Pretende-se com esta pesquisa poder contribuir para a elucidação de aspectos práticos da legislação ambiental aplicáveis ao registro de imóveis brasileiro, servindo de base para novos estudos e consistindo em catalisador para mudanças na seara dos Registros Públicos.

**Palavras-chave:** Bens Imóveis. Direito Ambiental. Função Social. Registrador Imobiliário. Segurança Jurídica.

## RESUMEN

El Registro de la Propiedad Inmueble surgió en Brasil como forma de garantizar la seguridad jurídica de las relaciones inmobiliarias y el derecho a la propiedad, inspirándose en los sistemas inmobiliarios francés y alemán. En 1988 la Constitución Federal reglamentó el derecho de la propiedad condicionando su ejercicio a atender a la función social, y esta, a su vez, comprende la protección y defensa del medio ambiente. En otros términos, debe haber un condicionamiento entre el ejercicio del derecho de la propiedad y la preservación del medio ambiente. La conjugación de las normas ambientales con los principios registrares, a su vez, favorece la publicidad y la seguridad que se esperan de los negocios jurídicos cuyo objeto sea el bien inmueble. Por lo tanto, el objeto de este estudio es el de analizar los reflejos derivados del Código Forestal en los registros de inmuebles. Los procedimientos metodológicos adoptados son la investigación bibliográfica y documental. El método fue el deductivo y el abordaje cualitativo. Con esta investigación se pretende poder contribuir para elucidar aspectos prácticos de la legislación ambiental aplicables al registro de inmuebles brasileño, sirviendo como base para nuevos estudios y consistiendo en catalizador para cambios en el ámbito de los Registros Públicos.

**Palabras clave:** Bienes Inmuebles. Derecho Ambiental. Función Social. Registrador de la Propiedad. Seguridad Jurídica.

## 1 INTRODUCTION

The use of natural resources has been widely disseminated throughout the recent history of humanity, with its main milestone defined with the advent of the French Revolution (1789) and, more specifically, the Industrial Revolution that followed. Since then, we have witnessed the parallel evolution of two faces of the same phenomenon in the world, that is, the alarming pressure on the environment, with successive demands for all kinds of consumer goods, coming from the progressive demographic increase; and, on the other hand, heavy investments in technological innovations, whose advances are surpassed in increasingly shorter cycles of novelty and, subsequently, of obsolescence, thus leading to environmental degradation.

Specifically in Brazil, the concern with the protection of the environment reached an unprecedented level with the promulgation of the Constitution of the Federative Republic of Brazil of 1988 (CF/1988), which dealt with the matter in its own chapter (Chapter VI – On the environment), in the penultimate of the nine titles (Title VIII – On the social order) which, together with the Preamble and the Act of Transitory Constitutional Provisions (ADCT), compose it, even if it has done so in a single article, 225, caput and §§ 1 to 7 (BRASIL, 1988, digital text). In this article, the Constituent Assembly first established the right to an ecologically balanced environment and included it among the fundamental rights of the third generation, or dimension; later, he established that the environment was a good for the common use of the people; and, finally, it determined not only to the Public Power, but also to the entire community the duty to defend and preserve it, for present and future generations (CF/1988, art. 225, caput, third part).

Based on these three constitutional premises, it is up to the Real Estate Registrar to <sup>3</sup> govern its performance, since it performs a function with a public purpose, in strict compliance with environmental legislation, in addition to ensuring compliance with this regulation by third parties, in order to, in so doing, protect, in a direct and equally reflexive way, the healthy and balanced environment.

The activity of the Real Estate Registrar must also be exercised according to the principle of strict legality (which underpins the Real Estate Registry), since, in the view of Dip (1993, p. 17), this principle would come from the very "theology of the registry institution", which, according to the author, would be found, in turn, in the reason for the existence of the

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<sup>3</sup> Real Estate Registrar is understood to be a legal professional who is a delegate, by the Brazilian State, of a public function corresponding to the exercise, by him, in a private character and in collaboration with the Public Administration, of extrajudicial services of technical organization and of a registry nature, in a real estate district for which he has been previously invested by the Public Power, after being duly approved in a public examination of tests and titles, in order to, with his performance, provide publicity, authenticity, security and effectiveness of the legal acts entered in the royal folio.

Public Registries, which is the granting of legal certainty. Brazilian environmental legislation, in simple definition, corresponds to the gathering of legal norms aimed at regulating human activity, in order to make it compatible with environmental protection.

Thus, when guiding their professional performance, with a preliminary focus on the constitutional premises, the Real Estate Registry officer will be responsible, for example, for making public, among others, information related to permanent preservation areas, environmental protection areas, soil contamination areas, as well as areas included in the Rural Environmental Registry (CAR) (provided for in Law No. 12,651, of May 25, 2012, art. 29, caput), in addition to those on which there are environmental licenses.

Such information appears to be of paramount social importance, both for individuals in defense of their respective private interests, and for the Public Power, in scrutiny of public policies under their responsibility, since, depending on the existence of certain environmental facts, real rights may be limited or restricted, among which is the right to property.

What is intended to be discussed from the analyses carried out concerns the strategies that could be developed by the Real Estate Registrar, so that the principle of publicity could be achieved, thus contributing to expand the environmental protection provided for in the rules. It is up to the Real Estate Registrar to observe the environmental legislation, to make third parties observe it, in the exercise of the real estate registration activity, so that, thus, the social function of constitutional and infra-constitutional protection is exercised.

The method of the present study was that of theoretical research, so classified because it focuses on the conceptual, legal and bibliographic aspects of the proposed theme. This is a bibliographic research on the theme addressed, which can be included, conceptually, as explanatory research, within the teachings of Gil (2008). The approach, in turn, is qualitative, which predisposes attention to the systematic analysis of nature and, consequently, to the understanding of what will be extracted from the interpretations of the investigated phenomenon.

The combination of environmental rules with registration principles, in turn, favors the publicity and security that are expected from legal transactions whose object is immovable property. Therefore, the objective of this study is to analyze the effects of the Forest Code on real estate records, guiding the approach of this study from the perspective of this Diploma. The problem that involves the development of this research is to clarify whether, in practice, the functions developed by the Real Estate Registry consecrate and influence, in fact, the effectiveness of the social function of property.

## 2 THE ROLE OF THE LAND REGISTRAR IN THE APPLICATION OF ENVIRONMENTAL LEGISLATION

In the explanation of Borges (2014, p. 21), with the advance promoted by modernity, some information has become vital for society, such as knowing the real owner of a certain property, "his rights and obligations or encumbrances, the real estate registry coated with his public faith that is inherent to it, plays the noble role of registering real estate property". This means demonstrating the registration status of the same, being able to carry out all changes, alterations and extinction of the rights related to the property. The services of the services are essential, acting as a "repository of all real estate property information, with authenticity, security and legal effectiveness".<sup>4</sup>

According to Álvares and Cunha (2018), it can be understood that the function reserved by the legal system to the Registrars was fundamental, regarding the preservation of the environment, which, through the publicity of the annotations made in the registry books, offered society essential environmental information about the property, also allowing to check whether or not the social function is being fulfilled by the property owner.

It is important to point out the principle of concentration, a provision launched by Federal Law 13,097/2015, establishing the obligation to include, in real estate registrations throughout the country, the registrations and annotations related to legal acts entered into prior to the effectiveness of said law, and such acts must seek due adaptation to the provisions determined by this legislation.

With the expanded view of the concept of property, and with limitations to its use in view of the function of social, environmental and economic requirements, it was also necessary to have a new posture of the Registration Officer, meeting the established responsibilities related to the preservation of the environment, aiming to promote a better quality of life, also serving the needs of current and future generations, according to constitutional commandment (ÁLVARES and CUNHA, 2018).

The authors also argue that the Registrar, when making available to the general public the relevant information about a certain property, applying the principle of concentration, must do so based on the current legislation, in an incisive legal text, which gives it the breadth and

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<sup>4</sup> Santos (2010, p. 327) observes about the challenges imposed on Real Estate Registrars: "The primordial nature of the registry activity stems from its vocation to stabilize social harmony, real estate business relations and the incidents arising from them, through the registry publicity that emerges from the foundations of the Democratic Rule of Law with erga omnes effect in search of the maintenance or restoration of social peace. [...] It is within this context that the Real Estate Registry books are open as repositories, notorious and accessible, of acts and facts that in some way may have repercussions on the right to property and on the social function of real estate, whose pronouncement is marked by a peremptory sign by virtue of the so-called registration principles".

recognition that it really needs, starting to promote a true revolution in the scope of Brazilian Real Estate Registry Law.

The Registration Officer who performs a public function, by delegation of the State and on behalf of the State, also has the obligation for environmental protection, not only for the function he performs, but also for the fact that he is Brazilian and is inserted in society.

The Real Estate Registry is an instrument of environmental inspection and also of planning because, at the moment when the real estate registrations contain all the environmental information of a given property, the Public Power, as well as society, have access to this information and from this scenario can outline more specific environmental policies by region, creating legal certainty in real estate business relationships, and an expanded environmental balance (HELLSTROM, 2016).

### **3 REAL ESTATE REGISTRATION AS A MEANS OF LEGAL CERTAINTY FOR ENVIRONMENTAL PROTECTION**

According to Álvares and Cunha (2018, p. 33), it is possible to observe that the changes that occurred in society and in the Law were significant, accommodating here, in the present study, the essential change in the function of property, as it was imposed on it to meet the needs of the collectivity, and not only, to observe the interest of its owner. In a similar sense and as a collective right that it is, the preservation of the environment must be juxtaposed with the individual right, being the "first category of individual goal interests to deserve attention from society and the legislator. It is a right to be protected and that the Real Estate Registry can contribute".

The authors note that the Federal Constitution of 1988 guaranteed the right to private property, since, by establishing that "property shall serve its social function", the Constituent Assembly did not have the scope of excluding the right to private property, but tried to provide for its social function. It maintained, however, the private character, with its use also serving the common good. The obligations to the community, established by law, are no longer absolute the use, enjoyment and enjoyment of the property by its holder as provided for in the Brazilian Civil Code of 1916 (ÁLVARES and CUNHA, 2018, p. 33).

In line with the Federal Constitution of 1988, the first paragraph of article 1,228 of the Civil Code (CC) clearly expresses the consecration of such conception, by determining:

The right to property must be exercised in accordance with its economic and social purposes and in such a way that flora, fauna, natural beauty, ecological balance and historical and artistic heritage are preserved, in accordance with the provisions of a special law, as well as avoiding air and water pollution (BRASIL, 2002).

In this sense, in order to fulfill the social function of property, its holder must preserve the environment, a requirement of this function, also provided for in articles 182 and 186 of the 1988 Magna Carta, remembering, inclusively, that there is a legal warning and jurisprudential decision leading to the penalization of the owner who degrades the environment, even if he has not been the direct author of the damage<sup>5</sup>.

The social purpose attributed to property was reinforced in the Forest Code, which provided that the right to property must be exercised in accordance with its social purpose, which extends to the preservation of "flora, fauna, natural beauty, ecological balance and historical and artistic heritage, as well as avoiding air and water pollution". In article 2 of this legal diploma, it is established that the exercise of property must observe the limitations established by the legislation (BRASIL, 2012).

According to the provisions of paragraph 2 of the aforementioned article: "the obligations provided for in this law have a real nature and are transmitted to the successor, of any nature, in the event of transfer of ownership or possession of the rural property". By stipulating that environmental obligations have a real nature, the legislator meant that these are *propter rem* obligations<sup>6</sup>, accessory to the right in *rem* or property.

Noronha (2010, p. 317) teaches in this sense that such obligations impose on the owner of the thing the "duty to perform a service necessary for the harmonization of the exercise of his real right with that of another real right, of a different person, incident on the same thing, or on a neighboring thing".

Melo (2010, p. 29) understands that the structure presented by the Real Estate Registry "is one of the most important aspects that must be taken into account for the availability of environmental information", and lists its characteristics:

- a) the Real Estate Registry is a body that performs public service, constitutionally mentioned in article 236: "notarial and registry services are exercised in a private capacity, by delegation of the Public Power". The regulation, in turn, is contained in article 3 of Law No. 8,935/94, which defined: "Notary, or notary, and registration officer, or Registrar, are legal professionals, endowed with public faith, to whom the exercise of notarial and registration activity is delegated". Acting as a holder of public faith,

<sup>5</sup> In this sense, ADI 5623 – STF - Judging body: Full Court - Rapporteur: Justice CÁRMEN LÚCIA - Judgment: 11/28/2022 - Publication: 12/01/2022  
AP 470 – Judging body: Full Court - Rapporteur: Justice JOAQUIM BARBOSA - Judgment: 12/17/2012  
Publication: 04/22/2013

<sup>6</sup> *Propter rem* obligation, or obligation proper to the thing, is an obligation that arises from the simple acquisition of a real property right. That is, when acquiring a property, the financial obligations related to that property are also acquired. Available at: <https://www.google.com/search?q=propter+rem&oq=propter+rem&aqs=chrome..69i57j0i512i9.2146j0j7&sourceid=chrome&ie=UTF-8>. Accessed on: 12 jul. 2022.

- acting in conjunction with the Public Administration, the Registrar is attested to make environmental information public through registration in its books;
- b) organized territorially, the Real Estate Registry offices are in all counties of the country, and it is possible to find in most places, a service.
  - c) the Real Estate Registry has a relationship with all Public Administration bodies, maintaining a close relationship with them. The agencies sign agreements that result in the exchange of information between them, which also helps with tax information. It also maintains a direct relationship with the Brazilian Federal Revenue Service (SRFB), in the Declarations on Real Estate Operations (DOI) – established in article 8 of Federal Law 426/2002, and which are carried out monthly on the internet and the Federal Heritage Secretariat (SPU), according to article 3-A of Decree Law No. 2,398/87, in the case of acts performed in federal real estate;
  - d) the professionals who perform the services provided in the Real Estate Registry are technically qualified after being approved in a competition of tests and titles, when then, the Real Estate Registrar is declared qualified to perform the function, legitimizing him to the service related to property rights and also to environmental limitations.
  - e) another relationship maintained by the Real Estate Registry is the connection with the Brazilian Geodetic System, created in Law No. 267/2001, generating a way to manage and describe real estate property, making use of geographic coordinates fixed with the help of satellites.

Even in the face of such attributions and characteristics, the author (2010) understands that the relevant changes brought about by the progress of urban and environmental legislation are not reflected with the same advance in registration legislation. Therefore, it is essential in matters that deal with the environment, to pay attention to the need for effective precision in the inspection and identification of the owner of the property so that civil, criminal and administrative obligations can be imposed, in addition to the need for cadastral accuracy to the legal situation of the property.

In order to materialize the social function of property from a sustainable perspective, the development of urban policies must be complete, in the indispensable sense of combining efforts between public entities and real estate registry services, "accommodated in restricted areas of Civil Law, ignoring the need for interface with Public Law, showing that adequate planning is necessary to achieve this end" (MELO, 2010, p. 30).

The Law must protect property, because, as this is a constitutional guarantee, it is necessary to offer security to the citizen's assets. In this context, it is indisputable that the Real Estate Registry Offices provide such security, producing an important and complex function, in addition to being "the controlling body of its formal aspects, applying the registry principles, ensuring legal certainty, the reliability of the system and wide publicity, since most of the patrimonial relations involving real estate are controlled by it". In this role, notary offices cover the economic, legal and social scenario, in view of "their finalistic attribution, which is the static and dynamic legal certainty of the right to real estate property and other real or obligatory rights related to their competence" (MELO, 2010, p. 30).

The author has the view that there are three fundamental factors to the legal dimension, within the scope of Real Estate Registry Law:

- a) control over the legal situation of the property: an element that considers the previous analysis of the history of the property, as well as that of the mutations of its legal situation, by means of registration acts to be performed;
- b) the production of qualified legal information about the property is the element that examines the precision and exact scope of each change that occurs in the legal situation of the property;
- c) the provision of qualified information about the property to interested parties.

Santos (2010, p. 328) recalls that the conception of the Real Estate Registry being a simple repository of titles cannot be maintained, on the contrary, since "this centennial institution is a mechanism that provides for the permanent observance of human rights, fundamental principles and other constitutional dictates, with effective application in the field of private property". From this and other statements, it can be seen that, in order to meet the social function of property, it is essential to register the property in the Real Estate Registry Office of the competent district, limiting the domains of private property and intensifying the importance of the Real Estate Registry itself.

According to Santos (2010, p. 330), there is a socioeconomic dimension to the services provided by extrajudicial real estate services, in the sense that continuous urban growth generates complex and unbridled social problems and, sometimes, chaotic urbanization, with the lack of decent housing and the poor distribution of land to those who truly need to produce. In this perspective, being the instrument able to provide legal certainty to real estate business, Registry Law promotes economic stability, "enabling the best circulation of real estate, since society believes that real estate investment is the safest means of accumulating wealth,

through the protection conferred by the Federal Constitution", which, safeguarding the right to property, generated reflections "throughout the country's economic and social chain".

Regarding the role of the Real Estate Registry in the preservation of natural resources, Gonçalves (2011), director of development at the Mato Grosso do Sul Environmental Institute, states that the publicity of the law is not enough. It emphasizes the need for real estate advertising as a way to ensure legal certainty and compliance with the obligations contained in the legislation, which contributes, in particular, to the knowledge about the existing limits on the use of the property and the binding of future buyers of the properties.

Hellstrom (2016) comments that the theme of the annotations in the registration of the property has, as a central point of discussions, the principle of concentration, oriented to the real estate registration system. This principle can be understood from its link to the acts of registration, clarifying the situation of the registration of the property, as a support "in which any and all situations that may influence the property or the person of its owner must be publicized", dispensing with other steps that, otherwise, would be necessary to reach the real legal situation of the property.

In this area, legal certainty would be extended only to those acts registered or annotated in the registration of the property, that is, "only the situations contained in the Real Estate Registry, which plays an important role in the systematic transmission of data related to the property" that may generate foreseeable and imminent environmental damage. Hence, the relevance of monitoring such information, as such registration monitoring would enable the application of concrete measures in a timely manner, "preventing damage and/or the aggravation of environmental degradation" (STIFELMAN, 2012, p. 583).

The imposition of real estate property having to fulfill its social function, incorporated by the Federal Constitution and the Civil Code of 2002, has clearly linked it to environmental preservation, making it one of the premises for the fulfillment of the social function.

The legal system has granted a relevant role to the Real Estate Registry, in view of this new socio-environmental practice, this role being that of releasing important environmental information related to real estate property, giving it greater publicity and, due to the structure and reliability enjoyed by the Real Estate Registry system, checking whether environmental and social obligations are being fulfilled. The Real Estate Registry has a broad structure, which favors access to registration and environmental information to the local population, which must be clear and precise to facilitate understanding (HELLSTROM, 2016).

The author adduces that the understanding remains evident that, in the use of its structure and territorial competences, the services of the Real Estate Registry, exercising their functions, can reach the effective preservation of the environment. And that the

contribution of the right to information is to allow any citizen to exercise their right and duty to be informed and to be informed. Such practice leads to the realization of the socio-environmental function of the property. And effective environmental publicity occurs through the acts of concentration of the registration.

In Special Appeal (REsp) No. 1857098, from the State of Mato Grosso do Sul (MS) (2020/0006402-8), the prosecutor from Mato Grosso do Sul Edmir Fonseca Rodrigues explained to the Superior Court of Justice (STJ) that, in order to comply with Principle 10 of the Rio Declaration, through various norms, there is international recognition of the right of access to environmental information. Continuing his presentation, the Prosecutor narrated seeing, in this right, just mentioned, the existence of a two-way street: the right "of the individual to have access to the requested public information (passive transparency) and the state's duty to publicize the public information it holds (active transparency)". This author also reminds us that, even though it is constituted as an autonomous right, it is a right that is intrinsic to democracies, as it acts as a function of the right to social participation in public affairs (BRASIL, STJ, 2022).

Referring to the content of the aforementioned Special Appeal, the prosecutor stated that the Brazilian environmental and registry system determines the adequacy of the registration of the Environmental Protection Area (APA) in the Rural Property Registry. It also stated that there is no exhaustive provision for optional registrations, pointing to the fact that the Public Prosecutor's Office is expressly entitled to request, including directly to the Real Estate Registry officer, notes linked to its institutional function, among which, unequivocally, is environmental protection (BRASIL, STJ, 2022).

It is also stated in his arguments that the previous publicity of administrative acts "in no way prevents registration, even if it also meets this same principle", citing the various public acts, including judicial acts, which are compulsory annotation or registration (such as sentences, expropriations and listings). And it also reports that the Brazilian registry regime admits the registration of optional information about the property, of public interest, including environmental information (emphasis not present in the original) (BRASIL, STJ, 2022).

It also clarifies that, even if it is not internalized, "pending ratification, national law reflects similar principles throughout the legal system, from the constitutional level, which are spread across various federal laws".

It also teaches that the Principle of Maximum Disclosure is the one followed in the Brazilian transparency regime, that is, "publicity is the rule, and secrecy, the exception, without subterfuge, legal anachronisms or half-measures", and it is the duty of the State "to

demonstrate consistent reasons to deny active publicity and, even stronger, to reject compliance with the duty of passive transparency" (BRASIL, STJ, 2022).

Having evidenced the need to promote environmental encumbrances in the registration of real estate, the main environmental limits imposed by the legislation are discussed below, as a way to contribute and guide the registration of real estate.

## **4 THE ENCUMBRANCES THAT CONTRIBUTE TO ENVIRONMENTAL PROTECTION**

### **4.1 LEGAL RESERVE**

Law No. 12,651/2012, known as the New Forest Code, as already mentioned, provides in its article 2, paragraph 2 that the obligations provided for in this Law have a real nature and are transmitted to the successor.

To avoid any doubts about what would be a legal reserve, the legislative diploma thus conceptualized the legal reserve in its article 3, III, "having the function of ensuring the economic use in a sustainable way of the natural resources of the rural property", as well as "assisting the conservation and rehabilitation of ecological processes and promoting the conservation of biodiversity", in addition to sheltering and protecting wildlife and native flora.

From this perspective, it can be seen that the idea of the national legislator was, in the words of Miranda (2010, p. 347), "to protect Brazilian forests, especially the Amazon, due to the great limitation it imposes on properties located in the Legal Amazon, its application has been responsible for the genesis of a good part of the tensions" in these areas, because the use of the discourse of regional development directly collides with the preservation of the forest.

The concern with forests in Brazil dates back to the times of Colonial Brazil, but it was only with the CF/88 that new contours were achieved. However, Silva and others (2010, p. 272) assert that "forests and other forms of vegetation existing on private lands are not yet defined as public goods", and it is clear that the legislation (general or specific) should also be applied to private properties, since there was no distinction between public and private, but only the delimitation of the region, so that these private assets "are already considered to be of common interest to all the inhabitants of the country", and, for this reason, will also have their property rights limited, according to the Federal Constitution and §1 of article 1,228, of the Civil Code (SILVA et al., 2010, p. 272).

With the advent of the current Forest Code, the competence for the registration of the Legal Reserve area was transferred to the Rural Environmental Registry (CAR), under the terms of article 18,

Paragraph 4, "which exempted the registration in the Real Estate Registry Office", establishing the free practice of the act to the rural owner or possessor who wishes to do so, in the period between the date of publication of the Law and the registration in the CAR.

Silva (2021, p. 250) criticizes the aforementioned paragraph stating that it would be better if the environmental agency, whether municipal or state, responsible for receiving the information, made "the communication directly to the real estate registry, considering that it is an obligation of the Government to defend the environment, especially when it comes to an area already established as a mandatory protection". For him, the importance of the institute's registration "would greatly facilitate not only the establishment, in fact and in law, of the Legal Reserve, but would also result in greater environmental effectiveness through the publicity conferred by the Real Estate Registry" (SILVA, 2021, p. 251).

However, there are rural properties that do not have Legal Reserves for numerous reasons or these are partially deforested and/or occupied by pastures, developing livestock activities or with plantations, for agricultural activities. These situations are justified because when the legislative change in the boundaries established mainly for the Amazon region, countless rural properties were opened in violation of the maintenance of the legal reserve (MIRANDA, 2010, p. 372).

The owners or possessors of rural properties with deforested or partially deforested areas, whose Legal Reserve area is less than the limits defined in article 12 of the Forest Code, were left with three options: recomposition, natural regeneration of vegetation or compensation, which can be used separately or together.

In view of the importance of the legal reserve and the legislative impositions in the face of its total or partial absence, there is no doubt that the registration publicity of these obligations in any of the three modalities listed (recomposition, regeneration or compensation), which by their nature accompany the property, would induce the owners and possessors of rural properties to voluntarily comply with these measures, as well as making the future purchasers of the environmental obligations assumed scientific, since, as stated elsewhere, these would also be transmitted, thus allowing the institute of the Legal Reserve to be better disseminated, ensuring biodiversity and an ecologically balanced environment (SILVA, 2021, p. 253).

#### 4.2 ENVIRONMENTAL EASEMENT

The institute of environmental easement was not conceptualized by the Brazilian legislator, who, in the wording given by article 9-A of Law No. 11,284/2006, presented only the criteria for its constitution, establishing that it would be instituted by the rural owner, with

the consent of the environmental agency, with the voluntary waiver, on a permanent or temporary basis, totally or partially, of the right of use, exploitation or suppression of natural resources existing on the property<sup>7</sup>.

Thus, the environmental easement does not apply to Permanent Preservation Areas and the minimum required Legal Reserve, as provided for in paragraph 2 of the aforementioned article. It should be noted, as appropriate, that the restriction on the use or exploitation of the vegetation of the area under environmental easement must be, at least, the same as that established for the Legal Reserve. The environmental easement can also be used as an instrument of compensation for the legal reserve, at which time it must be recorded in the registrations of all properties involved, as provided for in paragraph 5 of article 9-A. It should be noted that the rural owner continues to be able to exercise his right of disposal, in such a way that he may alienate, assign or transfer the environmental easement. However, in cases of transfer of rural property, for any reason, dismemberment or rectification of the boundaries of the property, it is prohibited, during the term of the environmental easement, to change the destination of the area (CARDOSO, 2010).

The holder of the environmental easement may alienate, assign or transfer it, in whole or in part, for a fixed period or definitively, in favor of another owner or a public or private entity that has environmental conservation as its social purpose. However, the temporary environmental easement cannot be established with a term of less than 15 years, given the objectives of environmental preservation. On the other hand, the perpetual environmental easement is equivalent, for credit, tax and access to public funds purposes, to the Private Natural Heritage Reserve (RPPN), defined in article 21 of Law No. 9,985, of July 18, 2000, which will not be the object of our study.

In cases of alienation, assignment or transfer of the environmental easement, article 9-C of Law No. 11,284/2006 states that the contract must be recorded in the registration of the property (EL DEBS, 2021).

Although the institute of environmental servitude is an important instrument of environmental preservation, the legislator was wrong to not stipulate any economic or tax benefit in return, considering that its institution restricts property, constituting an obligation that accompanies the property, regardless of the owner. In international law, the rights and benefits linked to this type of system encourage the creation of easements, ensuring more effective environmental protection, as is the case in the United States with conservation easement and ecological servidumbres in Costa Rica (CARDOSO, 2010, p. 389-390).

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<sup>7</sup> It should be noted that the environmental easement may be instituted by an individual or legal entity, free of charge or for a fee, by means of a public or private instrument, or even by an administrative term that must contain the elements described in paragraph 1 of article 9-A (EL DEBS, 2021, p. 839).

However, it should be recognized that by establishing the registration of the environmental easement in the registrations of real estate, as provided for in article 167, II, of Law No. 6015/73, the legislator recognized the competence of the real estate registrar to centralize information on environmental issues of great importance, "preserving effects over time and publicizing the easement to interested third parties, more efficiently to the institute of Environmental Law." (SILVA, 2021, p. 254)

#### 4.3 CONSERVATION UNITS

Conservation Unit – U.C., as provided for in article 2, I, of Law No. 9,985/2000, is the territorial space and its environmental resources, including jurisdictional waters, with relevant natural characteristics, legally established by the Government, with conservation objectives and defined limits, under a special administration regime, to which adequate protection guarantees apply.

Conservation units are divided into two large groups: a) Full Protection Units; and b) Sustainable Use Units. The difference between these groups lies in the fact that the former aim to keep ecosystems free from alterations caused by human interference, admitting only the indirect use of their natural attributes, while the latter, although there is exploitation of the environment, this exploitation must be sustainable, ensuring the continuity of renewable environmental resources and ecological processes. maintaining biodiversity and other ecological attributes, in a socially just and economically viable way.

Although the majority of conservation units are in public areas, the legislator was right to establish that the areas around them are subject to specific rules and restrictions "to protect and guarantee the purpose of their creation" (MELO, 2010, p. 70), minimizing the negative impacts on the unit.

Regarding the entry of conservation units in the real estate registry, Silva (2021, p. 237) is categorical in stating that the effectiveness of the rules and restrictions related to each Conservation Unit will only be successful with their publicity in the real estate registry. The zoning, or the geographical delimitation containing the limits of the U.C. is mandatory because it implies the regulation of economic activities in the area and in the surroundings. Hence the importance of information related to the U.C.s to be part of the registration of the property and receive registration publicity, as a way to portray to future buyers of real estate the restrictions on the use of the property.

For Silva (2021, p. 239) the annotation of this environmental information would be of such relevance that "even a private individual, an association, a non-governmental

organization, or any interested party can provoke it", once the inertia of the Government or the administration of the conservation unit is verified.

#### 4.4 CONTAMINATED AREAS

The 1988 Constituent Assembly advocated the responsibility of society with the Government for the preservation of the environment for present and future generations. In this sense, each generation is obliged to deliver the environment in conditions to be enjoyed by the next generation, hence the idea of sustainable development, linked to the rational use of natural resources, considering their finitude (NALINI, 2010, p. 91-92).

The present study is interested in contaminated areas resulting from soil pollution, which occur for the most diverse reasons. For Silva (2021, p. 265) "the management of contaminated areas begins with the identification of suspicious sites and, once the hypothesis is confirmed, intervention measures, damage control measures and environmental remediation measures must be adopted".

The identification of the area is of total importance, as well as its delimitation, since, depending on the degree of contamination, it generates restrictions on the use of the property, in addition to the duty to repair the damage, which in some situations is irreversible.

Thus, Silva (2021) suggests that when the inspection body investigates the existence of a contaminated area, it is up to it to immediately inform society, in order to prevent access to such properties, which can be done with the installation of fences and signs, through radio and television advertising, and also through registry advertising.

The Code of Standards for Notarial and Registration Services of the State of Roraima, representing the pioneering spirit in the treatment of the matter, in the Legal Amazon region, establishes in its article 668, b, items 39 to 41, that the information on the classification of the area, by the competent Body, as a Contaminated Area under Investigation (ACI), the information on the classification of the area, Competent Body, such as Contaminated Area with Confirmed Risk (ACRI) and the classification information of the area, by the competent Body, as a Rehabilitated Area for Declared Use (AR) must be recorded in the registration of the properties.<sup>8</sup>

This attitude enshrines the principle of information and recognizes the structure of the real estate registry as the guardian of the royal folio, responsible for also concentrating environmentally relevant information. It should also be added that "the registrar is responsible

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<sup>8</sup> The aforementioned state law of Roraima also advances that in case of omission by the bodies legally responsible for the contaminated areas to proceed with the annotations referred to in article 668, paragraph "b", items 39, 40 and 41, these may be carried out upon provocation by any person.

for the preservation of the vegetation cover in the district to which he is delegated" (NALINI, 2010, p. 96).

In turn, in addition to the educational nature of the measure, these annotations put citizens in a position to discuss and demand from the Government the institution/execution of Public Policies that are necessary in the affected areas (SILVA, 2021, p.103).

At the federal level, Conama Resolution No. 420/2009, in article 37, established the competence of the environmental agency, when verifying the existence of a contaminated or rehabilitated area for declared use, to formally communicate to the Real Estate Registry offices of the District where such areas are inserted, as well as to the real estate registry of the municipalities and the Federal District.

It should be noted that the ideal would be for this information to be passed on to real estate notaries as soon as possible or at the beginning of the "contaminated area identification procedures" (SILVA, 2021, p. 266), in order to avoid the irreversibility of the damage, as well as to enable environmental information to reach public knowledge in a timely manner, and may also prevent socio-environmental impacts of large proportions.

## **5 FINAL CONSIDERATIONS**

In the course of this study, it was possible to verify the presence, increasingly, in the lives of citizens, of a healthy interference in the relationship between man and the environment, as well as it was clear that using the right to property in a way that causes damage to the environment is what causes ecological disasters, usually originated by the disorderly occupation of the land.

The publicity promoted by the Real Estate Registry provides the desired and necessary legal certainty to the institutes of Environmental Law, which aim to protect the environment, as the information released by the Registry can prevent the harmful use of the property. In other words, the Real Estate Registry may contribute favorably, in addition to the protection of private property, also to the publicity of the institutes of Environmental Law that aim to modify the owner's behavioral attitudes in relation to the environment, a function that the Public Registries already perform efficiently.

Despite having promulgated so many historical milestones in terms of fundamental rights, the drafting of the current Federal Constitution also expresses the interests of several different objectives. The aspiration demonstrated in the norm contained in its article 225, to provide everyone with the right to an ecologically balanced environment, has already proven to be essential to a healthy quality of life.

It is evident that this benefit can only occur with the collaboration of the Government and society, in order to protect, defend and preserve this healthy environment for present and future generations. The most efficient way to more easily achieve this objective may be the collaboration of the Real Estate Registry, through the publicization of rights and environmental restrictions that may fall on real estate, which will contribute to the guarantee of the right to property to the citizen and will also serve to assist in the inspection of the rational exercise of the right to property. preventing abuses that, coming from the owner, may lead to environmental degradation.

By the way, Post-Modernity has brought the publicization of rights as a trend, becoming necessary and useful to the environmental controls carried out through the Real Estate Registry system, which makes use of its essence, translated into publicity and legal certainty, in the prevention of environmental damage.

This link formed between Environmental Law and Real Estate Registration resulted in benefits for the whole society, which now has more effective instruments in the control and rational and sustainable use of private property, meeting its social function.

## REFERENCES

- Álvares, A. de C. B., & Cunha, R. H. A. (2018). A proteção do meio ambiente pela publicidade imobiliária. *Revista Científica Multidisciplinar Núcleo do Conhecimento*, 3(7, v. 1), 31–56. <https://www.nucleodoconhecimento.com.br/lei/publicidade-imobiliaria>
- Borges, A. M. (2014). *Registro de imóveis no direito brasileiro* (4<sup>a</sup> ed.). Contemplar.
- Brasil. (1988). *Constituição da República Federativa do Brasil de 1988*. [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm)
- Brasil. (1890). Decreto n. 451-B, de 31 de maio de 1890. Estabelece o registro e a transmissão.
- Brasil. (2012). Lei n. 12.651, de 25 de maio de 2012. Dispõe sobre a proteção da vegetação nativa (Código Florestal). [http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2012/lei/l12651.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12651.htm)
- Brasil. Superior Tribunal de Justiça. (2022). REsp n. 1.857.098/MS (2020/0006402-8). Relator: Min. Og Fernandes, julgado em 18 de maio de 2022. [https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num\\_registro=202000064028&t\\_publicacao=24/05/2022](https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=202000064028&t_publicacao=24/05/2022)
- Cardoso, S. L. de M. (2010). A servidão ambiental segundo a Lei n. 11.284/2006. In S. Jacomino, M. A. S. de Melo, & F. de A. P. Criado (Orgs.), *Registro de imóveis e meio ambiente* (pp. ?–?) (Série Direito Registral e Notarial). Saraiva.
- Dip, R. H. M. (1993). Sobre o saber registral: Da prudência registral. *Revista de Direito Imobiliário*, 31/32, 5–21.
- El Debs, M. (2021). *Legislação notarial e de registros públicos: Comentada artigo por artigo* (5<sup>a</sup> ed. rev., ampl. e atual.). JusPodivm.

- Gil, A. C. (2008). Métodos e técnicas de pesquisa social (6ª ed.). Atlas.
- Gonçalves, R. R. M. (2011). A importância do Registro de Imóveis na preservação dos recursos naturais. *Boletim IRIB em Revista*, 341, 24.
- Hellstrom, L. (2016). O registro de imóveis como um instrumento de fiscalização de meio ambiente. *Jus Brasil*. <https://hellstrom.jusbrasil.com.br/artigos/325838251/oregistro-de-imoveis-como-uminstrumento-de-fiscalizacao-de-meio-ambiente>
- Melo, M. A. S. de. (2021). O Código Florestal e o Registro de Imóveis. In *Artigos 2021 do Boletim Eletrônico do Instituto de Registro Imobiliário do Brasil*. IRIB. <https://irib.org.br/obras/3974>
- Miranda, M. A. (2010). A importância da atividade notarial e de registro no processo de desjudicialização das relações sociais. *Revista Âmbito Jurídico*, 13(73). <https://ambitojuridico.com.br/cadernos/direito-processual-civil/a-importancia-da-atividade-notarial-e-de-registro-no-processo-de-desjudicializacao-das-relacoes-sociais/>
- Nalini, J. R. (2010). O ambiente e Registro de Imóveis. In S. Jacomino, M. A. S. de Melo, & F. de A. P. Criado (Orgs.), *Registro de imóveis e meio ambiente (Série Direito Registral e Notarial)*. Saraiva.
- Noronha, F. (2010). *Direito das obrigações (3ª ed. rev. e atual.)*. Saraiva.
- Santos, F. A. dos. (2010). Registro de Imóveis e meio ambiente: Uma reflexão intraorganizacional necessária. In S. Jacomino, M. A. S. de Melo, & F. de A. P. Criado (Orgs.), *Registro de imóveis e meio ambiente (1ª ed., Série Direito Registral e Notarial)*. Saraiva.
- Silva, A. F. S. do A. e. (2021). *Registro de imóveis e meio ambiente: Princípios e interações em prol da sustentabilidade*. Alteridade.
- Silva, S. T., Figueiredo, G. J. P., Leuzinger, M. D., & Neto, J. N. (2010). Código Florestal: Em defesa das nossas florestas e do nosso futuro. In P. Lavratti et al. (Orgs.), *Direito e mudanças climáticas – A reforma do Código Florestal: Limites jurídicos*. Instituto “O Direito por um Planeta Verde”.
- Stifelman, A. G. (2010). O registro de imóveis e a tutela do meio ambiente. *Revista de Direito Imobiliário*, 69, 337–350.