

Land subdivision in Norway. A comparison with Denmark and Sweden

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SUMMARY

The Scandinavian countries Norway, Sweden and Denmark are closely related and share a common history in many ways. Norway has been in union with both countries during the last 200 years. More than 400 years in union with Denmark ended in 1814, and the union with Sweden starting in 1814 ended in 1905. Despite these close relations between the three countries, the cadastral systems are different.

The majority of land subdivisions in Norway are conducted by local authorities in accordance with the Cadastral Law. A smaller number of land subdivisions are conducted by the Land Consolidation Courts in accordance with the Land Consolidation Law. This article presents the system of land subdivision in Norway, from the owner's application for permission for land subdivision to assignment of a new identification number to the new property, which is then ready for sale and possibly mortgaging. Conditions that must be met before the municipality can give permission for land subdivision and the subdivision process are described, as well as methods used to resolve boundary disputes. The Norwegian process is then compared with similar processes in Sweden and Denmark, including cost benchmarking and discussion of the quality of the land subdivision process.

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1. INTRODUCTION

The paper is based on an article by the same author in the anthology *Perspektiver på jordskifte*, published in 2009 (Gyldendal Norsk Forlag ISBN 978-82-05-39080-5). The book was published in connection with the 150th anniversary of the Land Consolidation Court.

In 2007, 32300 new land properties and 2200 new land leases were established in Norway. 4400 cadastral surveys over existing land properties were conducted. In most cases these were existing properties established before 1980 by laymen in rural areas, with no mapping.

2. LAND SUBDIVISION IN NORWAY

2.1 Purpose oriented land subdivision

The purpose of a new land parcel determines whether a land subdivision can be carried out legally. In Norway, subdividing land that can be used for agriculture and forestry is prohibited by law, cf Land Law § 12. Consent to a land subdivision of agricultural and forestry land might be given if it is favorable for public interests, or if land subdivision can be justified for economical reasons. Furthermore, land subdivisions in the 100 meter coastal zone are forbidden, cf Planning and Building Law, except for areas in the coastal zone having an approved land use plan. Prohibition does not apply for various purposes, such as agriculture or fisheries, if the municipality has allowed this in the municipal plan. Furthermore the prohibition will not prevent redemption of a built land lease in accordance with the Land Lease Law. The municipality can introduce restrictions on land subdivisions and buildings in the municipal plan. The municipality may grant exemptions from the restrictions if certain conditions are in place. We thus have a system of purpose-oriented land subdivision in Norway. A landowner who applies for a subdivision must state the purpose of the new land parcel. The purpose of the new land parcel will be normative for permission given by the municipality and for development of the new land parcel. These conditions will usually be taken into account when a building application is processed at a later stage.

2.2 The municipality must give permission for land subdivision

Land subdivision is an initiative that requires an application for permission from the municipality in accordance with the Plan and Building Law. Municipal permission is also required for land leases for more than 10 years. There are no requirements for qualifications of the applicant. Consequently, a land owner can present an application directly to the municipality. There are no specific requirements about how the new property is to be presented in map form in the application. My experience is that requirements for mapping vary greatly from municipality to municipality, and that hand-drawn sketches may be

acceptable. The applicant must notify neighbors prior to sending the application to the municipality. Before the application is processed the municipality must consider whether a new notification of neighbors is necessary. The Plan and Building Law has several requirements and conditions with regard to land subdivisions. Land subdivisions are prohibited in a 100-meter coastal belt. The municipality may also lay down a temporary prohibition against land subdivisions and new buildings in areas in which planning is pending. New properties and leases must not be established in a way which obstructs building purposes. The Plan and Building Law sets out requirements for roads, water and wastewater. A building plot can only be created if it has secured access by either 1) legal access to a road that is open to public access, 2) right of way secured by a registered document or 3) other forms of secured right of way that the municipality finds satisfactory.

Exits from public roads must be approved by the public road authorities. Disposal of wastewater must be in accordance with the Pollution Control Act. The municipality may determine that the property shall be connected to public sewer. In planned areas, roads, water and sewer must be established prior to the land subdivision. The municipality may give permission for land subdivision on the condition that such requirements are met before the new property is built upon.

According to the Land Law § 12, it is forbidden to subdivide land that is used or may be used for agriculture or forestry cf. section 2.1 above. The agricultural authority, which today is the municipality, may consent to land subdivision if there are strong reasons such as public interests or economic returns. Permission may be required by other authorities e.g. road authorities or port authorities.

It is up to the municipality to organize the procedures for land subdivisions.

Once the application is complete it shall be considered and decided on by the municipality as soon as possible, and within a maximum of 12 weeks. A permit for land subdivision is valid for 3 years.

2.3 Implementation of land subdivisions

After permission is granted, the land subdivision is carried out by cadastral survey. Responsibility for carrying out cadastral surveys in Norway rests with the municipalities as a mandatory task. Requisition for a cadastral survey is usually delivered to the municipality in conjunction with an application for land subdivision, and a standard form is used for this.

The municipality is responsible for execution of cadastral surveys under the provisions of the cadastral law. The municipality may entrust others, typically private surveyors, to carry out the survey on behalf of the municipality.

In the cadastral survey the actual land subdivision is carried out: that is, a part of a property is separated and established as a new property. A major event in the cadastral survey is the field meeting – usually on-site. In general the parties shall be notified at least 2 weeks in advance

by mail, but the parties can agree on a shorter notification period and by telephone. The field meeting is a meeting that lasts an average of 1- 2 hours. Existing boundaries are detected, marked if appropriate marking is lacking, and surveyed. New boundaries are marked and surveyed. After the survey the new property is registered in the cadastre, and a notice is sent to the land register. When the new property is registered in the cadastre and the land register, it is considered to be established.

A cadastral survey may be appealed to the County Governor. It is the surveyor's execution, ie, first and foremost marking, surveying and registration in the cadastre that is subject to the appeal. Lack of notification may also be appealed. The land owner's detection of a boundary cannot be appealed. The municipality cannot determine the boundary if there is a boundary dispute. The parties may appoint an arbitrator, typically the land surveyor, and thus resolve the dispute, but arbitration is not used in cadastral surveying in practice. If agreement is not reached, the land surveyor can postpone the survey. If the parties fail to reach consensus, the normal procedure is that the cadastral survey will be completed by registration of the boundary as uncertain or disputed in the cadastre.

It is then up to the parties whether they will allow the boundary dispute to rest, or bring it in for a decision in the courts, either the Land Consolidation Court or District Court. The most common is to bring the matter to the Land Consolidation Court. There may be several reasons for this. In the previous cadastral law (replaced in 2010 by a new cadastral law) the possibility of going to the Land Consolidation Court was specifically mentioned. Another reason would be that the Land Consolidation Court, in addition to deciding on the boundary dispute, also marks the boundary and ensures registration in the cadastre and land register. If the dispute is resolved in District Court, marking and registration are not ensured. The final and decisive factor is often the fact that legal costs are lower in the Land Consolidation Court. The District Court often involves lawyers and experts on a larger scale.

Cadastral Research 2007¹ found that 86% of the cadastral surveyors would recommend the parties to go to the Land Consolidation Court when there is a dispute. Only 3% of the surveyors would recommend parties to go to the District Court.

A boundary dispute should not prevent the survey from being completed by registration in the cadastre and land register. It should, however, be registered in the cadastre that the boundaries are disputed.

2.4 Land Consolidation Court's tasks of land subdivision

For land under land consolidation, only the Land Consolidation Court can conduct a land subdivision, except in cases where the Land Consolidation Court delegates the subdivision to the municipality. This rule applies to the entire property which is under public land consolidation, including parts of the property outside the area under land consolidation. New identification numbers must always be assigned by the municipality. The provisions of the

¹ Research carried out in 2007 on cadastral practice. Bergen University College. *Kartforretningsundersøkinga 2007.*

Land Consolidation Law are to be followed as appropriate. At appeal proceedings, the rules for appeal under the Land Consolidation Law are to be followed. When the case is completed it is sent to the municipality, which ensures registration in the cadastre and land register.

According to the Plan and Building Law, the municipality must give permission before a land subdivision takes place. For agricultural land, consent to land subdivision must be given by the municipality according to the Land Law.

Land Consolidation Courts perform only a few land subdivisions, not more than a few hundred, per year. The reporting system of the land consolidation does not give a full overview of land subdivisions carried out by the Land Consolidation Court.

In the event of a boundary dispute, the municipality does not have authority to resolve the dispute. The boundary dispute can be referred to arbitration to determine where the boundary goes, if the parties agree to this, but this arrangement is very little used in practice. Most boundary disputes are brought to the Land Consolidation Court. The Land Consolidation Court thus has an important role in land subdivisions in which there is a boundary dispute, since such disputes are settled mainly as cases presented to the Land Consolidation Court. Such cases will in a sense be resolved in the Land Consolidation Court, if the landowners do not prefer to live with the dispute. Cadastral surveys by the Land Consolidation Court may include not only property boundaries, but also easement boundaries and lease boundaries. A landowner may also call for an ordinary boundary survey at the Land Consolidation Court, even if there is no dispute, in order to get the boundary clarified, marked and surveyed. If a landowner brings a boundary dispute to the District Court there must be a dispute about the boundary. The Land Consolidation Court shall always mark the boundaries in the field after its decision, which the District Court does not do. When the District Court's decision is actualized in the field, a decision based on evidence such as descriptions and maps, it may well cause a new controversy regarding the field interpretation of the court's decision. This is avoided when the dispute goes to the Land Consolidation Court.

3. LAND SUBDIVISION. THE SYSTEMS IN DENMARK AND SWEDEN

This chapter is based on the report *Dannelse og transaktioner vedrørende fast ejendom i de nordiske lande*, (Property formation in the Nordic Countries) published in 2006. The report gives identically structured descriptions of amongst other things, property formation in the Nordic Countries².

3.1 Denmark

The Danish chartered surveyor (Landinspektør) is responsible for implementing the land subdivision process on behalf of the landowner. A land owner who wants a new parcel to be established will contact a chartered land surveyor. If in doubt about whether the land subdivision can be carried out, the surveyor will hold a preliminary conference with the

² The report is published partly in English: <http://www.kms.dk/NR/rdonlyres/E0130FAD-250D-4162-B4F7-6DE6C9602E51/0/PropertyformationintheNordiccountries.pdf>

relevant authorities. The chartered surveyor will have a meeting with the land owner and will check and survey new and existing borders. When the existing boundaries are marked, the chartered surveyor will inform owners of neighboring properties. The land owner signs a statement that he is satisfied with the marking of the new boundaries. If right of way is to be established or changed, the chartered surveyor collects information from the land book about the properties involved. The surveyor prepares the maps required to update the cadastre. The surveyor then presents the case for hearing in the municipality and for other authorities with an interest in the matter. The municipality gives permission for the subdivision, or could reject the case. After the hearing is completed the chartered land surveyor sends the land subdivision case to the National Survey and Cadastre (KMS) for registration. The chartered surveyor prepares a declaration for the land register as the basis for distributing easements between existing and new properties for the land register. The land register updates the land book, and the municipality updates municipal records.

If doubt or dispute about a property boundary occurs, related to a land subdivision or as an independent matter, anyone who has a "legal interest" in this question can apply to a land surveyor for a decision on where the line goes. This is done in a *skelforretning*. The chartered land surveyor seeks to get the parties to agree. When agreement is reached, the parties sign a binding declaration. If the parties fail to agree, the chartered land surveyor will perform a temporary boundary marking and draw up a declaration. The declaration will be sent to the parties with a map attachment and informing them that the boundary marking is binding if neither party brings the case to court within 8 weeks.

In this way, the chartered land surveyor is a kind of first instance court for boundary disputes. A landowner in Denmark cannot bring a boundary dispute to the courts before a *skelforretning* has been held by a chartered land surveyor. About 50 *skelforretning* are carried out every year in Denmark, about 5 of which end in court (2006).

3.2 Sweden

In Sweden, changes in land, i.e. subdivision of a property or boundary adjustments, are made as decisions in the administration or in the courts. In almost all cases, changes in land are performed in a cadastral survey (*lantmäteriforretning*). After 1972, it has not been possible to change boundaries privately, i.e., through agreements between landowners. A land subdivision must not be in conflict with land use plans or other regulations that regulate land use. Property delimitation is found in the national property map. A landowner who wants to make changes in property or create a new property contacts the nearest office of Lantmäteriet (The Swedish mapping, cadastral and land registration authority), or the municipality if cadastral authority is delegated to the municipality. In cases where the prerequisites for land subdivision have to be considered, there will be consultation with the municipality and possibly the county level administration. If, after this, the land surveyor (lantmätare) concludes that the land subdivision can be carried out, the survey will continue with technical measures such as boundary marking and surveying. Easements needed will also be investigated, such as rights of way and common rights that are affected. When needed, formal meetings are held with the land owner. If the new property will share a common boundary

with a neighboring property and this boundary is unclear, the boundary may need to be determined through *fastighetsbestämning*. The neighboring owner will be contacted. The land surveyor then makes a decision about the land subdivision. The cadastral survey is then closed, and there will be a briefing about possibilities for appeal. There is a 4 week appeal period. The decision includes boundaries on the ground as well as handling of rights and joint ownership. When necessary, new joint property can be established. The municipality has the right to appeal the survey. The county administration has the right to appeal surveys outside of planned areas, and will in such cases receive information about the survey. The survey is registered in the cadastre and land register, both of which are administered by the Swedish mapping, cadastral and land registration authority (Lantmäteriet).

If boundaries of property or rights are unclear, a survey – *fastighetsbestämning* – may be required from Lantmäteriet. In the survey, only questions concerning the property's extent or the content are decided, i.e., property boundaries and easements, or the inclusion of a building or other installation in the property. Questions about ownership cannot be decided in the survey, as they must be decided by court. The surveyor will make a decision about the matter, and the parties will be informed about appeal. The time limit for appeal is 4 weeks. If neither party appeals, the decision will have legal force. A maximum of 10 boundary disputes are brought to courts in Sweden per year (oral information G. Eriksson 24.3.2009).

4. COST BENCHMARKING

The Swedish mapping, cadastral and land registration authority (Lantmäteriet) has carried out a Nordic Benchmarking of costs in the Nordic countries for land subdivision for a standard plot of 3000 square meters (Eriksson & Gardby, 2006). Table 1 shows the costs. The figures refer to 2005.

1 Country	2 Fee permission for land subdivision	3 Fee cadastral survey	4 Fee to registration authority	5 Registration right of way	6 Costs excl. tax and VAT	7 Tax	8 Vat	9 Total costs
Norway - within regulated area	198	1702			1900			1900
Norway - outside regulated area	727	1702		186	2615			2615
Sweden - within regulated area		1712			1712			1712
Sweden - outside regulated area		1792			1792			1792
Denmark - within regulated area		1320	383		1703	660	363	2726
Denmark - outside regulated area		1980	383		2363	660	528	3551

Table 1. Costs for a land subdivision of a plot 3000 m². All figures in euro.

The Nordic Benchmarking Report points out that variables upon which the list is based are not fully comparable among the countries. I believe such variables could include salaries and transportation costs.

5. FINAL DISCUSSIONS AND CONCLUSIONS

In Norway we have a system of land subdivision, in which several different organizational bodies are involved at various stages, from the landowner's decision to subdivide a parcel of his property, until the creation of the new property in the public registry system with a consistent description of the boundaries.

The first step of the process is the municipal authority, who handles the application for land subdivision. Although this task will be organized differently from municipality to municipality, it must be carried out in accordance with the Plan and Building Law, and thus usually by a different person than the person executing the cadastral survey. The application for land subdivision will typically be processed by the person who processes applications for building permits in the municipality. In Cadastral Research 2007 it was found that 20% of the cadastral surveyors also handled the application for land subdivision. Thus in the vast majority of cases (80%), the person dealing with the application for land subdivision is different from the person handling second stage, the cadastral survey. It is during this stage that new boundaries are marked in the field and the new property is assigned a new registry number and registered in the cadastre and land register. Most land subdivisions will be finalized and completed at this stage, unless there is a boundary dispute. The municipal

surveyor is not authorized to resolve a boundary dispute, beyond attempting to negotiate a agreement between the parties. In order to resolve a boundary dispute, one of the parties must bring the dispute to either the Land Consolidation Court or District Court. The Land Consolidation Courts have recently handled an average of one dispute per case, or about 1000 disputes per year. These are mainly disputes over property boundaries, but also include easements, and cover both judgments and court settlements. Figure 1 shows the trend in number of cases and disputes in the land Consolidation Courts from 1995 to 2010. The figure is based on statistics compiled by the National Courts Administration based on the Land Consolidation Court reporting system.

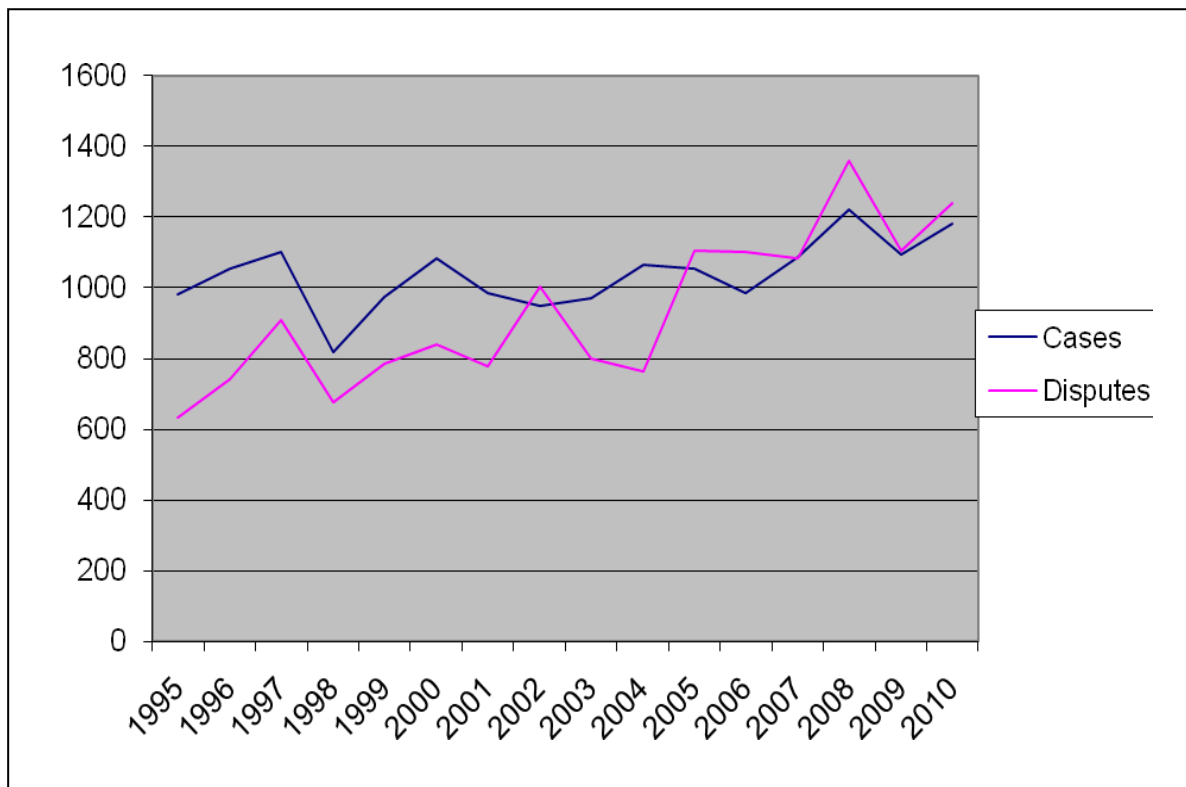


Figure 1 Number of cases and number of disputes. Land Consolidation Courts. 1995 to 2010.

As we see from Figure 1, the number of disputes processed by the Land Consolidation Courts per year is tending to increase, while the number of cases completed each year is more constant.

Compared with Sweden and Denmark, Norway thus obviously has the highest number of property disputes.

In Sweden and Denmark the land subdivision process is not fragmented as in Norway. The surveyors in Sweden and Denmark provide for the total implementation of the land subdivision process, starting with the owner's decision to start land subdivision process and ending with registration of the new property. The content of the land subdivision work

process is also more extensive in our neighboring countries, as the surveyor will do “clean up” work with rights in the land register, a task the municipal surveyor in Norway usually will not carry out. The Nordic Benchmarking indicates that Norway has the highest level of costs (see column 6 in Table 1). The reason Denmark comes out with the highest price, is that tax and vat are added on top of costs.

In a boundary dispute, the Danish chartered surveyor will make a decision about where to draw the boundary. The Swedish land surveyor will make decisions about the boundaries of property and rights. Boundary disputes in our neighboring countries Denmark and Sweden are usually settled outside the court system.

The system of land subdivision in Norway is therefore fragmented when compared to the corresponding systems in our neighboring countries. Responsibility for processing the application for land subdivision is usually separated from the cadastral survey. The contents of a cadastral survey are usually more limited than in our neighboring countries; right of way and other easements are usually not handled by the surveyor. The municipal surveyor makes no decision about where to draw the line and has no general statutory authority to settle a boundary dispute. Whereas in Denmark and Sweden the surveyor handles the land subdivision application process, conducts the cadastral survey and resolves a boundary dispute, in Norway the system is such that the person handling building permits usually handles application for land subdivision, the surveyor comes into the case when the cadastral survey is to be carried out in the field, and the land consolidation judge or district court judge makes decisions on disputes.

As the cost level also seems to be highest in Norway (see column 6 in Figure 1) I believe that it must be questioned whether the land subdivision processes in Norway are efficient enough and hold high enough quality standards. In preparatory work with the cadastral law which introduced cadastral surveying in rural areas in Norway in 1980, it was expected that the system would reduce the number of boundary disputes. The number of boundary disputes was considered 30 years ago "unreasonably high" and “probably a consequence of earlier inadequate surveying and mapping.” Nevertheless, figure 1 shows that the number of property disputes is high and has had an increasing trend in recent years. The new cadastral law was adopted in 2005 and put into force in 2010. The new law expands the contents of the cadastral survey so that the surveyor is also to clarify and document rights. It is a question whether this will work in a majority of municipalities in the future, given the current system in which boundaries and rights are usually handled in a brief meeting in the field. If rights are to be handled in a responsible manner by a surveyor, the surveyor should be introduced at an earlier stage of the process. A system similar to that in our neighboring countries, in which the surveyor also processes the application for land subdivision, is clearly conceivable. Alternatively, a pre-conference could be carried out in the field involving the surveyor and the land owner. Such a field conference could clarify boundaries and rights for the new property, as a prerequisite for approval of land subdivision. Thus the surveyor can obtain an overview of legal matters at an early stage and help to formulate agreements such as right of way. This could be a way to perform this type of services in a more sensible way for the parties than is now the case in Norway. The surveyor can then also accurately determine the position of new

boundaries at an early stage, and not, as is the case today, by interpreting an often low quality map sketch.

In our neighboring countries, we see that in addition to focusing on quality of the cadastral survey there is also a focus on preventing boundary disputes that end in the courts. The surveyor in Sweden makes a decision on boundaries, and in Denmark there is a requirement for skelforretning before court case. Bertelsen (1997) discusses whether the municipalities can be provided with formal legal competence to decide the position of property boundaries. He concludes that this will lead to increased costs due to stricter qualification requirements for the surveyor, and more costly procedures. This solution as a whole will lead to increased costs, if municipal surveyors are equipped with such skills. In my opinion, however, when it can be shown that surveyors in our neighboring countries have such qualifications and thus can create “valid” boundaries with lower costs than in Norway, we should be able to achieve this in Norway too.

In my view, a condition for achieving better quality in the land subdivisions in Norway is to introduce a system of competency requirements for land surveyors. There must be a guarantee that the surveyors practicing have sufficient expertise. Denmark and Sweden have high educational requirements for cadastral surveyors. In Norway, such requirements were enacted when the new cadastral law was adopted in 2005. A decision was then made to introduce a system of private surveying companies with licensing to perform cadastral surveys, but this was converted by the new government in 2007, presumably for purely political reasons. Norway therefore still lacks formal requirements for cadastral surveyors. It is up to each municipality on an independent basis to assess the competence the surveyor must have. Unless binding competence requirements are introduced to ensure that the surveyor possesses the expertise necessary to handle the sometimes very complex tasks that must be performed and documented in a cadastral survey, I predict that the dispute level for Norwegian landowners will remain high and may also increase in the future.

Furthermore, if qualification requirements are not introduced, I do not think it will be possible to introduce measures such as the Danish practice of cadastral survey (skelforretning) conducted prior to court cases, even if they are desired as a way to relieve the courts in Norway of such cases.

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BIOGRAPHICAL NOTES

Leiv Bjarte Mjøs (born 1956) has taught land administration and cadastral surveying as assistant professor at Bergen University College since 2004. He has a degree in land consolidation at Agricultural University of Norway (cand. agric, 1983). He has worked as cadastral surveyor in Bergen Municipality from 1983 to 1986, and in various positions in the Norwegian Mapping Authority from 1986 to 2004. He was president of the Norwegian Association of Chartered Surveyors since 1996 - 2010.

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