LUMEN ET VIRTUS
ISSN: 2177-2789

EXTRAJUDICIAL ADVERSE POSSESSION AS AN INSTRUMENT OF URBAN LAND REGULARIZATION

https://doi.org/10.56238/levv15n43-102

Submitted on: 23/11/2024 **Publication date:** 23/12/2024

Rodrygo Kanevassi Murakami[1]

ABSTRACT

The article analyzes the institute of extrajudicial adverse possession, introduced by the Code of Civil Procedure of 2015, allowing the recognition of adverse possession directly by the Real Estate Registry Officer. Adverse possession is an original form of property acquisition, based on prolonged possession and inertia of the holder of the right. The text details the requirements of adverse possession, including possession with the intention of owner, meek and peaceful possession, and continuous possession. The analysis also addresses the importance of adverse possession in land regularization and in the social function of property.

Keywords: Adverse Possession. Land Regularization.

[1] E-mail: rodrigo.murakami@yahoo.com.br

INTRODUCTION

This article aims to analyze the institute of extrajudicial adverse possession, inaugurated in our legal system by the Code of Civil Procedure of 2015 (Law No. 13,105/15), which added article 216-A to Law No. 6,015/73 (Public Records Law), allowing the request for extrajudicial recognition of adverse possession processed directly by the Real Estate Registry Officer of the District of the property.

An analysis of adverse possession as an original form of property acquisition will be made, detailing its concept, legal nature, requirements and species, and then studying the new mechanism of recognition of adverse possession.

Next, a brief summary of urban land regularization (REURB) will be made, under the terms of Law No. 13,465/17 (Brazilian Land Statute), delimiting its definition, objectives and principles.

USUCAPION

Adverse possession, without a doubt, is one of the most important issues in civil science. It constitutes one of the effects of possession which, added to the requirements required by law, will constitute the real right of property, the main subjective right protected by the legal system.

Possession, according to Ihering's objective theory, adopted by the Civil Code of 2002 in article 1,196[2], is a factual situation characterized by the exercise of some of the powers inherent to the figure of owner. It is said to be the externalization of property, the visibility of the domain. A possessor is the one who acts, in relation to the thing, as if he were its owner, using, enjoying and, above all, defending.

This is a factual event that has repercussions in the world of law and, therefore, deserves protection by the legislator. Attentive to what happens in the concrete world, the institute of adverse possession was created, allowing the possessor, over time, to transform his possession into property, formally regularizing his legal situation, which brings numerous benefits in the social, economic, environmental and legal aspects.

Not infrequently the individual, without much education, acquires only possession of the land, thinking he is acquiring the property. It is usually deceived by unscrupulous people claiming that the property's documentation is in order. Adverse possession is a very effective mechanism in land regularization, covering numerous concrete situations.

[2] Civil Code of 2002, article 1,196: "A possessor is considered to be anyone who has in fact the exercise, full or not, of any of the powers inherent to property".

Adverse possession is an original form of acquisition of property and other real rights, through prolonged possession and inertia of the owner of the domain. Its foundation is to ensure legal certainty, consolidating a de facto situation for a long period, converting possession into property. It should be noted that the social function of property (Article 5, XXIII, of the 1988 Constitution) will also be met.

Quoting the eminent Álvaro Villaça Azevedo[3], "adverse possession is the acquisition of the domain by continuous possession, during the time established by law (*usucapio est adiectio dominii per continuationem possessionis temporis lege definiti*)".

It is observed that the object of adverse possession is not only the right to property, but also other real rights, especially those exercised over someone else's thing of enjoyment or fruition. As an example, article 1,379 of the Civil Code allows the acquisition of the easement by the acquisitive prescription for a period of ten or twenty years, depending on fair title or not.

As for its legal nature, it is an original form of acquisition of property, insofar as the new owner does not maintain any relationship of real or obligatory rights with his predecessor, since he does not obtain the property from the old owner, but against him.

In this sense, Francisco Eduardo Loureiro[4]:

> It is the original way of acquiring property, since there is no personal relationship between a precedent and a subsequent subject of law. The right of the usucapient is not based on the right of the previous holder, and this right does not constitute the presupposition of the former, much less determining its existence, qualities and extent.

From its legal nature it follows that the incorporation of the asset into the assets of the usucapient takes place in a clear manner, free of all the defects that the previous legal relationship presented. In fact, there is no incidence of ITBI and, any real encumbrance on the property, due to a legal transaction of the previous owner (mortgage, for example), will be automatically extinguished, no longer subsisting. The property is acquired free of blemishes.

As for the ITBI, it is important to remember that its taxable event is the inter *vivos transfer,* in any capacity, by onerous act (and not gratuitous), of real estate, by nature or physical accession, and of real rights over real estate, except those of guarantee, as well as assignment of rights to its acquisition (Article 156, II, of the 1988 Constitution). What is verified in adverse possession is the absence of burdensomeness, so that there is no incidence of ITBI.

[3] AZEVEDO, Álvaro Villaça. Law of Things. São Paulo: Atlas, 2014, p. 63.
[4] PELUZO, Cesar. Commented Civil Code. 18th ed. Santana de Parnaíba: Manole, 2024, p. 1.130.

It is known as acquisitive prescription, since time influences the definition of people's legal positions. According to Cristiano Chaves de Farias and Nelson Rosenvald[5]:

> The foundation of this legal model is twofold: it represents a prize to the one who for a significant period has imprinted on the asset an apparent destination of owner; but it also means a sanction for the insidious and inert owner who did not protect his right in the face of the possession exercised by others.

It is concluded that the foundation of adverse possession is to ensure social peace, conferring legality to the factual situations consolidated in time. Consequently, the security and stability of the property are also covered. In another turn, the negligent owner is punished with his patrimony that leaves, over the time provided for by law, the prescriber exercises possession *ad usucapionem* over a certain asset.

Adverse possession is an institute that removes a person's property right, transferring it, without defects, to the possessor. As it represents, at the same time, a punishment and a sanction, the legal system requires the fulfillment of some requirements, as a way of ensuring the principle of legality and due process of law.

Property is a fundamental right and has, with its fulcrum in the Constitutional Text (Article 5, XXIII), a social function. It is required that the owner give a positive destination to the property, in order to meet economic and social interests and to preserve the environment (article 1,228, § 1, of the Civil Code).

Social utility is prestigious, and it is not allowed, in the contemporary world, that the owner of the domain remains inert, ceasing to occupy or rent the property. The demand for housing is one of the most relevant aspects of social rights and was thus recognized by the derived constituent in Constitutional Amendment No. 26/2000, amending Article 6 of the 1988 Constitution.

The absolute character of the right to property, in the sense that its holder can do whatever he pleases, is no longer so absolute. Law has become socialized, it has become concerned with the collective, with the well-being in society, imposing on its holders the exercise in a non-abusive way. The individual and patrimonialist mentality reigning in the Civil Code of 1916 gave way to the social function and objective good faith.

As Zenildo Bodnar recalls[6],

> The owner can no longer be an absolute monarch of his "sacred" right with parasitic attitudes of self-indulgence, because he has an important social mortgage that encumbers and encumbers his property, which cannot be an instrument used only to

[5] FARIAS, Cristiano Chaves de; ROSENVALD, Nelson. Civil Law Course. Vol. 5, 12th ed. Salvador: Editora JusPodivm, 2016, p. 388.

[6] BODNAR, Zenildo. Real Estate Registry Regularization in the Realization of Fundamental Rights in the Sustainable City. Dissertation (Post-Graduation in Urbanism, History and Architecture of the City) – Federal University of Santa Catarina, Florianópolis, 2015, p. 91.

satisfy selfish and excessively personalistic interests, but a right with a deep social spirit.
The fulfillment of the social function legitimizes the right to property to the extent that it is respected and accepted by the collectivity. The interests of the community and the owner complement and compensate each other mutually and reciprocally in the exercise of the right to property.

With regard to the requirements of adverse possession, the doctrine traditionally divides them into three, namely: a) possession *ad usucapionem;* b) time and c) skillful thing (*res habilis*). These are the mandatory assumptions that must be present in all types of acquisitive prescription.

Adverse possession results from possession, defined as de facto power over the thing, in order to externalize some of the powers inherent to the figure of owner. It is one of the effects of possession. However, simple possession is not enough. Possession *ad usucapionem is necessary*, that is, possession that, in addition to the ability to use possessory interdicts, allows the acquisition of property by adverse possession.

Its characteristics are:

a) Possession with the intention of the owner (*animus domini*): that is, the will of the possessor to have the thing as his own, to treat it as if he were the owner. Savigny's subjective theory applies in this regard. In practical terms, it is demonstrated by performing acts of conservation of the thing, fulfilling the social function, avoiding new invasions (the prescriber is the possessor and, therefore, has legitimacy to file possessory actions).

Thus, the direct possessor (the one who received de facto power over a tangible thing through an obligatory or real legal bond), such as the lessee, borrower, depositary could not acquire the property by adverse possession. This is because they do not exercise possession with the intention of ownership. They recognize the domain of the lessor, lender, depositor and respect him.

b) Meek and peaceful (uninterrupted) possession: it is exercised without the opposition of the owner of the asset. It is the inertia of the owner of the domain, his negligence, negligence. In other words, it is the non-exercise of the right of sequela.

An important rule is the one provided for in article 1,244 of the Civil Code, according to which the impeding and suspensive causes of the statute of limitations are extended to the possessors, which shows the connection with the extinguishing statute of limitations, provided for in articles 189 to 206 of the civil law. That is, time influencing the acquisition or extinction of legal positions.

Thus, there is no statute of limitations and, therefore, no term of adverse possession against the absolutely incapable persons referred to in article 3 of the Civil Code, which is sometimes an important rule to observe in practice.

c) Continuous and lasting possession: it is possession without breaks, shocks, interruption, gradually transforming possession into property. It is verified in relation to the active conduct of the possessor.

It is possible to achieve continuity through the sum of possessions or *accessio possessionis* (article 1,243 of the Civil Code[7]), with the exception of special adverse possession provided for in articles 183 and 191 of the 1988 Constitution, in view of its constitutional treatment (Statement 317 of the IV Conference on Civil Law promoted by the Federal Justice Council[8]).

d) Fair possession: it is that which has not been acquired through violence, clandestinity or precariousness. At this point, it is necessary to warn that, according to article 1,208 of the Civil Code, as long as acts of violence or clandestinity have not ceased, the subject is considered a mere holder. From the moment of termination, there is unjust possession. However, if the period of year and day has elapsed, it convalesces, becoming a just possession, allowing adverse possession. This reasoning is taken by combining articles 1,208 of the civil law and article 558 of the Code of Civil Procedure.

Note that the legal provision refers only to violent or clandestine acts. Traditionally, precarious possession (obtained with abuse of trust) is not subject to validation, always remaining unjust and unusuable. However, contemporary doctrine has admitted, based on the social function of possession, the interversion of possession (*intervesio possessionis*), when there is a substantial change in its cause. Thus, even precarious possession would be subject to adverse possession.

In this sense, it is recommended by Statement 237 of the III Conference on Civil Law of the Federal Justice Council: "It is appropriate to modify the title of possession – *interversio possessionis* – in the event that the direct possessor demonstrates an unequivocal external act of opposition to the former indirect possessor, having the effect of characterizing the *animus domini".*

The second mandatory requirement of adverse possession is time. It is not enough to exercise possession *ad usucapionem* over *a skillful thing with animus domini*: it must be exercised for the sufficient time determined by law for the conversion of possession into property. The amount of time varies according to the type of adverse possession. With regard to the real right of ownership, the maximum is 15 years (extraordinary adverse

[7] CC, article 1,243: "The possessor may, for the purpose of counting the time required by the preceding articles, add to his possession that of his predecessors (article 1,207), provided that all are continuous, peaceful and, in the cases of article 1,242, with just title and in good faith".

[8] The *accessio possessionis* referred to in article 1,243, first part, of the Civil Code does not find applicability in relation to arts. 1,239 and 1,240 of the same law, in view of the normativity of urban and rural constitutional adverse possession, articles 183 and 191, respectively.

possession – article 1,238, of the Civil Code) and the minimum is 2 years (family adverse possession – article 1,240-A, of the civil law).

In this regard, there is a common point with the extinguishing statute of limitations, provided for in articles 189 to 206 of the civil law. Time influences the acquisition or extinction of rights. It is for this reason that doctrine and jurisprudence call adverse possession as an acquisitive prescription, since the passage of time consolidates a factual situation and transfers rights.

The third requisite concerns the skillful thing. In other words, possession *ad usucapionem* for the period of time required by law is not enough. The thing, over which possession is exercised, must be capable of being acquired by adverse possession. The fulfillment of the mandatory requirements must be cumulative and not isolated.

Just as an example, public assets cannot be acquired by adverse possession. The prevailing understanding is that, whatever the type of public good, it will always be imprescriptible. However, the seductive thesis of adverse possession of Sunday goods gains strength, by virtue of the principle of the social function of property, in a civil-constitutional analysis[9].

In fact, Sunday goods do not have a specific public destination, and can be used by the Public Administration to generate income. They are assets that can be alienated, therefore, usucapable. The social function of property must be applied, not only to private individuals, but also to the Government. Its functions of limiting the exercise of the right to property on the one hand and, on the other, encouraging positive destination, must be observed by public entities.

The legislator provided for several modalities of adverse possession, distinguishing them in terms of the term, the need for fair title and good faith, the area limit of the property in adverse possession, the need for housing, among other peculiarities. However, the general requirements studied above (possession *ad usucapionem,* time and skillful thing) are present in all species. These are mandatory requirements.

The first type is extraordinary adverse possession, provided for in article 1,238 of the Civil Code[10] and is characterized by the absence of fair title and good faith. Thus, even the

[9] FARIAS, Cristiano Chaves de; ROSENVALD, Nelson. *Op. cit.,* p. 395: "It is also highlighted, in a civil-constitutional analysis, that the absolute impossibility of adverse possession over public goods is mistaken, as it offends the value (constitutionally contemplated) of the social function of possession and, ultimately, the principle of proportionality itself. [...] Now, if the Sunday assets are not linked to anything, naturally the possession of private individuals over them – once the legal requirements of adverse possession are proven – would be deserving of obtaining a title deed".

[10] CC, article 1,238: Anyone who, for fifteen years, without interruption or opposition, owns a property, acquires ownership of it, regardless of title and good faith; and may request the judge to declare it so by judgment, which will serve as a title for registration at the Real Estate Registry Office. Sole Paragraph. The period established in

possessor (invader of an area), with full knowledge that the property over which he exercises possession is not his (possessor in bad faith), may acquire the property by adverse possession. The legislator aimed to punish the negligent owner with his patrimony who does not observe the social function of property and to protect the right of the prescriber.

The term is 15 years, however, it will be reduced to 10 years if the possessor fulfills the social function of possession, establishing his residence in the property or carrying out works or services of a productive nature therein.

Farias and Rosenvald[11], in this regard, record:

> Furthermore, the principle of proportionality is not neglected, since the legislator emphasizes that, even possession excluded from any social function, still has more value and legitimacy than idle and demobilized property. The activity of the possessor will be deserving of adverse possession, however, in periods longer than those demarcated for those who honor the fundamental social right to housing and grant a social function to possession.

Ordinary adverse possession, in turn, is provided for in article 1,242 of the Civil Law[12] and requires the possessor to have a fair title and good faith.

A fair title is one that would be able to transfer the property if it did not present a defect that prevents it from producing its effects, regardless of registration. The great example is the particular instrument of purchase and sale commitment.

As for good faith, it is its subjective aspect, characterized by the possessor's lack of knowledge/ignorance as to the obstacle that prevents him from acquiring the thing. In other words, the prescriber is convinced that the property possessed belongs to him.

With regard to time, the law requires, as a rule, a period of 10 years. However, based on the social function of possession, as in extraordinary adverse possession, this period can be reduced to 5 years, if the possessor has acquired the property onerous based on a registration later canceled and has established his residence or made investments of social and economic interest.

In addition to extraordinary and ordinary adverse possession, the legal system regulates special adverse possession, which is based on the 1988 Constitution itself (articles 183 and 191) and aims to honor the social function of possession, since it requires

---

this article shall be reduced to ten years if the possessor has established his habitual residence in the property, or has carried out works or services of a productive nature therein.

[11] FARIAS, Cristiano Chaves de; ROSENVALD, Nelson. *Op. cit.,* p. 404-5.

[12] CC, article 1.242: The property is also acquired by the person who, continuously and uncontestedly, with fair title and good faith, has owned it for ten years. Sole Paragraph. The period provided for in this article will be five years if the property has been acquired, onerously, based on the registration contained in the respective notary's office, later canceled, provided that the possessors have established their residence therein, or made investments of social and economic interest.

the use of the property as a home and, if it is a rural property, to make the area productive. Therefore, possession qualified as possession-work is not an option for the prescriber to reduce the period of adverse possession, but a mandatory requirement of this modality.

The last type of adverse possession is family or pro-family adverse possession created by Law No. 12,424 of June 16, 2011, adding article 1,240-A to the Civil Code[13]. It is the possibility of the ex-spouse or ex-partner using the other spouse's share due to voluntary abandonment of the home.

EXTRAJUDICIAL ADVERSE POSSESSION

This is a celebrated novelty operated by the New Code of Civil Procedure (Law No. 13,105/15), adding article 216-A to the Public Records Law (Law No. 6,015/73). The National Council of Justice (CNJ) regulated extrajudicial adverse possession in Provision No. 65/2017 (which was incorporated into the National Code of Extrajudicial Forum Rules – Provision No. 149/2023, articles 398 to 423). Alternatively, without prejudice to the jurisdictional route, the request for extrajudicial recognition of adverse possession is allowed, processed directly before the Real Estate Registry Office of the district in which the property is located.

It innovates the infra-constitutional legislator in order to meet the dejudicialization initiated by Constitutional Amendment No. 45/2004 and allow compliance with the principle of reasonable duration of the process (Article 5, LXXVIII, Constitution of 1988), since, ultimately, it will considerably reduce the time of the adverse possession process if the parties opt for the extrajudicial route.

With regard to the documents required for extrajudicial adverse possession, analyzing article 216-A of Law No. 6,015/73[14], it is required to present a notarial act drawn up by a notary, attesting to the time of possession of the applicant and his predecessors;

---

[13] CC, article 1,240-A: Anyone who exercises, for two (2) years uninterruptedly and without opposition, direct possession, with exclusivity, over urban property of up to 250m² (two hundred and fifty square meters) whose property he shares with an ex-spouse or ex-partner who has abandoned the home, using it for his or her family's home, shall acquire full ownership, provided that he is not the owner of another urban or rural property. Paragraph 1 - The right provided for in the *caput* The same possessor shall not be recognized more than once.

[14] Law No. 6,015/73, article 216-A: Without prejudice to the jurisdictional route, the request for extrajudicial recognition of adverse possession is admitted, which will be processed directly before the real estate registry office of the district in which the property is located, at the request of the interested party, represented by a lawyer, instructed with: I - notarial minutes drawn up by the notary, attesting to the time of possession of the applicant and his predecessors, as the case may be and its circumstances, applying the provisions of article 384 of Law No. 13,105, of March 16, 2015 (Code of Civil Procedure); II - plan and descriptive memorial signed by a legally qualified professional, with proof of annotation of technical responsibility in the respective professional inspection council, and by the holders of rights registered or annotated in the registration of the usucapiendo property or in the registration of the adjoining properties; III - negative certificates from the distributors of the district where the property is located and the applicant's domicile; IV - fair title or any other documents that demonstrate the origin, continuity, nature and time of possession, such as the payment of taxes and fees levied on the property.

plan and descriptive memorial signed by a legally qualified professional and by the holders of real rights and other rights; negative certificates from the distributors of the district of the location of the property and the domicile of the applicant and, some other documents, such as fair title (if any), document proving ownership, among others.

It is noted, therefore, that the procedure requires the participation of the Notary Public in the drafting of the notarial act and, subsequently, the documents will be forwarded to the Real Estate Registrar for the proper registration qualification.

The first document, therefore, relates to the notarial act. It is a kind of notarial act through which the notary narrates in his notebook in an impartial, objective and detailed manner legal facts witnessed or verified in person, for the purpose of pre-constituting evidence.

The notarial act is gaining more and more importance in contemporary society, especially due to the rapid exchange of information, information technology combined with the internet, globalization. Because of this, the New Code of Civil Procedure, in article 384[15], regulates as a means of proof intended to attest to the existence and mode of existence of some fact.

It turns out that the way in which the notary will carry out his mission was not said. The specialized doctrine teaches that time is a past legal fact and that it must be proven by witnesses, concluding that we are facing a declaratory public deed, as it instrumentalizes the will of the possessor.

In this sense, Luiz Carlos Weizenmann teaches[16]:

> But that is where the question lies, as it does not clarify how the notary public can certify the time of possession. As we have seen, the notarial act is the objective narration of an occurrence or fact, witnessed or verified by the notary. The question remains: how to certify time of possession? The possession exercised by the applicant is a past fact and it would only be possible to verify this fact through testimonies.

Although Paulo Roberto Gaiger Ferreira and Felipe Leonardo Rodrigues[17] identify the minutes of attendance and declaration as a kind of notarial act, according to which "the notary faithfully narrates, in legal language, the declaration of the interested party about a fact or event that he witnessed or learned about through an intermediary, with the intention

[15] CPC, article 384: The existence and manner of existence of any fact may be attested or documented, at the request of the interested party, by means of minutes drawn up by a notary. Sole Paragraph. Data represented by image or sound recorded in electronic files may be included in the notarial act.
[16] WEIZENMANN, Luis Carlos *in* PAULINO, Roberto. Repercussions of the New CPC: Notarial and Registry Law. v. 11., Salvador: JusPodivm, 2016, p. 186.
[17] RODRIGUES, Felipe Leonardo; FERREIRA, Paulo Roberto Gaiger. Notary Office. São Paulo: Saraiva, 2013, p. 119-0.

of using it in the administrative or judicial sphere", admit that in Brazil many notaries use the declaratory public deed.

The second document required by law is the plan and descriptive memorial. Its purpose is to comply with the principle of objective specialty, according to which the property must be perfectly individualized in order to be entered in the Real Estate Registry.

The plan and descriptive memorial must be signed by the following persons: a) legally qualified professional, with proof of annotation of technical responsibility in the respective professional inspection council; b) holders of real rights and other rights registered or annotated in the registration of the usucapiendo property and c) the adjoining properties. If the plan does not contain the signature of all the parties and the holder of the property right over the property, they will be notified through the Real Estate Registry Office to express their express consent within 15 days, interpreting their silence as agreement (article 216-A, § 2 of Law No. 6,015/73).[18]

We have already had occasion to write[19] that very rarely will anyone agree to be deprived of their right. The field of use of extrajudicial adverse possession will be limited to those cases in which the applicant intends to regularize the ownership of the property, given that he has already entered into a purchase and sale agreement duly paid with the owner of the domain and that, for some reason, he has not entered the real folio.

In fact, the holder of the real right, if he does not sign along with the application, plan and descriptive memorial, will be notified by the competent real estate registrar to manifest himself within 15 days. If you are really interested in hindering the procedure, contesting the request for adverse possession, you will have the opportunity to do so within the legal deadline.

Clearance certificates are also required from the distributors of the district where the property is located and the applicant's domicile. It aims to inform the existence of possessory or claim actions on the usucapiendo property.

It is interesting to note that the certificates must be presented in the name of the applicants and their predecessors in cases of *"accessio possessionis"* or *"successio possessionis".*The Civil Code of 2002 admits the sum of possessions in article 1,243[20].

---

[18] "If the plan does not contain the signature of any of the holders of rights registered or annotated in the registration of the property being used or in the registration of the adjoining properties, the holder will be notified by the competent registrar, in person or by mail with acknowledgment of receipt, to express express consent within fifteen days, silence being interpreted as agreement".

[19] MURAKAMI, Rodrigo Canevassi. Extrajudicial adverse possession. Dissertation (Lato *sensu post-graduation* in Applied Real Estate Law) – Escola Paulista de Direito, São Paulo, 2016, p. 48.

[20] Civil Code, article 1,243: The possessor may, for the purpose of counting the time required by the preceding articles, add to his possession that of his predecessors (article 1,207), provided that all of them are continuous, peaceful and, in the cases of article 1,242, with just title and in good faith.

Possession, although a fact, has economic and social relevance and can be assigned in any capacity, whether by public or private instrument. Possession is recognized as a right subject to protection (*ius possessionis*).

Article 216-A of Law No. 6,015/73 also requires the presentation of fair title or any documents that demonstrate the origin, continuity, nature and time of possession, such as the payment of taxes and fees levied on the property.

Depending on the type of adverse possession, it is important to demonstrate fair title and time, in addition to the good faith of the possessor. Therefore, all documents must instruct the request for extrajudicial adverse possession. The payment of taxes and fees levied on the property demonstrates possession *ad usucapionem.*

The extrajudicial adverse possession will be processed before the Real Estate Registry of the district in which the usucapiendo property is located (principle of territoriality – article 12 of Law No. 8,935/94[21]) and will be presided over and conducted by the Real Estate Registry Officer.

It begins upon request of the interested party, complying with the principle of instance or rogation, according to which the Real Estate Registrar does not act ex officio, and must always be provoked to do so. In the request, the prescriber must describe the entire factual situation on which his claim is based, as well as the type of adverse possession, the requirements duly fulfilled, the sums of possession, without forgetting the documents required by the Public Records Law (article 400 of the National Code of Extrajudicial Forum Rules – Provision No. 149/2023 of the National Council of Justice).

The interested party must be represented by a lawyer, along with the power of attorney instrument, which must contain special powers, according to article 661 of the Civil Code[22].

Once the application is submitted to the competent Real Estate Registry, it must record it (entry in Book 1 – Protocol), and the title is assigned an order number. This number is important because it will determine the priority of the title and the latter, the

[21] Law No. 8,935/94, Article 12: The officers of the registry of real estate, titles and documents and civil of legal entities, civil of natural persons and of interdictions and guardianships are responsible for the practice of the acts listed in the legislation pertaining to public records, of which they are responsible, regardless of prior distribution, but subject to the real estate and civil registry officers of natural persons to the rules that define the geographical districts.

[22] Civil Code, article 661: The mandate in general terms only confers powers of administration. Paragraph 1 - To sell, mortgage, compromise, or perform any other acts that exceed the ordinary administration, the power of attorney depends on special and express powers. Paragraph 2 - The power to compromise does not matter the power to enter into a commitment.

preference of the rights in rem, even if presented by the same person more than one title simultaneously (article 186 of Law No. 6,015/73[23]).

Once the application has been submitted with the documents required by law and after it has been noted in Book 1 – Protocol, the Real Estate Registry Officer will carry out the registration qualification of the title, that is, he will verify that all the requirements have been met and that everything is in order.

Registration qualification is the main and most important activity of the Real Estate Registry Officer. It is with it that he controls the entry of securities into his service and the registration of real or obligatory rights with real effectiveness, always marked by the primacy of legal certainty and effectiveness of acts and businesses. It is the filter of the rights registered in the real estate service.

It is the power-duty of the registrar to verify the existence, in the title, of all the necessary requirements for him to be able to enter the real estate registry. This is an unfolding of the principle of legality, according to which it imposes that the documents submitted for registration must meet the requirements required by the legal norms to have access to registry publicity.

According to the Judge of the Court of Justice of São Paulo, Ricardo Henry Marques Dip[24] "is the prudential judgment, positive or negative, of the power of a title in order to its land registration, importing in the empire of its registration or its unregistration".

Part of the qualification is the verification provided for in § 2 of article 216-A of Law No. 6,015/73, that is, whether the plan and descriptive memorial have the signature of all the persons required by law (holders of real rights or other rights registered or annotated in the registration of the usucapiendo property and in the registration of the adjacent properties).

If the answer is negative, the Real Estate Registry Officer must notify them at the request of the applicant, who must indicate the complete address, by virtue of the principle of rogation.

Notification may be made in person by the registrar (or through an authorized agent) or by mail with acknowledgment of receipt. Once notified, the holder of the real right and the adjoining parties have a period of 15 days to express their express consent, interpreting silence as agreement (amendment introduced by Law No. 13,465/2017).

---

[23] Law No. 6,015/73, Article 186: The order number shall determine the priority of the title, and this the preference of the rights in rem, even if presented by the same person more than one title simultaneously.

[24] DIP, Ricardo Henry Marques. *In* ALVIM NETO, José Manuel de Arruda; CLÁPIS, Alexandre Laizo; CAMBLER, Everaldo Augusto. Commented Public Records Law. Rio de Janeiro: Editora Forense, 2014, p. 1.068.

Continuing with the analysis of the procedure, the Public Records Law imposes the administrative procedure of the adverse possession request on the Union, States/Federal District and the Municipality, so that they can express their opinion on the request within 15 days (article 216-A, § 3). This notification must be made in person by the Real Estate Registry Officer (or his representative) or through the post office or the Registry of Deeds and Documents (expressly provided for in the legal command).

The objective is to give the opportunity for such entities to express their views on the request, insofar as public assets are absolutely imprescriptible, according to the prevailing doctrine and jurisprudence. In other words, they cannot be acquired through adverse possession.

Notwithstanding, article 412, paragraph 1 of the National Code of Extrajudicial Norms[25] provides that the silence of the Public Treasury must be interpreted as agreement/acceptance, not preventing the continuation of the request.

As in the judicial process, in the administrative sphere before the Real Estate Registry, the publication of a notice is also required for the knowledge of any interested third parties, who may manifest themselves within 15 days (article 216-A, § 4, LRP). After the deadline without manifestation, the procedure will continue for final registration qualification.

After all the measures mentioned above (notification of the holder of the real right, if he has not signed the plan and memorial described; subpoena of the federated entities and publication of a notice for the knowledge of any interested third parties), the Real Estate Registry Officer must make the registration qualification to verify that all the requirements (material and formal) required by law have been met.

To this end, it may request or carry out steps to clarify any point of doubt (article 216-A, § 5, Public Records Law). It is the registrar's duty to filter the rights that will have access to the royal folio.

If all the requirements have been met (positive registration qualification) and no challenge is presented, the Real Estate Registry Officer will register the acquisition of the property with the descriptions presented, and the opening of registration is allowed, if applicable (article 216-A, § 6, of Law No. 6,015/73).

However, if the documentation is not in order (negative registration qualification), the registrar must reject the extrajudicial request for adverse possession (article 216-A, § 8, LRP). However, throughout the administrative procedure, it is lawful for the interested party

[25] Provision No. 149/2023 of the CNJ, article 412, paragraph 1: "The inertia of public bodies in the face of the notification referred to in this article will not prevent the regular progress of the procedure or the eventual extrajudicial recognition of adverse possession".

to raise the doubt procedure, which will follow the procedure of articles 198 et seq. of the Public Records Law (article 216-A, § 7, LRP).

It is important to highlight that the rejection of the extrajudicial request does not prevent the filing of the adverse possession action in the competent court, since administrative decisions do not constitute material res judicata and are not subject to preclusion. Therefore, even if the Real Estate Registry Officer refuses the interested party's request on the grounds that, for example, he did not meet all the material requirements of the acquisitive prescription, such as the time required by law, nothing prevents him from filing an adverse possession action, which will follow a common procedure in accordance with the New Code of Civil Procedure, demonstrating to the judge the temporal requirement.

In fact, it is in the judicial sphere that the principle of due process of law reigns absolutely, in the variants of adversarial and ample defense. In the extrajudicial sphere, the activity of the Real Estate Registry Officer is based on documentary evidence presented with the application and, eventually, some specific diligences. Hence, the normative provision that the rejection of the extrajudicial request does not prevent the filing of the adverse possession action.

If there is any challenge to the procedure, the registrar must send the case to the competent court of the district where the property is located, and it is up to the applicant to amend the initial petition to adapt it to the common procedure (article 216-A, § 10, LRP).

In conclusion, if the request is in terms, the Real Estate Registry Officer will promote the registration of the acquisition of the property by adverse possession in the registration of the property, publicizing the new legal position to third parties, allowing the availability of the right.

URBAN LAND REGULARIZATION

Brazil has experienced, especially in view of its late industrialization, a significant increase in urban occupation in the main centers of the country, due to the phenomenon of strong and accelerated urbanization. It resulted in the disorderly growth of land subdivision, often carried out without observing legal formalities in order to obtain profits.

That is to say, with the rural exodus and the pressing need for housing and housing, owners of large plots of land located in urban areas took advantage of the moment to fill their land, subdividing it into plots for construction, with the opening of new circulation routes.

However, the Urban Land Subdivision Law (Law No. 6,766/79), enacted with the purpose of protecting the future purchasers of the lots, requires a series of legal requirements in its article 18[26], in addition to the necessary registration of the subdivision in the Real Estate Registry Office.

In the same vein, the Real Estate Registry Officer must qualify the title presented to him in order to materialize the principle of legality, harmonizing with the purpose of the notarial and registry activity, that is, the guarantee of publicity, authenticity, security and effectiveness of legal acts and transactions (Article 1 of Law No. 8,935/94).

It happens that most subdividers, with the objective of making money and profiting at the expense of others, do not comply with such requirements or, what is worse, deceive needy people and those devoid of technical-legal knowledge, abusing their good faith and "alienating" the lots as if everything were correct.

It is in this context that irregular and clandestine allotments emerged, depriving their owners of the formal title of property, so as not to guarantee a minimum of patrimony, violating the greatest principle of the Brazilian Constitution, that is, the dignity of the human person.

It should also be noted that in addition to the lack of a document proving the right to property, the disorderly growth of cities has also caused urban and environmental issues to be affected.

In view of the chaotic scenario that took place in Brazil, it was necessary for the Legislative Branch to take action, enacting some laws with the aim of regularizing informal properties.

At the outset, it should be noted that the irregularities constitute deviations from rules, abnormalities, in short, isolated points outside the legal curve that guides the design of the normality of life in society. Normally, sanctions, sometimes punitive, sometimes

[26] Article 18. Once the subdivision or dismemberment project is approved, the subdivider must submit it to the real estate registry within 180 (one hundred and eighty) days, under penalty of expiration of the approval, accompanied by the following documents: I - title deed of the property or registration certificate, except for the provisions of §§ 4 and 5; II - history of the property titles, covering the last 20 (twenty years), accompanied by the respective proofs; III - clearance certificates: a) of federal, state and municipal taxes levied on the property; b) of real shares related to the property, for a period of 10 (ten) years; c) criminal actions with respect to crimes against property and against the Public Administration. IV – certificates: a) from the notary offices of protest of titles, in the name of the subdivider, for a period of 10 (ten) years; b) personal actions related to the subdivider, for a period of 10 (ten) years; c) of real encumbrances related to the property; d) criminal actions against the subdivider, for a period of ten (10) years. V – copy of the act of approval of the subdivision and proof of the term of verification by the City Hall or the Federal District, of the execution of the works required by municipal legislation, which shall include, at least, the execution of the circulation routes of the subdivision, demarcation of lots, blocks and public places and the works of rainwater drainage or the approval of a schedule, with a maximum duration of four years, accompanied by a competent guarantee instrument for the execution of the works; VI – a copy of the standard contract of promise of sale, or of assignment or promise of assignment, which shall mandatorily contain the indications provided for in article 26 of this Law; VII - declaration by the applicant's spouse that he/she consents to the registration of the subdivision.

annulling, are imposed, aimed at the return of the *status quo ante* or compensation. However, exceptionally and as *a last resort,* the irregular is converted into regular: it is regularized.

Vicente de Abreu Amadei[27] observes that regularization "was not a subject disciplined as an institution, category or genre, nor was it properly the object of theorizing, requiring a systematized scientific study".

Doctor continues:

> However, so vast are the real estate irregularities in Brazil, especially after the phenomenon of strong and accelerated urbanization from the middle of the last century, and still so many laws enacted and so many innovations of legal institutes in recent decades, referring to related regularizations, with a profile of broad scope and signs of systematization (e.g. Law No. 11,977/2009 and Law No. 13,465/2017), that, currently, it is already possible to forge a theory of land regularization, as strange as this may seem.

The general theory of land regularization has as its legal basis the recent Law No. 13,465/2017, which brought numerous regularization instruments, in addition to harmonizing with constitutional provisions, such as the social function of property, the social right to housing, and the dignity of the human person.

The definition of the institute under study here is a laborious task, given that it has a plural feature. Land regularization has an a) directive character, as the purpose and direction of the urban development policy (article 2, item XIV of the City Statute); b) matrix, as a genre of various forms of regularization, encompassing the multiplicity of aspects of building irregularities and c) procedural, insofar as it encompasses several stages, instruments, and acts aimed at regularization (as extracted from article 9 of Law No. 13,465/2017: a set of legal, urban, environmental, and social measures aimed at the incorporation of informal urban centers into urban territorial planning and the titling of their occupants).

Urban land regularization (referred to by Law No. 13,465/2017 simply as Reurb) presents, in general terms, two very distinct species. On the one hand, we have the urban land regularization of social interest (Reurb-S), applicable to informal urban centers occupied predominantly by low-income populations, so declared in an act of the municipal Executive Branch (article 13, I, of Law No. 13,465/2017) and, on the other hand, urban land regularization of specific interest (Reurb-E), applicable to informal urban centers occupied by a population not qualified in the previous hypothesis (article 13, II, of Law No. 13,465/2017).

[27] AMADEI, Vicente de Abreu; PEDROSO, Alberto Gentil de Almeida; MONTEIRO FILHO, Ralpho Waldo de Barros. First impressions of Law No. 13,465/2017. ARISP, 2018, p. 11.

This economic and social criterion produces significant effects in the course of regularization. That is to say, in the land regularization of social interest (Reurb-S) there is flexibility of requirements, reduction of costs, specific application of a regularization instrument, in short, several urban, environmental, administrative, registration, economic and instrumental benefits.

The Reurb-E forecast opens space for land regularization of informal urban centers in general, but without the advantages of Reurb-S.

In Amadei's lessons[28]:

> This does not mean that Reurb-E is not fostered or that the new law has not extended some facilities to its implementation. On the contrary, Law No. 13,465/2017 was rich in fostering and expanding the universe of land regularization in general, that is, for Reurb (genus) to also include Reurb-E (species). However, its degree of favoritism continues to be much lower than that of Reurb-S, not least because the aforementioned new law not only correctly recognizes the need to support and reduce bureaucracy in the regularization of low-income settlements, but, in this direction, it was even more generous.

In view of the pluralistic nature of land regularization, it is possible to envision numerous legal instruments aimed at its implementation, namely (article 15 of Law No. 13,465/2017): land legitimation and legitimation of possession; adverse possession; the private judicial expropriation provided for in article 1,228, §§ 4 and 5 of the Civil Code; the collection of vacant property; the real estate consortium; expropriation for social interest; the right of preemption; the transfer of the right to build; the concession of special use for housing purposes; the granting of the real right of use; donation; and buying and selling.

CONCLUSION

Urban land regularization is an effective mechanism for the incorporation of informal urban centers into urban territorial planning and the titling of their occupants. It represents, therefore, an effective instrument for the realization of the social function of the city and property and, ultimately, the dignity of the human person.

That is to say, housing was, is and always will be sought by all humanity as an unfolding of the human essence itself, that is, the need for protection, shelter, comfort and security of its occupants.

Today, housing has new functions, especially in its sociological aspect. That is, it represents a decisive element in the construction of human individuality (resulting from the

[28] AMADEI, Vicente de Abreu; PEDROSO, Alberto Gentil de Almeida; MONTEIRO FILHO, Ralpho Waldo de Barros. *Op. cit.,* p. 17.

principle of the dignity of the human person, constitutionally provided for in article 1, item III, of the 1988 Charter of the Republic), in addition to having an off-balance sheet character.

It can be safely stated that currently the function of the residence is no longer just a sphere of human protection, but a feature of what we call the dignity of the human person. Housing is, without a doubt, a natural right of the individual, essentially linked to the human condition and indispensable to the dignified survival of any person.

In view of the provision expressed in article 15, II, of Law No. 13,465/2017, adverse possession, including that processed extrajudicially, is one of the instruments of land regularization, allowing the prescriber to convert his possession into property, formalizing and documenting the right in rem. With the insertion in the system, the owner will enjoy the benefits of a regularized property: possibility of obtaining credit by offering the property as collateral for the operation; incorporation into a person's estate; valuation of the property in view of its formality; permission to enforce public services, among others.

REFERENCES

1. Amadei, V. A., Pedroso, A. G. A., & Monteiro Filho, R. W. B. (2018). Primeiras Impressões Sobre a Lei n.º 13.465/2017. *ARISP*.

2. Azevedo, Á. V. (2014). *Direito das Coisas*. São Paulo: Atlas.

3. Bodnar, Z. (2015). Regularização Registral Imobiliária na Efetivação de Direitos Fundamentais na Cidade Sustentável. Dissertação (Pós-Graduação em Urbanismo, História e Arquitetura da Cidade), Universidade Federal de Santa Catarina, Florianópolis.

4. Dip, R. H. M. (2014). In Alvim Neto, J. M. de A., Clápis, A. L., & Cambler, E. A. (Eds.), *Lei de Registro Públicos Comentada* (p. 1.068). Rio de Janeiro: Editora Forense.

5. Farias, C. C. de, & Rosenvald, N. (2016). *Curso de Direito Civil* (Vol. 5, 12ª ed.). Salvador: Editora JusPodivm.

6. Murakami, R. C. (2016). Usucapião extrajudicial. Dissertação (Pós-graduação lato sensu em Direito Imobiliário Aplicado), Escola Paulista de Direito, São Paulo.

7. Peluzo, C. (2024). *Código Civil Comentado* (18ª ed., p. 1.130). Santana de Parnaíba: Manole.

8. Rodrigues, F. L., & Ferreira, P. R. G. (2013). *Tabelionato de Notas* (p. 119-0). São Paulo: Saraiva.

9. Weizenmann, L. C. (2016). In Paulino, R. (Ed.), *Repercussões do Novo CPC: Direito Notarial e Registral* (v. 11, p. 186). Salvador: JusPodivm.