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**Outline for a National Strategy for a
Unified Title Registration System in Ukraine**

Prepared for
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Course of Work

The mission was conducted by Justin T. Holl, Jr. and Alexander Khotsyanovsky. During the course of the mission we met with Anatoly Bondar, head of the Main Administration of Geodesy, Cartography, and Cadastre; Alexander Kimlach, Mayor of the City of Vishgorod; Mark Lundell and Iain Shuker, Project Managers of the World Bank Title Registration Project; Bronislav Stichinsky, Ministry of Justice; Viktor Turakevich, former first deputy of the Land Resources Committee and present deputy of the Ukraine Institute for Land Use; Igor Popiv, President of Intelligent Systems; Sigolene Brisou, Project Coordinator for the TACIS European Community Title Registration Pilot Project; Volodya Nosik, attorney-at-law and member of the PADCO, Inc. Land Unit; Vladimir S. Gubarev, deputy head of the State Committee for Land Resources; James Nealy, USAID Banking Project in Ukraine; Daniel Bilak, Counsel to the Ministry of Justice; Igor O. Vergeles, Deputy Mayor of the City of Chernihiv; the deputy architect from the city of Sudak, Crimea; and others.

BACKGROUND

Both Ukrainian specialists and international experts agree that an efficient title registration system must be a part of any land reform effort in Ukraine. The rationale is that such a system is necessary to attract investment by using land and other real estate as security, thus unlocking the wealth of non-liquid real estate assets and making the funds available to the people of Ukraine. An appropriate title registration system makes the process of title protection more efficient and provides for certainty of title so that investors know who they should deal with when engaging in real estate transactions and know exactly what rights they acquire.

There is presently a general lack of confidence in ownership in Ukraine, because the institutional jurisdiction for the proper maintenance of the real estate records is vague and it is not certain which of the governmental agencies has the actual authority to maintain a title registration system. At the same time there is no single ministry, committee or department in Ukraine which could maintain a fully functioning title registration system which incorporates agricultural land, commercial land, industrial land, buildings and living units. The Ministry of Justice, the State Committee for Land Resources, the State Committee for Urban Development and Architecture, the Main Administration of Geodesy, Cartography and Cadastre, the State Committee for Housing and Municipal Economy, the Bureau of Technical Inventory, and the State Property Fund, through their counterparts at the local level, all play some part in maintaining real estate records, though none is capable of maintaining a complete title registration system itself. Yet these institutions are struggling among themselves for control of the land information records, including registration of titles. The specific role of each of these institutions has not been clearly defined in the era of market reform and each, to a certain degree, has set out on its own course to implement the registration process.

To create a unified organization that takes into account the interests of all the committees and administrative agencies is an extremely complicated matter both politically and logistically. Defining the exact role of these committees and other agencies in the area of land reform is further complicated by the fact that the interests of institutions at the national and oblast level do not necessarily coincide with the interests of corresponding affiliates at the regional and local level. Certain efforts have been made in the past by these institutions to start to discuss possibilities for the resolution of the institutional inadequacies, but these efforts have effectively been abandoned.

On January 31, 1996 the Cabinet of Ministers of Ukraine issued "Protocol No.1 of the Sitting of the Cabinet of Ministers, Part 3 'On the Status of Reforms in Land Relations'" compelling the head of the State Committee for Land Resources, the Ministers of the Ministry of Justice, the Ministry of Economy, the Ministry of Finance, the head of the Main Administration of Geodesy, Cartography and Cadastre, and the head of the State Committee of Urban Development and Architecture, to submit within two months proposals concerning the establishment of a state registration system for land and

other realities. Thereafter, a substantive title registration draft law would have to be finalized, presumably for introduction to the parliament. Proposals are being developed by the State Committee for Land Resources, the Ministry of Justice and by the Main Administration of Geodesy, Cartography and Cadastre. The Protocol contemplates a system which includes "other realities" which would include buildings and living units. The State Committee for Housing and Municipal Economy should have been included in the Protocol in order to avoid continued fragmentation of the issues and responsibilities.

THE CURRENT STATUS OF TITLE REGISTRATION

The lack of a uniform plan at the national level for title registration creates a problem, because privatization is proceeding at the local level throughout Ukraine even without an adequate legal basis. Although there is presently only a sketchy and disjointed basis for title registration at the national level as set out in the present Land Code, title registration is being implemented *de facto* and *de jure* at the local level. Many cities have already started to arrange for the implementation of some sort of system which is loosely referred to as a title registration system.

There is a difference between a juridical registration system and a general cadastre. A system that focuses just on legal rights in land is more critical for investors than a system that tracks a variety of technical attributes of the land, because the technical attributes of a parcel of real estate are objective and can be investigated by anyone who needs the information by making a detailed inspection of the premises. The legal rights, in contrast, are purely abstract and cannot be determined by an inspection of the real estate. There must be a legally recognized system to inform investors of all the rights and limitations of use of the real estate.

A juridical system has the primary purpose of putting all persons dealing with a parcel of real estate on notice of the outstanding, valid legal rights. Another purpose is the protection of those legal rights which have been registered. To do this the system must provide a mechanism for private persons to easily determine the ownership and current encumbrances on a parcel of land or real estate. The system must be developed to engender confidence and stability in private rights in real estate and to establish an adequate, reliable record of these rights. Ideally the government would legislatively guarantee the reliability of the system. Systems which concentrate on technical attributes of real estate rather than the legal rights fail to accomplish this purpose.

Nevertheless, more attention has been given by local officials to technical cadastres, because of the historical, technical nature of land inventories and cadastral work, and the previous lack of private legal rights in real estate. For this reason many institutions and organizations are concentrating on updating mapping systems and automating these. Less attention is being given to formulating appropriate systems to track legal rights and preparing forms for real estate transactions, which not only evidence these rights, but also are formulated for convenient data entry. There is an overemphasis on projects (under the guise of title registration) which focus on such activities as

vectorizing maps, cataloguing land use and similar activities. Such projects use the high standards of technical expertise omnipresent in Ukraine. However, such systems generally fail to recognize the need for a proper juridical registration system, which incorporates a methodology which recognizes the dynamics necessary to conveniently track the legal rights in real estate.

NATIONAL LEVEL PREPARATION

In May, 1995 key officials of the above mentioned institutions came to a general agreement that a system designed to support privatization and the expedient transfer of legal rights in real estate must:

1. be limited to registering legal rights in land and property,
2. have full legal authority and protection, and
3. be kept separate from all other types of land information such as land use inventories, housing records, tax assessment, zoning records, environmental data, and the like.

This is important, because this understanding, though present at the national level, is not being properly communicated to local officials presently establishing land information systems. Proper policies must be addressed from above in order to avoid *ad hoc* implementation at the local level. It is essential that there be uniformity of practice and procedures throughout Ukraine so that those who need access to the real estate information can rely on the same practices and procedures no matter where in Ukraine the real estate is situated.

To establish a unified front for land reform and title registration, specialists from as many of the interested national committees, ministries and support organizations should be formed into a Working Group under the direct control of one of the vice-presidents of the Cabinet of Ministers to design and implement a national plan for title registration in Ukraine. Technical assistance could be provided to this Working Group, financed by international donor organizations, to work toward an organized framework for title registration, which takes into account the diversified functions of each of the interested committees and ministries. The functions of the present state institutions would be identified and analyzed within the context of a functioning juridical registration system. A detailed framework appropriate for Ukraine, given the historical and the contemporary functions of the existing institutions, would be developed and submitted to the Cabinet of Ministers. A Decree should then be prepared for signature by the President incorporating the agreed upon framework.

As a second task a "Law for the Registration of Land and Other Realities" would be prepared by the Working Group, which incorporates the proper provisions which make the registration of rights in real estate mandatory, establish security of titles, incorporate

provisions for the priority of rights based upon the chronological order of the registration of the rights, provide for a form of report that can be relied upon by investors, give legal effect to this report, provide an appropriate form of governmental guarantee of the rights, and provide a mechanism for adverse claims and dispute resolution.

CURRENT INSTITUTIONS

The present Land Code already grants authority to the local units of government to provide juridical title registration. The Land Code contains the following provisions:

Article 9:

The authority of rural, settlement and city radas will extend to:

- (2) the registration of ownership rights, land use rights, and lease contracts;

Article 10:

The authority of city radas will extend to:

- (2) the registration of ownership rights, land use rights, and lease contracts;

Article 11:

The jurisdiction of rayon radas will extend to:

- (2) the registration of ownership rights, land use rights, and lease contracts;

Article 23:

The right of ownership or the right of permanent use will be confirmed by state documents issued and registered by rural, settlement, city and rayon radas.

The national level participation therefore must extend, not to the actual implementation of the juridical title registration system in each locality, but only to the establishment of standard practices and procedures to be implemented by the local radas.

The State Committee for Land Resources

Advantages

- This is the primary institution involved with the maintenance of records concerning the privatization of land, at least in rural areas.
- It has historically maintained the records regarding the land inventory and retains this function under the present Land Code.
- Article 98 of the Land Code provides for the registration of deeds as part of the land inventory.
- It has jurisdiction over the cadastre and has approximately twenty thousand trained specialists throughout Ukraine well accustomed to land use and distribution, and has been keeping the land inventory for years.

Disadvantages

- The land inventory is not title registration and much of the information collected for the land inventory need not be collected at all to support private market real estate transactions.
- The main focus of Land Resources Committees is rural land.
- The Land Resources Committee does not have jurisdiction over buildings, but only land.
- The Land Resources Committee does not have jurisdiction or experience regarding individual dwelling units.
- This agency does not register mortgages, leases or other encumbrances on real estate.

The State Committee for Urban Development and Architecture

Advantages

- There is a Center for Construction and Cadastre, which is subordinate to the State Committee for Urban Development and Architecture which could be used to establish a unified registration system.
- This Committee imposes restrictions on the use of urban land and these restrictions should be registered in a juridical registration system.

Disadvantages

- The main responsibility of this Committee is to coordinate planning and general development within cities.
- Another function is to develop plans for the completion of unfinished construction.
- Registration of legal rights has not been part of this activity.
- The Center for Construction and Cadastre is primarily established to provide normative documentation and procedures to support building construction.
- This Committee is not responsible for registering deeds, mortgages, leases or other encumbrances.

The Ministry of Justice

Advantages

- A juridical title registration system is intended to secure the legal rights of ownership, mortgage, lease etc. and should have direct input by members of the legal profession.
- Rayon level notary offices are subordinated to a special unit of legal aid of the Ministry of Justice.
- Notaries must authenticate documents such as buy-sell agreements, leases, and mortgages and make a register of these transactions.

Disadvantages

- The Ministry of Justice has never dealt with land issues in the past.
- It does not have the resources or man-power to implement title registration across Ukraine.

The Main Administration of Geodesy, Cartography and Cadastre

Advantages

- Topographical and cartographic support is provided by the Main Administration of Geodesy, Cartography and Cadastre.

Disadvantages

- The Main Administration does not have direct jurisdiction over land issues.
- It is not involved in tracking rights in buildings and living units.

The State Committee for Housing and Municipal Economy

Advantages

- The Bureaus of Technical Inventory are under the subordination of this committee.
- The Bureau of Technical Inventory is the authority which is presently responsible for the maintaining an inventory regarding buildings and apartments.
- As part of this activity the Bureaus of Technical Inventory maintain records regarding the ownership of buildings and apartments.
- The State Committee for Housing and Municipal Economy has jurisdiction over approximately 30% of all privatized real estate in Ukraine in the form of buildings and apartments.

Disadvantages

- At the local level some of the BTI's are starting to become private enterprises and as soon as they do this they lose their subordination to the State Committee for Housing and Municipal Economy.
- Private enterprises should not control exclusive access to real estate information.
- There is great ambiguity concerning the land between buildings in urban areas and land specialists will be needed to resolve these issues

The State Property Fund

Advantages

- The State Property Fund has as its main objective the privatization of enterprises and as a part of this function it also registers leases of these enterprises for the entire parcel upon which the enterprise is situated.

Disadvantages

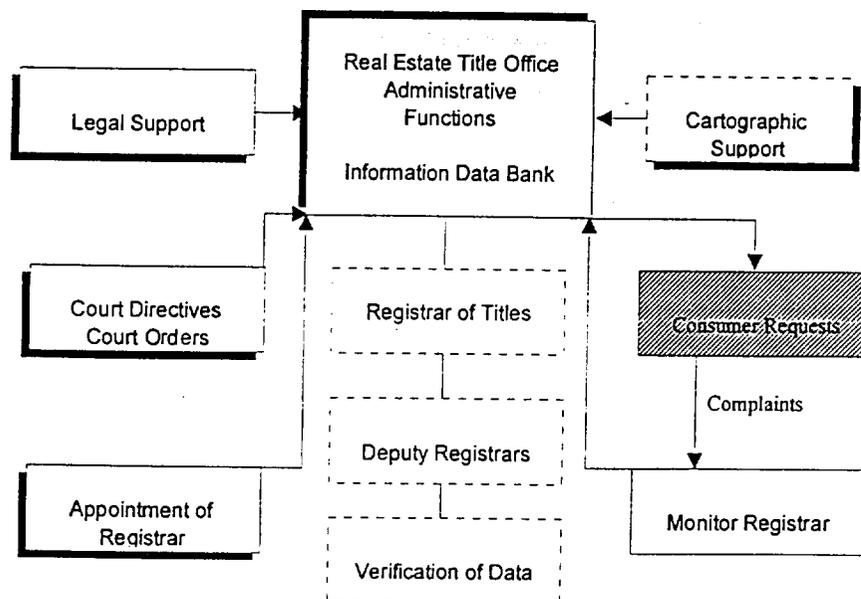
- The State Property Fund has no serious interest in maintaining a juridical registration system for land and other real estate.

Other institutions which have at least an ancillary interest in title registration in Ukraine are the Ministry of Finance, the Ministry of Economy, the Ministry for Territorial Planning, and the State Committee on Construction and Communal Services.

A review of the functions of a juridical title registration system shows that they cut across the jurisdictional competencies of all of the institutions mentioned in this section, but none has jurisdiction over all or even a majority of the component parts.

TITLE REGISTRATION FUNCTIONS

REAL ESTATE TITLE REGISTRATION FUNCTIONS



Administrative office

The primary office for the administration of a title registration system is a Land Title Office or Registry of Legal Rights. The activities of this office are:

- Receive documents evidencing the legal rights

These documents would be drafted by the same persons who are presently responsible for drafting the documents, e.g. state notaries, local radas etc. The documents, when properly completed would be submitted to the title registration office.

Data needs to be properly entered into the system by the personnel of the title registry according to the following general procedure:

1. Identify the parcel of real estate which is the subject of the document.
 2. Determine whether or not the document affects a parcel that has previously been registered or not.
 3. Check that all necessary notary acts and required seals are on the document.
 4. Verify that all necessary payments have been made.
 5. Verify receipt for necessary filing fees.
 6. Check the names of the parties to the instrument to be sure that they are correct on the document.
 7. Confirm that the document is appropriately signed and acknowledged by the parties to the instrument.
 8. Obtain the current title report and check the above information with the information contained on the title report.
 9. If any of the required information is lacking the document must be rejected for registration, accompanied by a detailed reason for the rejection and how the problem can be remedied.
 10. If the document contains the required information and is otherwise legally sufficient it must then be assigned a registration document number either manually or automatically.
 11. Then the proper information is keyed into the computer system.
 12. After this information is keyed into the database, the title report must be processed according to the established procedures, a new report created with accurate data and the old report archived.
- Verification of the information for the sake of accuracy of the records.
 - Information requested by the public and other agencies needs to be supplied.
 - Personnel:

1. Registrar of Titles who is in charge of all decisions regarding the operation of the land office. He should have immediate access to appropriate legal advice.
2. Deputies who will receive and process the documents registered in the land office.
3. Verifiers
4. Personnel to assist clients and consumers in accessing the title registration information needed for their transactions.

Cartographic Support

- Cartographic information needs to be supplied to the registration office.
- Cartographic information needs to be updated when new subdivisions of a parcel are made or when multiple parcels are combined to make a new parcel.

There is a serious problem with State Acts as presently used in Ukraine. It is extremely difficult to identify the parcels described in the State Acts with a parcel on a map of the city or rayon. The following are cogent comments:

1. The State Act contains no unique legal description of the parcel.
2. There is no uniform system for legal description of real estate or national cadastral number system.
3. The State Act contains no reference to any block in the city where the land is located. Uniform block numbers have not been established.
4. The State Act contains no reference to the garden or dacha associations to help find the location of the parcel referred to.
5. There are no ties to fixed monumentation, geodetic or otherwise, to show where the parcel is.
6. There are no geographic coordinates of the parcel shown on the State Act.
7. There is no numbering of points that can lead one back to coordinates.
8. The dacha and garden associations may keep maps with one numbering system for the lots and other local authorities keep another numbering system.
9. There can be several parcels in the same general area with the same parcel number on the local maps.
10. There is no address of the parcel on the State Act.
11. The plats or sketches on the State Acts give no bearings.
12. The cardinal directions are not shown on the State Acts and some lots may be oriented with north up while other parcels are oriented so that a different direction is up.
13. The serial number displayed on the face of State Acts may be a number assigned by the Institute for Land Use. It is meaningless to other specialists. If the Institute does not do the surveying in anticipation of issuing a State Act, a serial number may be arbitrarily assigned.

- Cartographic experts should be available on site to assist the public in identifying cadastral numbers or other information so that information as to legal rights can be found in the database if a parcel is identified on the maps.
- Most surveying should be done by the private sector, but the surveys should be reviewed by a local governmental agency to ensure accuracy and that any new survey properly ties into existing survey information.
- The survey information must be added to the title registration database and become part of the legal registry.

Legal Support

- If there are discrepancies or difficult legal issues to be resolved, proper legal expertise must be available to the registration office.
- Courts should be available to resolve real estate disputes.
- Courts issue administrative directives or court orders after proper procedures to Administrative Land Office and full faith and credit must be given to these directives and orders.

Monitoring and Control

- There should be a procedure to compel a recalcitrant registrar to perform the general functions of the office.
- If the registrar refuses to register a particular transaction there must be an appeal procedure and the registrar must comply with any orders or directives which result from the appeal.
- There should be a control mechanism in case the registrar office does not complete its mandated functions in a timely fashion.
- The registration office should not be run as an entrepreneurial activity of the registrar or staff, but should inure to the benefit of the government.
- There must be a procedure for removal of the registrar for gross negligence or intentional refusal to carry out his functions.

PROPOSAL FOR LOCAL IMPLEMENTATION OF A NATIONAL TITLE REGISTRATION SYSTEM

From the perspective of investors involved in real estate, title registration means the creation and maintenance of an information system that provides “facilitation of market real estate transactions”. A good title registration system is oriented to the needs of the public and only secondarily to the needs of the institution maintaining the records. In Ukraine one encounters the attitude that the institution is more significant than the customer. Ukrainian counterparts at the State level make the argument that a particular committee is better suited for jurisdiction over title registration because it has complete vertical hierarchy from the State level to the local level. This, in fact, is not a convincing argument, because for the actual realization of useful title registration offices the power hierarchy is relatively unimportant. It is the local competence that is key. Local specialists know the local records, the local geography, the qualities and desirability of their local areas and the existing local real estate market. The same is true of the potential customers such as banks and real estate brokers. They work on a daily basis in specific localities, have working relations with the local specialists and authorities and have little or no reason to be in contact with other officials or seek information at the national level.

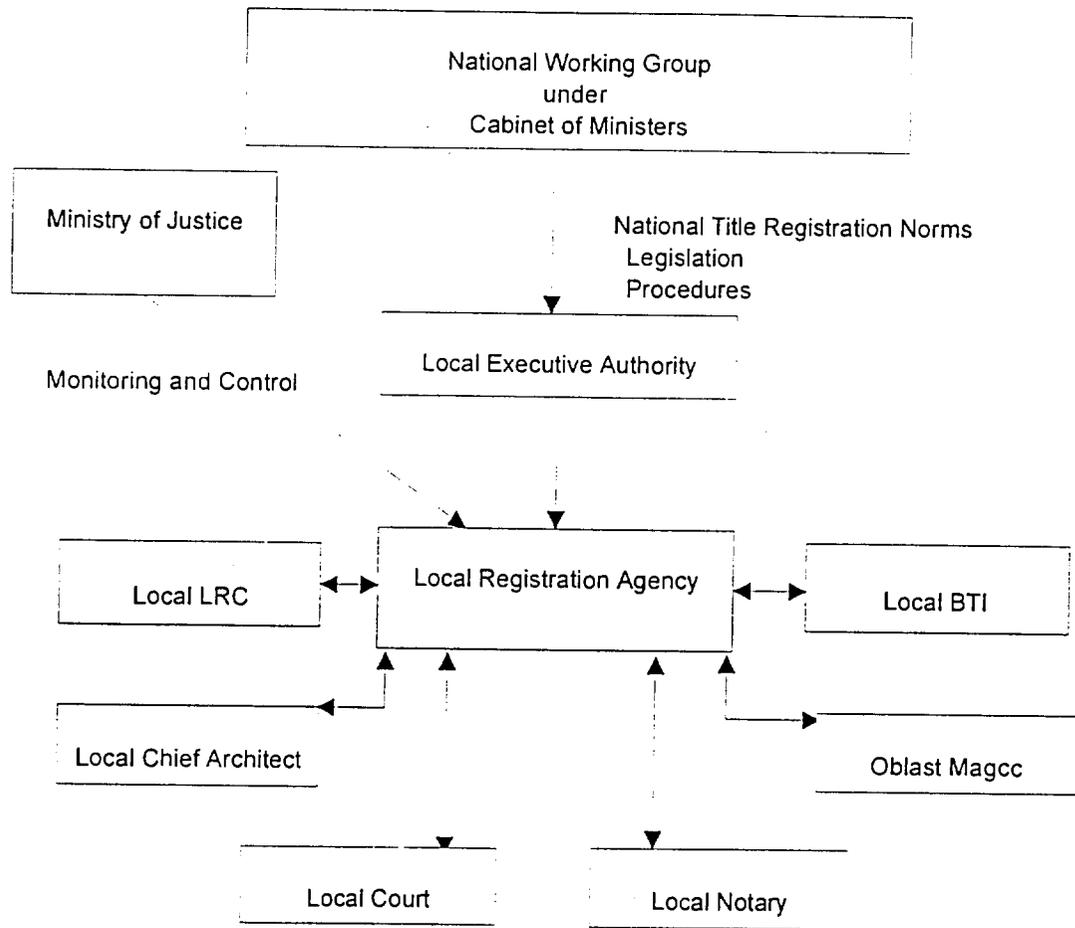
From this standpoint it is significant that the experts at the local level often have very good relationships among themselves and are quite amenable to working together in implementing title registration. In some localities these agencies are already working together. A system in each locality (rayon or city) for the registration of real estate should be established by resolution of the local executive authorities. The local agency for title registration should be a new agency independent of the existing institutions, which is established solely for the purpose of maintaining information regarding the legal rights in real estate. The agency must comply with national norms established based upon the efforts of the national working group, but within the norms the structure of the agency may vary from location to location depending upon the political and practical strengths of the local institutions presently having jurisdiction over functions regarding real estate information.

The title registration system and functions of the registration office should be independent of other substantive obligations of the local committees, which would continue with their present activities and responsibilities. The title registration office can be established simply for the maintenance of the information and be supported by state legal guarantees. Each institution contributes the information relevant to juridical registration and each institution should have access to the information maintained. At the local level fees charged by the registration office could be apportioned among the institutions contributing the information as well as the registration agency and this apportionment could be based upon volume of records provided, on the value of the real estate, which is the subject of the transactions, or on some other rational basis.

The institutions at the state level would have responsibility for establishing national policy in the areas of their jurisdiction. So, in fact, there would be no unification under one institution at the state level. Only at the local level would there be joint effort, and then not as to substantive matters, but only on maintaining one record system

tracking rights in real estate. All other functions of the local institutions would remain the same as they do today, or as amended from time to time by state decrees or laws.

This creates in fact a situation which is novel in countries that are accustomed to a command economy where the vertical subordination was of key importance, because the local registration offices would not be channeling information up the chain of subordination. Of course key policy questions regarding title registration must be made at the state level and this could be done by the Working Group.



CONCLUSIONS

- There is no single ministry, committee or department in Ukraine which could maintain a fully functioning title registration system which incorporates agricultural land, commercial land, industrial land, buildings and living units.
- The Ministry of Justice, the State Committee for Land Resources, the State Committee for Urban Development and Architecture, the Main Administration of

Geodesy, Cartography and Cadastre, the State Committee for Housing and Municipal Economy, the Bureau of Technical Inventory, and the State Property Fund would play a part in developing a unified system of title registration.

- Privatization is proceeding at the local level throughout Ukraine.
- Proper policies must be addressed from above in order to avoid *ad hoc* implementation at the local level.
- It is essential that there be uniformity of practice and procedures throughout Ukraine.
- National committees, ministries and support organizations should be formed into a Working Group under the direct control of Cabinet of Ministers.
- A “Law for the Registration of Land and Other Realities” should be prepared by the national Working Group.
- The present Land Code already grants authority to the local units of government to provide juridical title registration.
- A juridical title registration system cuts across the jurisdictional competencies of all of the institutions.
- A good title registration system is oriented to the needs of the public and only secondarily to the needs of the institution maintaining the records.
- Local specialists know the local records, the local geography, the qualities and desirability of their local areas and the existing local real estate market.
- A system in each locality (rayon or city) for the registration of real estate should be established by resolution of the local executive authorities.
- The local agency for title registration should be a new agency independent of the existing institutions.
- The local title registration agency must comply with national norms established based upon the efforts of the national Working Group.
- There would be no unification under one institution at the state level.