

**2014 Modularization of Korea's Development Experience:  
Enhancing Transparency in Real  
Estate Ownership and Transaction:  
Cases of Two Policy Reforms in Korea**

**2014**



MINISTRY OF  
STRATEGY  
AND FINANCE



**HANYANG UNIVERSITY**



**KANGNAM  
UNIVERSITY**



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**Enhancing Transparency**  
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## Enhancing Transparency in Real Estate Ownership and Transaction: Cases of Two Policy Reforms in Korea

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2014 Modularization of Korea's Development Experience

# Enhancing Transparency in Real Estate Ownership and Transaction: Cases of Two Policy Reforms in Korea



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# Preface

The study of Korea's economic and social transformation offers a unique window of opportunity to better understand the factors that drive development. Within about one generation, Korea transformed itself from an aid-recipient basket-case to a donor country with fast-paced, sustained economic growth. What makes Korea's experience even more remarkable is that the fruits of Korea's rapid growth were relatively widely shared.

In 2004, the Korean Ministry of Strategy and Finance (MOSF) and the Korea Development Institute (KDI) launched the Knowledge Sharing Program (KSP) to assist partner countries in the developing world by sharing Korea's development experience. To provide a rigorous foundation for the knowledge exchange engagements, the KDI School has accumulated case studies through the KSP Modularization Program since 2010. During the first four years, the Modularization Program has amassed 119 case studies, carefully documenting noteworthy innovations in policy and implementation in a wide range of areas including economic policy, administration-ICT, agricultural policy, health and medicine, industrial development, human resources, land development, and environment. Individually, the case studies convey practical knowhow and insights in an easily accessible format; collectively, they illustrate how Korea was able to kick-start and sustain economic growth for shared prosperity.

Building on the success during the past four years, we are pleased to present an additional installment of 19 new case studies completed through the 2014 Modularization Program. As an economy develops, new challenges arise. Technological innovations create a wealth of new opportunities and risks. Environmental degradation and climate change pose serious threats to the global economy, especially to the citizens of the countries most vulnerable to the impacts of climate change. The new case studies continue the tradition in the Modularization Program by illustrating how different agents in the Korean society including the government, the corporations, and the civil society organizations, worked together to find creative solutions to challenges to shared prosperity. The efforts delineated include overcoming barriers between government agencies; taking advantage of new opportunities opened up through ICT; government investment in infrastructure; creative collaboration between the government and civil society; and painstaking efforts to optimize

management of public programs and their operation. A notable innovation this year is the development of two “teaching cases”, optimized for interactive classroom use: Localizing E-Government in Korea and Korea’s Volume-based Waste Fee System.

I would like to express my gratitude to all those involved in the project this year. First and foremost, I would like to thank the Ministry of Strategy and Finance for the continued support for the Modularization Program. Heartfelt appreciation is due to the contributing researchers and their institutions for their dedication in research, to the former public officials and senior practitioners for their keen insight and wisdom they so graciously shared as advisors and reviewers, and also to the KSP Executive Committee for their expert oversight over the program. Last but not least, I am thankful to each and every member of the Development Research Team for the sincere efforts to bring the research to successful fruition, and to Professor Taejong Kim for his stewardship.

As always, the views and opinions expressed by the authors in the body of work presented here do not necessarily represent those of the KDI School of Public Policy and Management.

**December 2014**

**Joon-Kyung Kim**

**President**

**KDI School of Public Policy and Management**



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## Summary

This paper attempts to present and evaluate the achievements of two systems, the real estate real-name system and the real estate transaction reporting system, which were introduced consecutively to create a more transparent real estate market. The real estate real-name system was adopted to address the rampant practice of registering real estate under a borrowed name to avoid taxation for owning property. It was first introduced in the 1990s, approximately around the same period the financial real-name system was adopted, and contrary to concerns, the real-name system quickly found its place. Thus, the real estate real-name system contributed tremendously to advancing the transparency of the Korean real estate market, and brought fair taxation a step closer to being realized.

Afterwards, market information on holding real estate became more up-to-date, but there was little improvement in the market conditions related to real estate transactions, where it was still general practice to sign double contracts. As a result, lower-than-actual transaction prices were commonly reported, and as taxes were imposed based on this reported data, this led to problems concerning fair taxation. Furthermore, there were concerns that the lack of fair taxation was the reason behind the inability to uproot real estate speculation.<sup>1</sup> To this end, after several years of preparation, a system for reporting real estate transactions was adopted in 2006.

1. This paper uses the terminology “speculation,” based on the understanding that is socially accepted in the Korean real estate market. Real estate development took off in the 1960s; people earned tremendous profits from a rapid soar in real estate prices within a short period of time. As a result, real estate was perceived as a speculative investment, and real estate speculation emerged as a major issue in Korean society.

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As with the real estate real-name system, before the introduction of the reporting system, there were doubts over whether it would prove effective. However, once implemented, the new system became firmly grounded. Although there are still a considerable number of areas that need to be improved, the reporting system drew notable achievements in that it created a more efficient real estate market by collecting and circulating actual market information related to real estate transactions. Moreover, it established an infrastructure for fair taxation and transactions, thereby establishing conditions for resolving social conflict related to real estate speculation. From a long-term perspective, this is largely attributed to the real estate real-name system that led to registering property under the actual ownership holder and eradicating the practice of registering a title under a third party's name, which in turn improved transparency in the real estate market.

This paper primarily seeks to provide an in-depth analysis and documentation of the two systems that played a pivotal role in improving the transparency of the Korean real estate market: the real estate real-name system, which attempted to enhance market transparency of property holdings, and the real estate transaction reporting system, which aimed at improving transparency related to real estate transactions.

2014 Modularization of Korea's Development Experience  
Enhancing Transparency in Real Estate Ownership  
and Transaction: Cases of Two Policy Reforms in Korea

# Chapter 1

## Real-name Registration for Real Estate

1. Introduction
2. Enactment and Execution of AREAT
3. Analysis on Title Trust Agreements and Registration System
4. Effectiveness of AREAT
5. General Summary

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# Real-name Registration for Real Estate

## 1. Introduction

The purpose of enacting the 「Act on the Registration of Real Estate Under Actual Titleholder's Name」 (“AREAT”) is “to contribute to the sound development of the national economy through the prevention of antisocial acts, such as speculation, evasion of taxes and acts circumventing laws, etc., which abuse the real estate registration system, the normalization of real estate transactions, and the stabilization of real estate prices, by having any ownership and other real rights to real estate registered under the names of those having real rights so as to conform to the substantial relation of rights”. (Article 1 of AREAT)

In other words, AREAT is to regulate the real estate property market that had operated in a non-transparent manner, and to deter illegal behaviors, such as real estate speculation and tax evasion, conducted by those who manipulate ‘title trust agreements’, which allows the registration of property under a third party’s name, and loopholes in the Registration of Real Estate Act, in which a title holder is not qualified as a real owner.

Historically, title trust agreements for real estate property were initiated in the Japanese colonial era in the 1910’s, when legislations regulating the title system had not been properly established. At that point of time, properties owned by a family clan could not be registered under the clan’s name. Instead, they were registered under names of the clan members (title trust). Even after the independence from Japanese colonization, title trust agreements had been considered a good custom, which did not disturb public order, in accordance



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with contract principles of Civil Laws by the Supreme Court. Consequently, title trust agreements had been legally allowed until the 1990's and regarded as an inadequate system hindering transparency in real estate transactions.

In fact, title trust agreements could be utilized to get away from various regulations enacted to deter real estate speculations, and to evade taxes in relation to real estate property.

Later in the 1990's, the Korean government enacted the 「Act on Special Measures for the Registration of Real Estate」 to prevent real estate speculations and tax evasions, but it was not effective, as it did not deny the judicial effect of title trust under its private law. Social damages by title trust expanded, hence the Korean government enacted AREAT in 1995 to invalidate the judicial effect of title trusts and cancel the relevant title registration.

As a consequence, from July 1, 1995, title registration must be done under the real owner's name, and title trust agreements and corresponding title registrations were invalidated. In cases of breach, 30% of the property value was to be imposed as penalty. Even after the imposition of the penalty, if the title had not yet been transferred to the actual owner, AREAT charged additional enforcement fines and initiated criminal actions.

As a result, during the grace period (1995.7.1~1996.6.30), 140,000 titles had been transferred to their real owners, which amounted to 4,441.6 billion Won and 431,416m<sup>2</sup>. The enactment of AREAT stabilized real estate prices and improved the effectiveness and efficiency of real estate policies as the property transactions and ownership status were managed in a transparent manner.

In this chapter, the enactment and execution of AREAT will be explained in section 2; the attributes of title trust agreements and title registrations that potentially allow for real estate speculations will be discussed in section 3, together with the introduction of AREAT; the effects of AREAT will be analyzed in section 4; and a final conclusion will be suggested in section 5.

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## 2. Enactment and Execution of AREAT

In order to fight against real estate speculations,<sup>2</sup> the Korean government enacted legislations such as the 「Act on Special Tax Measures against Real Estate Speculation」 on November 29, 1967, and the 「Act on Special Measures for the Registration of Real Estate」<sup>3</sup> (Act No. 4224) on August 1, 1990, in addition to various other administrative measures.

The transparency in real estate transactions was very low (especially in relation to ownership and property price reported to the government). In order to eradicate this problem fundamentally, it was necessary to invalidate judicial effects (regulated by private laws) of title trust agreements, which had not been included in the legislations and measures in early days.

The 「Act on Special Measures for the Registration of Real Estate」 in 1990 had provisions prohibiting title trust agreements, which only applied to property transactions with speculative intents. Therefore, there had been ongoing conflicts between the tax authority and taxpayers to determine the speculative intention of property transactions.<sup>4</sup>

In order to resolve these structural problems, the Korean government enacted AREAT (Act no. 4944) on March 30, 1995, and outlawed real estate title trust agreements by invalidating its judicial effects, regardless of the speculative intents. After the execution of AREAT, tax evasions and property-related-law manipulations had remarkably decreased.<sup>5</sup>

2. In this article, the term 'real estate speculation' is being used instead of 'real estate investment' because

① this article analyzes the purpose of AREAT, and it is specified in Article 1 as 'to fight against real estate speculations'. ② At the time of enacting AREAT, the Ministry of Finance and Economy published 「AREAT Commentary (1995)」 and 「AREAT White Papers (2007)」 in that real estate transactions between 1962 and the enactment of AREAT were defined as speculative transaction.

In this regard, not every real estate transaction in those days was speculative, but rather, there must had been more numbers of ordinary transactions. However, this article analyzes AREAT and this law regulates real estate speculations, therefore, extraordinary transactions with sudden price inflation are being phrased as real estate speculations.

Of course, skyrocketed real estate prices are considered good for the Korean economy as it accords with the Korean constitution that supports a free market economy. However, it clearly caused negative impacts on the Korean economy. Therefore, for the purpose of this article, the justification for real estate speculations will not be discussed in details.

3. For more details, refer to Kim, H.S., Research study on Acts for Real-name Registration of Real Estate Transactions, Essays in celebration of 60<sup>th</sup> birthday of Professor Hong, C.Y., 1997. 11.

4. The 「Act on Special Measures for the Registration of Real Estate」, effective from September 2, 1990, prohibited title trust registrations with certain purposes by imposing criminal punishment (Article 8), but this was only a regulative provision that did not deny the judicial effect of trust title agreements (Supreme Court decision on 1993.1.26, 92DA39112 and many other same decisions).

5. For more details, refer to Oh, J.M., Policies and Legislations for Real-name Registrations, Legislative Research (Vol. 232), 1995. 4.

## 2.1. Previous Measures Against Real Estate Speculations

The Korean government arranged countermeasures against each occasion of real estate speculation. In particular, the 「8·8 Action」 in 1978 and 「8·10 Action」 in 1988 were emergency measures to control the real estate speculation frenzy that continued during the period between the mid 1970s and the mid 1980s.

However, these emergency measures were not very successful in alleviating the speculation frenzy, and the government ended up adopting the public concept of land ownership, such as the imposition of tax on excessively increased land prices and development levies in 1990.

Various measures that currently being executed (e.g. capital gains tax, aggregate land tax, and land transaction license, etc.) had their roots in those measures in the early days. The statistics of real estate speculations and corresponding counter measures set up by the Korean government will be explained and assessed as follows.

### 2.1.1. Emergence of Real Estate Speculation

Real estate properties had become the subject of speculation from the point of time when the economic development plan initiated in 1962 and was producing satisfactory results. There had been an increased number of property (land or houses) acquisitions by individuals for the purpose of accumulating wealth, or by companies for securing factory sites<sup>6</sup>. The periodic analysis is as follows.

Firstly, during the Five-year Economic Development Plan initiated in 1962, the Gyeongbu (Seoul-Busan) Expressway and the Pohang Iron & Steel Co. were constructed in addition to the land readjustment project in Seoul's Gangnam district. These developments resulted in the growth of a secondary and tertiary industry, which promoted internal migration from rural areas to urban cities and increased demands for factory sites and urban housing sites.

The urban population increased by 61.1% from 9,784,000 in 1960 to 15,764,000 in 1970. The number of urban houses also increased by 69.5% from 825,000 in 1960 to 1,398,000 in 1970. Therefore, the housing shortage rate worsened by 41.2% from 32.5% in 1960 to 41.2% in 1970.<sup>7</sup>

The sudden increase in housing demands led to an increase in demands for residential land, which caused an increase in land price and the emergence of speculative transactions seeking short-term profits.

6. Of course, not every property transaction was speculative [Refer to footnote 1 above].

7. Extracted from 「Statistics for population and housing」 in 1970 by the Ministry of Finance and Economy.

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The real estate speculation reached its peak in the 1970's. Large industrial complexes constructed in Geoje, Yecheon, Onsan, Changwon, and Pohang resulted in a shortage of land supply, and urban concentration of population increased demands for land. The upswing in exports produced foreign capital inflows, which were invested in buying up real estate properties in Seoul, especially the Gangnam district, and urban housing prices skyrocketed.

More specifically, the value of land in urban areas increased 11 times in 1979 compared to 1970. During the same period, the price for an apartment flat increased 25 times, and the residential land value increased 20 times.<sup>8</sup> Real estate brokers were at the center of the speculations during those eras by not only intermediating property sales, but also being buyers and sellers themselves. They manipulated property prices for enormous profits, which led to the real estate speculation frenzy.<sup>9</sup>

In particular, the Korean government initiated development of the Seoul Gangnam district in late 1970, which resulted in remarkable inflation of real estate prices for 16 years between 1963 and 1979. For example, the land value increased 1,333 times in Hakdong, 875 times in Apgujeong, and 1,000 times in Shinsadong.<sup>10</sup>

The real estate speculation fever continued in the 1980's. The 8·8 special anti-speculation measures in 1978 depressed real estate businesses and the entire economy. Hence, another special measure for economic growth with an interest rate cut was announced in June 28, 1982, which caused funds in the market to flood back into the real estate market.

As a result, the average land value increased by 31.7% in six major cities and 57.7% in Seoul.<sup>11</sup>

In particular, during the 'period of three falls' in 1986, consisting of a decrease in international oil prices, weak dollar, and drop in international interest rates, the competitiveness of domestic businesses was enhanced, resulting in a huge increase of exports. Surpluses from international trades were accumulated, causing a sudden currency inflation. Specially, after the Seoul Asian Game was held in 1986 and the Seoul Olympics

8. Extracted from the Federation of Korean Industries, 'Korea Economic Yearbook', 1980.

9. Kim, S.K., 'Study on Public Restrictions for Land Resources', Graduate School for Administration Study, Hanyang University, 1988, p. 38.

10. Chang, S.H. 'Development of Capitalism and Real Estate Speculation in Korea after Independence', History Criticism (Vol. 66), The Institute for Korean Historical Studies, 2004, pp. 60-61.

11. Park, S.H., 'Study on Reasons behinds the Land Prices Bubbles in Korea', Graduate School of Administration Study, Seoul University, 1991, p. 48.

was held in 1988, a large amount of funds went into the Korean markets. The West Coast development projects undertaken from 1988 promoted real estate speculations in those areas.

During the first quarter of 1989, the land value increased by 17.0% in large cities, and 14.7% in small and medium-sized cities. After the announcement of government plans to build two million houses and develop new towns in Ilsan and Bundang, the land value increased by 32% in 1989.<sup>12</sup>

However, due to the supply of two million houses and the IMF foreign exchange crisis in late 1990, the real estate prices converted to a downward trend.

In the 2000's the Korean government announced plans for economic growth to recover from the IMF crisis, which resulted in a housing price increase, but only limited to certain areas and not as high as the price of inflation in the 1970's. However, a new town development in Sejong city still encourages prices to go up in the affected areas.

### **2.1.2. Measures Against Real Estate Speculations**

In order to fight against real estate speculations, the Korean government imposed taxes as restitutions for unearned speculation income. However, due to title trust agreements allowed in Korea, the person acquiring the property could register its title under a third party's name. Therefore, the most important function of the tax system, progressive taxation, was to control and penalize real estate speculations, which became ineffective. The periodic analysis is as follows.

Firstly, the government enacted the 「Act on Special Tax Measures against Real Estate Speculation (Act no. 1986)」 on November 29, 1967 in order to deter real estate speculations. In Article 1, it stated “the purpose of this act is to deter real estate investment with speculative intents by imposing taxes on capital gains from land trades.” Hence, it was very clear that the act was to control real estate speculations.

The Act only applied to lands located in Seoul, Busan and other areas specified in the Act, and it prescribed that the capital gains (selling price reduced by past purchase price together with expense deductions pursuant to the Act) from land trades be taxed at 50% as 「a tax aimed at curbing speculation on real estate」.

12. Song, Y.H., 「Study on the Land Price and Speculation in Korea」, Graduate School, Sungkyunkwan University, 1993, p.27.

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However, curtilage of a house for a family, which is not larger than ten times the area with residential buildings on top and a land purchased for the purpose of relocating a factory operated for more than two years, are exempted from the capital gains tax. In other words, land transactions without speculative intents were excluded from the tax.

Despite the execution of the Act, the tax amounts were not punitive enough to deter real estate speculations since, in computation of capital gains, the fair market value of the selling price is defined by the government valuation, which was far different from the actual selling price.

Secondly, the 「Income Tax Act (Act no. 2705)」 were rewritten on December 24, 1974. In order to increase taxation on property income, it abolished the early tax aimed at curbing speculation on real estate by combining it with income tax and imposing income tax on capital gains from land or building trades.

Also, in order to impose heavy tax on asset income (i.e. interest, dividend and rental income) and high-income earners, every asset income of a family is to be combined with the primary income earner's total income for income tax purposes, named 「cumulative taxation system for asset income」. Moreover, companies are levied 「special value added tax」 in addition to corporate income tax at the rate of 25% on capital gains from land trades.<sup>13</sup>

However, it was still not sufficient to fully deter real estate speculations, hence, the Korean government announced 「special measures against real estate speculations (called 8.8 measure)」, which increased the capital gains tax rate to 50% with an extra 100% in cases of non-registration and an extra 40% in cases of short-term sales within two years.

Also, the Land Transaction License and Reporting System were adopted, in which restrictive areas were specified and every land transaction above a certain threshold in those areas was to be reported to the government. Additionally, at the time of title registration, the contract form must have had an official seal, and standard land prices were announced by the government for every piece of land. Existing 「tax on vacant lots」 was enhanced and non-commercial land became subject to tax at the rate of 5% to 10% depending on the length of ownership.

Thirdly, in the mid-to-late 1980's, international trade started to turn into surpluses that caused an expansion of currency, and the Seoul Olympics in 1988 and various regional development plans prompted speculative trades. The real estate prices skyrocketed and the Korean government executed 「8·10 measure」 on August 10, 1988.

13. Refer to Sections 59-2 and 59-4 of the Corporate Income Tax Act 1974.

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Mainly it was about the increase in housing supplies with the construction plan of two million new houses, including 400,000 houses located in metropolitan areas that sparked a fever of heavy speculation. After the 「8·8 measure」, the anti-speculation measures such as the capital gains tax and the Land Transaction License and Reporting System were heavily strengthened.

In addition, the provisions regarding tax exemptions allowed to the first house of a family were amended so as to allow exemptions only if the family owned the house for at least five years (previously three years) and lived in the house for at least three years (previously one year). Also, 「aggregate land tax」 was introduced to combine property tax on land and tax on excessive land holdings.

Finally, in the 1990's, a tax on an excessive increase in land value, development levies, a limit on the number of residential land holdings, and certifications of forest tradings were introduced. These were considered as meaningful changes as the public concept of land ownership was applied to real practices.

The tax on an excessive increase in land value was imposed on unearned income from the increase in value of idle land and non-commercial land at the rate of 50% as restitutions to the public on a triennial basis. However, it was controversial whether the tax on unrealized income was justifiable. Development levies were imposed at the rate of 50% on gains from various development projects such as industrial complexes and golf clubs as restitutions to the public. The purpose of development levies and that of taxes on excessive increases in land value were similar to each other.

Additionally, a limit on the number of residential land holdings was introduced in March 1990. It was enacted to promote an even supply of houses and deter speculative transactions. Companies were basically prohibited from acquiring lands or land holdings, and individuals could not hold more than 200-pyung (approximately 661m<sup>2</sup>) in six major cities. Individuals with excessive holdings were liable for extra levies.

At last, AREAT was enacted in 1995 to prohibit title trust agreements entirely. The above-mentioned systems are summarized in <Table 1-1>.

**Table 1-1 | Summary of Anti-speculation Measures Prior to AREAT**

Anti-speculation Measures	Particulars
1967. 11. 29.	<ul style="list-style-type: none"> <li>• Act on Special Tax Measures against Real Estate Speculation</li> </ul>
1978. 8. 8. Anti-speculation policies	<ul style="list-style-type: none"> <li>• Introduced measures for idle land</li> <li>• Heavier income tax levied on capital gains</li> <li>• Supplemented documentation for title registration of real estate property</li> </ul>
1988. 8. 10. Anti-speculation policies	<ul style="list-style-type: none"> <li>• Supplied 2,000,000 new houses</li> <li>• Introduced aggregate land tax</li> <li>• Established notification system for official land value</li> </ul>
1990. Public concept of land ownership	<ul style="list-style-type: none"> <li>• Tax on excessive increase in land value</li> <li>• Limit on number of residential land holdings</li> <li>• Restitution of gains from land development</li> </ul>
1990. 5.8. Measures	<ul style="list-style-type: none"> <li>• Compulsory sales of lands held by 30 major enterprises</li> </ul>
1995. AREAT	<ul style="list-style-type: none"> <li>• Complete prohibition of title trust agreements</li> <li>• Land integrated computer networks system</li> </ul>

### 2.1.3. Evaluation on Anti-speculation Measures

The government utilized the tax system to deter real estate speculation from 1962. However, the tax system was fundamentally ineffective in preventing speculative transactions because people still could earn large profits from sales of real estate even after the payment of capital gains tax due to the price inflation of real estate properties.

The most effective anti-speculation measure based on theory is that real estate demand is dealt by an adequate level of real estate supply. However, Korea has limited land resources with a large population, and due to the radical industrialization and urbanization, the demand and supply did not match in the areas of industrial complex and large cities, resulting in real estate prices skyrocketed.

The real estate speculation was considered to be caused by the real estate price inflation. In order to calm the speculation, the Korean government adopted various legislative and administrative measures, however, their effectiveness was halved by title trust agreements, allowing the registration of a land title under a third party's name.



The reliance on the tax system was not considered an appropriate way to resolve problems of real estate speculation since the problem was beyond the functional realm of the tax system itself. Hence, the effectiveness was only very limited. The tax system should not function primarily as an anti-speculation measure. The speculation problems would have been resolved more effectively rather by amendments to Civil Laws or the Registration of Real Estate Act in a way that entirely prohibited title trust agreements or excessive land holdings. In this respect, AREAT, which was enacted in 1995, was highly acclaimed.

## 2.2. Overview of AREAT

AREAT consists of 15 provisions, which mainly prohibit title trust agreements and require real estate ownership to reflect the actual trading relationship. In summary, AREAT prohibits title trust agreements. More details of AREAT are as follows.

### 2.2.1. Invalidation of Title Trust Agreements after July 1, 1995

A transfer of a real right after July 1, 1995 must be done under the name of the actual interest holder of the real estate property as prescribed in AREAT. AREAT invalidates title trust agreements with a third party, as well as transfers of real rights based on title trust agreements except in cases of title trust contracts.<sup>14</sup>

As per the Article 12 (1), if a title trustor fails to undertake the real-name registration or dispose of his/her real estate by sale within the grace period, the effects of the title trust agreement and title registration under a third party's name shall be invalidated after such period elapses.

If a person files a registration pretending that it is a real-name registration, he/she shall be punished by imprisonment for not more than five years, or by a fine not exceeding 200 million Won in addition to 30% of the real estate value.<sup>15</sup>

If a title trustor undertakes registration under a third party's name pursuant to the title trust agreement, or if a creditor provides documentation with false information about transfer of security, or if anyone instigates to do so, they shall be punished by imprisonment for not more than five years, or by a fine not exceeding 200 million Won. Also, a title trustee

14. Article 3 (1) of AREAT states "No person shall register any real right to real estate under the name of the title trustee pursuant to the title trust agreement."

15. Title trustee and anyone who instigates the title trustee shall be punished by imprisonment for not more than three years, or by a fine not exceeding 100 million Won. Also, anyone who aids and abets a title trust agreement shall be punished by imprisonment for not more than one year, or by a fine not exceeding 30 million Won.

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and anyone who instigates the title trustee shall be punished by imprisonment for not more than three years, or by a fine not exceeding 100 million Won. Anyone who aids and abets title trust agreements shall be punished by imprisonment for not more than one year, or by a fine not exceeding 30 million Won.

However, registration under a third party is allowed as valid and punishments are waived only to the extent of arrangements between the families of the same clan or spouses without any intentions to evade tax or avoid compulsory execution of acts or limitations by various regulations.

If a person does not comply with real-name registration after the imposition of the initial penalty, 10% of the assessed value of real estate shall be imposed on him/her as charges for compelling performance when one year passes from the date on which the initial penalty is imposed. When two year passes from the initial penalty, he/she must pay an additional 20% of the assessed value of real estate as charges for compelling performance.

However, title trust agreements between the families of the same clan or spouses are allowed as exceptions only to the extent that there are no intentions to evade tax or avoid compulsory execution of acts or limitations by various regulations.

### **2.2.2. Invitations to Voluntary Real-name Registration for the Title Trust Agreement Entered before July 1, 1995**

The title registration under a third party's name pursuant to the title trust agreements entered before July 1, 1995 should be transferred to the actual interest holder within one year (by June 30, 1996) from the date when AREAT became effective. If anyone fails to do so, he/she shall be liable to pay a fine amounting to 30% of the assessed value of the real estate.

However, among the previously existing title trust agreements, those entered by religious groups for the purpose of their own religious activities with respect to farm lands were exempted from the real-name registration only to the extent that there are no intentions to evade tax or avoid compulsory execution of acts.

If there are disputes between a trustor and a trustee in relation to the cancellation of a title trust agreement, it has to be resolved by reconciliations or courts proceedings. In other cases, registrations of ownership transfer should be submitted to the registry office by reason of cancellations of relevant title trust agreements with provisions of 「agreement to terminate title trust」 and 「title trustee's certificate of seal」.

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### **2.2.3. Violation of Other Acts Identified by Real-name Registration**

If real-name registrations are undertaken within the grace period, any punishments under AREAT shall be waived, however, if violation of other acts is identified by the real-name registrations, corresponding punishments under the respective acts shall not be waived.

### **2.2.4. Special Tax Treatment for Real-name Registration**

If tax shortfalls are identified by the real-name registrations, those must be collected, but exemptions are allowed for capital gains tax and gift tax imposed on one house per household (only to the extent when the value of relevant real estate is equal to or less than 50 million Won). Also, if non-commercial lands are converted to commercial lands, the acquisition tax is not to be heavily imposed.

## **2.3. Efforts for Successful Settlement of AREAT**

AREAT prohibits title trust agreements, which had been allowed by customs since 1990. Therefore, there were many arguments against AREAT from the actual parties involved in real estate transactions as it caused infringement of property rights, which were protected by constitutions.

In order to resolve these issues, governments tried an early settlement of AREAT by improving various systems. The details are as follows.

### **2.3.1. Prompt Procedures to Approve Agreement to Terminate Title Trust**

In order to proceed with real-name registrations, 「agreement to terminate title trust」 or 「judgment document」 had to be approved and sealed by the mayor or provincial governor. However, when the request for approval was submitted, the authority required evidence for the past title trust agreement or often rejected the submission for the details of real estate registers not matching the contents of the title trust agreement, which caused obstacles against real-name registrations.

It was often difficult to prove the existence of title trust agreements with written evidence, and in rare cases, title trust agreements were verified by real estate registers.

However, the 「Supreme Court's regulation for execution of the act on special measures for the registration of real estate」, which regulated title registration of real estate, stated that “the mayor, provincial governor and the head of the district office must issue approvals

without delay after the required documentations, such as the agreement or judgment documents, are fully prepared”.

In other words, the administrative authority issuing the approval did not have actual authority to review substantive details of title trust agreements. However, the administrative authority still reviewed the substantive details and caused obstacles against real-name registrations.

In order to eliminate the obstacles, governments issued official letters (Subject: Request for cooperation on the approval for the agreement to terminate title trust agreements related to real estate property) twice on February and June 1996.

### 2.3.2. Prompt Services Provided to Pivil Pomplaint Caused by Real-name Registration

A special 「AREAT Team」 was set up in the Ministry of Finance and Economy to promptly deal with the civil complaints submitted during the grace period. Generally, a civil complaint was to be resolved within 14 days, but it was resolved on the day of submission.

On May 1996, which was the month immediately before the expiry of the grace period, there were 20~30 visits and 600~700 telephone inquiries a day on average. For effective and prompt resolutions to be provided to inquirers, additional consultants were hired and four extra telephone lines were installed (eight telephones in total).

The civil complaints submitted to the Ministry of Finance and Economy from July 1995 to June 1996 are classified in <Table 1-2>.

Table 1-2 | Civil Complaints Related to AREAT

( ) : Proportion

Total	Title Trust Agreement					Long-term Non-registration					Tax	Families of the Same Clan	Others
	Sub-total	Farm Land	Forest	Apartment	Provisional Registration and Others	Sub-total	Farm Land	Fores	Apartment	Inheritance and Others			
341 (100)	187 (55)	78 (23)	32 (9)	55 (16)	22 (7)	82 (24)	48 (14)	18 (5)	9 (3)	7 (2)	27 (8)	42 (12)	3 (1)

Source: The Ministry of Finance and Economy, 「AREAT White Papers」, 1997, p.48.

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### 2.3.3. Establishment of Complaint Commission

AREAT was to reform customary practices, which were conducted by ordinary persons for a long time in the past, therefore an unexpected negative outcome could emerge at the time of enactment. For this reason, the Ministry of Finance and Economy, Ministry of Justice, Ministry of Internal Affairs, Ministry of Commerce and Industry, Ministry of Construction and Transportation, and Ministry of Agriculture and Forestry collectively established 「Complaint Commission with respect to AREAT」 with the director of property and consumption tax department as its chairperson.

The main issues dealt by the commission were firstly to resolve difficulties suffered by the companies trying to acquire factory sites. Previously, when a company acquired a land for commercial purposes, the land was often registered under its employee's name. This method became obsolete after AREAT, hence companies could not acquire factory sites.

Companies should not be allowed to acquire land through title trust agreements, hence, 「measures to facilitate a stable supply of industrial sites」 were arranged to assist companies' acquisitions of industrial sites. Also, industrial districts in rural areas were newly designated, and the procedures were simplified for the conversion of farmland into non-farming uses. In addition, limits on construction of factories were waived for factories smaller than 30,000m<sup>2</sup>. The extra 10% of factory area could be acquired by companies in cases of factory expansions and the rate was higher, 20%, in metropolitan areas.

Secondly, with the existence of a clear intension to manage a farm and sufficient farming skills, farmers were allowed to acquire lands to effectively achieve the real-name registration for farmland. Previously, farmers were required to live within 20km from their own farmlands. This requirement was abolished, and the conditions required for acquisition of farmlands were loosened. Therefore, it was possible to acquire farmlands, if more than one-third of the main farm operations were managed directly by family members, or family members conducted farm works for more than 30 days per year.

Previously, companies were not allowed to acquire farmlands. However, the Agricultural Land Act was amended to allow acquisition of farmlands by companies for the purpose of constructing factories or company housings, only if the approvals for conversion of farmland into non-farming uses were granted. In this case the lands could be registered under the companies' names.

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### **2.3.4. Real-name Registration Allowed for Overseas Koreans to Own Real Estate Located in Korea**

Under the previous 「Act on foreign land acquisition and management」, if a Korean citizen obtained foreign citizenship, it was required to receive approvals for land holdings by foreigners within three months, or to dispose of the land or delegate an Adjustment Corporation to dispose of the land within three years from the change of nationality.

In cases of real estate properties owned by overseas Koreans, it was often problematic since the three years had already passed. Even if the properties were sold off, there was no way to legally transfer the funds overseas.

In this respect, the government amended relevant legislations so as to allow real-name registrations only if a Korean obtained foreign citizenship, and his/her lands were subject to title trust agreements, hence he/she was granted approval to acquire land by June 30, 1996.

### **2.3.5. Education and Promotion**

The Korean government operated educational programs for public officials, tax agents and tax accountants from April to May 1995 for the purpose of early settlement of AREAT. Forty circuit educational programs were conducted where relevant informative documents were distributed. There were several workshops held for the Korea Chamber of Commerce and Industry, Korean Institute of Certified Public Accountants and Certified Judicial Scriveners Association during June and July 1995.

In addition, many promotional works in public relations were actively undertaken to gain the public's cooperation and understanding for AREAT through various experts and the media. It was to relieve negative public concerns on AREAT, and attract full support and participation from the public. At the time of execution of AREAT, promotional introductory articles were advertised in major national daily newspapers, economic newspapers, and newsletters for neighborhood meetings in July 1996.

Moreover, 10,000 copies of 「Education resources for professional experts」 (targeting tax agents, local officials, and tax accountants), 160,000 copies of 「Promotional information for general public」, 17,500 copies of 「Guides with exemplary explanation for real-name registration」, which summarized answers for various civil complaints and inquiries submitted after execution of AREAT, were distributed. There have been significant efforts put toward promoting real-name registrations with interviews broadcasted by various media outlets a month prior to the expiry of the grace period.

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## 3. Analysis on Title Trust Agreements and Registration System

The main purpose of introducing AREAT was to prevent real estate speculations. Real estate speculations were possible because of the loopholes in regulations, which allowed acquisitions of real estate under a third party's name through title trust agreements, and the lack of an authentication system proving that the title holder pursuant to the Real Property Registration Act was the actual owner of the real estate.

Therefore, there was a systematic weakness, which allowed the title trustor to claim the selling price under the title trust agreement, although the title holder sold off his/her real estate. Further details of title trust agreements and real estate registration system will be discussed as follows.

### 3.1. Significance of the Title Trust Agreements

A title trust agreement was to internally keep the ownership right with a trustor (A) who managed and enjoyed profits from the real estate, meanwhile the title of the real estate was registered under the trustee's (B) name.<sup>16</sup> The case law allowed the title trust agreement since it did not contain false statements, however there were only a few scholars supporting this case law, and many others argued that the title trust agreement was void since it contained false representation.<sup>17</sup>

Despite the theories and arguments denying the validity of the title trust agreement, it had long been adjudicated as a valid contract and consistently upheld by courts since the freedom of contract and property right should be respected as long as the public order was not violated.

AREAT defines a title trust agreement as “a stipulation made between a person who holds, has actually acquired or is to acquire the ownership of or other real rights to any real estate and another person, to the effect that the person having the actual right holds or is to hold the real right to the real estate internally and another person registers the ownership under his/her name” as per Article 2 (1).

A title trust agreement was formed by explicit or implicit agreement between the relevant parties on having a title trust. If a real estate is registered under a third party's name without

16. Supreme Court decision 86DAKA2653, 1987. 5. 12., and many others.

17. Koh, D.C., Legal Practice Study: Execution of “Act on the Registration of Real Estate under Actual Titleholder's Name” and Title Trust, Judicial officers, vol. 556, 2003. 1., p. 267.

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agreement, it is not a valid title trust agreement under AREAT. Also, the title records must show the transfer of title to the trustee.

Under the Article 4 (1) of AREAT, any title trust agreement between trustor and trustee shall be null and void, hence the trustor cannot claim the fulfillment of terms and conditions of the contract (i.e. title trust agreement) and the trustee in default is not responsible for the performance of the contract.

Basically, AREAT invalidates title trust agreements not because title trust agreements were legal instruments working against the public's interest. It was rather because the purpose of AREAT was to deter real estate speculations and relevant tax evasions and avoidances of other regulations. Therefore, although title agreements do not harm the public's interests, it becomes void and null as long as it is related to any real estate speculations, tax evasions and avoidances of any regulations.<sup>18</sup>

In contrast to AREAT, in order to enhance efficiency of property usages, the Trust Act allows title trust agreements on real estate entered into in accordance with legal procedures. The purpose of Trust Act is to provide the legal relations on the trust in private laws as per Article 1. Under this Act, the term "trust" means a legal relation that a person who creates a trust (trustor) transfers a specific piece of property (including part of a business or an intellectual property right) to a person who accepts the trust (trustee), establishes a security right or makes any other disposition, and requires the trustee to manage, dispose of, operate, or develop such property or engage in other necessary conduct to fulfill the purpose of the trust, for the benefit of a specific person (beneficiary) or for a specific purpose, based on a confidence relation between the trustor and the trustee.

However, in cases of real estate trust title agreements, the trustee does not have rights to dispose of the real estate, nor to have entire or part of the benefits generated from the disposals.

In contrast, in cases of real estate title trusts under the Trust Act, the trustor (owner of the real estate) transfers or disposes of the ownership of a certain property to a trustee based on the special confidence relations (trust contract) between them, and the trustee (real estate trust company) can conduct management, disposal, development, security management in relation to the real estate property for the benefits of a certain person (beneficiary). <Table 1-3> summarizes the above explanations.

18. Supreme Court decision 98DA12874, 1998. 6. 26.



**Table 1-3 | Distinctions between Real Estate Title Trust Agreement and Real Estate Trust**

Classification	Real Estate Title Trust Agreement	Real Estate Trust
Purpose	Concealment of property, speculation, tax evasion	Efficient usage of property
Legal ground	Supreme Court judgment (case law)	Trust Act
Actual owner	Third party (differs from title holder)	Trustor
Specification of actual owner under the title record	None	Title holder under the title record
User/manager of real estate	Third party	Real estate trust company
Position of trustee	Holds no authority	Holds authorities granted under the trust contract
Beneficial owner	Actual owner	Trustor
Potential of disputes	Many conflicts	None
Negative impacts	Distorts equity in taxation	Equity in taxation achievable
Political purpose	None	Efficient usage of property

Source: Summarized extracts from p.28 of Noh, Y.H. (1997).

### 3.2. History of Real Estate Title Trust Agreement

In order to secure economical domination in Korea, Japan announced the 「order for land survey」 in August 1912, and undertook an investigation on every piece of land in Korea until the end of 1917. Later in July 1918, Japan announced the 「order for forest survey」 as well and terminated the land investigation projects in 1935. The explicit purpose of these investigations was to evenly impose land tax, and simplify land transactions by clarifying records of land registration bearing in mind that the basic foundation of the Korean economy at that point of time was the agricultural industry. However, the actual implicit purpose was to increase tax burdens in Korea, and confiscate non-registered lands in order to distribute them to Japanese people. The meaning of clan properties and details of problems caused by not allowing registration of the clan property under the clan's name are discussed below.

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### 3.2.1. Clan Properties

A clan is a community with the same father. The purpose of having a clan community is to keep the system of lower tax on farmlands during the years of poor harvest and ancestral rites, as well as socialization between family members. Among them, the primary function of a clan community is to keep the ancestral rites. Members donate clan properties and they belong to the clan community. The examples are often lands or buildings used for holding ancestral rites and farmlands or forests generating funds to keep the clan's activities. These properties are managed for the purpose of socialization and welfare benefits of the clan members.

### 3.2.2. Ownership of Clan Properties

A clan is an unincorporated association under the Civil Law hence a clan's properties are owned by every member as a collective ownership.<sup>19</sup> (Clan properties do not belong to a certain member of the clan, but they belong to every member as collective ownership under the Civil Law. Collective ownership is a form of ownership applied to a group's properties belonging to all members of the group, which does not have the capacity for enjoying private rights).<sup>20</sup> Collective ownership has features like: many members collectively belong to a group, and their properties are managed and disposed of by the group, meanwhile each member has their own rights to use or enjoy benefits from the properties only to certain extents.

### 3.2.3. Problems Caused by Clan Properties Not being Registered under the Name of the Clan

Under the order of a land survey by the Japanese Empire, there was no legal ground to make corrections to the ownership of clan properties and register them under the clan's name. Therefore, clan properties were reported as owned by a single or multiple members of the clan. The 「Order for Chosun real estate registration」 proclaimed in 1912 also did not have provisions allowing registration of clan properties under the clan's name, hence they had to be registered under names of a single or multiple members of the clan. Later in 1930, the order was amended to allow the registration of clan properties under the clan's name, but they were often registered under names of members by customs.

19. Article 275 (1) of the Civil Law states "if a piece of property is owned collectively by the members of an association, which is not a juristic person, it shall belong to collective ownership.

20. Collective ownership also applies to protestant churches, natural communities among neighborhoods, housing cooperatives, residents associations of apartments, labor unions, fishing village societies and women's associations of the apartment communities, which do not hold the capacity for enjoying private rights or owning properties.

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As stated above, clan properties were often registered under the names of its members, which caused ownership disputes between the actual owner (clan community) and the title holder (clan members). In those days, the judiciary of Chosun adopted the title trust theory to resolve disputes, hence it adjudicated that the clan properties registered under names of its members actually belonged to the clan community.<sup>21</sup> The case law was commonly adopted by the Supreme Court even after Korea gained independence in 1945.

This was the background history of title trust agreements.

### 3.3. Types of Real Estate Title Trust Agreements

As explained above, title trust agreements in real estate transactions have its origin from the title registration of clan properties. Even after independence, the Supreme Court deemed title trust agreements as valid, which showed the lack of efforts to actively reform the Civil Law or Real Property Registration Act in ways to minimize the harmful effects caused by title trust agreements. The loopholes in regulations seemed to have been abused by real estate speculators since 1962 for tax evasions and other non-compliances. Title trust agreements can be classified into three types: (1) a bilateral title trust for registrations, (2) an acquisition of property under a third party's name followed by a title trust agreement, (3) a title trust contract,<sup>22</sup> which will be analyzed in detail below. Furthermore, the impacts from title trust upon a third party and features of tax evasions, and other non-compliances will be illustrated.

#### 3.3.1. Bilateral Title Trust for Registrations

A bilateral title trust is entered into by a title trustor (A) who is registered as a real right holder and transfers the titles of his/her real estate property to a title trustee (B) pursuant to the title trust agreement. The main purpose of entering into this type of trust agreement is to avoid compulsory execution by governments or banks in cases of A's defaults so as to protect his/her properties. Party A transfers the titles of his/her properties to B in advance as a form of a disguised sale or gift. However, due to AREAT, a bilateral title trust for registrations is now considered as void and the real estate property belongs to the trustor.

In this case, if the trustee transfers its property to a third party, the trustor can claim wrongfully gained benefits. Otherwise, the trustor can have his/her legal ownership restored

21. Chosun's high court decisions on 1912. 10. 29., and many others.

22. For more details, refer to Noh, Y.H., 「Registration of Real Estate under Real Name: An Evaluation and Policy Directions」, KIPF, 1997. 7., pp. 28-31.

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by applying for the cancellation of a previous title transfer. However, if the court considers the illegality of the title trust is significant and makes an order of performance for illegal cause,<sup>23</sup> the trustor cannot claim to have its ownership back.<sup>24</sup>

### **3.3.2. Acquisition of a Property Under a Third Party's Name Followed by a Title Trust Agreement**

This is a case when a title trustor (A) enters into a purchase agreement with a seller (C) and requests the seller to transfer the title of the property to a trustee (B) pursuant to a title trust agreement. This type of transaction is called a tri-lateral title trust agreement or title trust with intermediate omission.

This was often arranged for the purpose of tax evasions or real estate speculations. In addition, companies have often engaged in this type of title trust agreement in order to avoid various public regulations concerning the purchase of real estate. It is due to the fact that the ownership is not registered under the A's name; hence various public authorities will be exercised on B instead of A.

Under this agreement, the sale and purchase agreement between the seller (C) and the trustor (A) is valid and all other legal relations are now void. The title trust agreement between the trustor (A) and the trustee (B) is invalid under the private law, hence A cannot claim a transfer of title based on the terms in the title trust agreement. The registration of ownership transfer and changes of real rights between C and B are invalid, hence the ownership belongs to the original owner, C.

23. The article 76 of the Civil Law prohibits claims for the monetary return in cases where any property or labor is sacrificed under illegal transactions (e.g. gamble).

24. The Ministry of Finance and Economy, 'AREAT Commentary – with Q&A from real cases', 1999, p.25. However, the Supreme Court consistently adjudicated that the performance for illegal cause did not apply to title trust agreements. The Supreme Court explained it as 'The title trust agreement specified in AREAT means that the actual owner of real estate still holds the actual ownership, and only transfers the title to a third party. Therefore, the title trust agreement itself can not be considered as a harmful system against good customs nor public order. Basically, AREAT only invalidates title trust agreements and the relevant changes of ownership, however it does not prohibit the trustor from claiming the rights to have its title back because of other legal relations. Instead AREAT imposes an administrative penalty or criminal punishments. It is to protect the principle of private autonomy and property rights. Although AREAT is enacted to deter anti-social behavior, such as speculations, tax evasions and other non-compliances manipulating the existing system of real estate registration, the mere facts that the title is registered under a third party's name pursuant to an invalid title trust agreement does not establish the necessity for applying the performance for illegal cause [Supreme Court decisions 2003DA41722, 2003. 11. 27., 93DA61307, 1994. 4. 15.]. Equally, when a title is transferred to a third party according to a title trust agreement entered into for the purpose of tax evasion, the performance for illegal cause will not automatically apply [Supreme Court decision 2010D08556, 2010. 9. 30.]

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On the other hand, the sales and purchase agreement between the original owner (C) and trustor (A) is valid, therefore A cannot claim a refund of purchase price to C. In order to register the real estate under A's name, A should claim a cancellation of title transfer to B instead of C, and request a title transfer pursuant to the sales and purchase agreement with C.

However, during the process, A will be liable for administrative fines and criminal punishment. Also, if courts adjudicate the illegality of the title trust agreement is significant and apply the performance of illegal cause,<sup>25</sup> A cannot recover ownership.

### **3.3.3. Title Trust Contract**

A title trust contract is entered by a trustor (A) and a trustee (B), and the trustee becomes the party directly involved in the sale and purchase agreement with a seller (C) and transfers the title to himself/herself. This form of title trust is often utilized to avoid regulations prohibiting the acquisition of real estate by companies.

In this case, the title trust contract between A and B is invalid, but the title transfer is valid, therefore A cannot claim a transfer of title to B, and B cannot claim a transfer of title to C. This is because C does not know the existence of the title trust contract between A and B, and B pays for the real estate with the funds from A. However, the trustor (A) can claim wrongfully gained benefits to B, but during the process, the title trust contract can be exposed and A can be liable for fines and criminal punishment.

### **3.3.4. Impacts from Title Trust Upon a Third Party**

AREAT prohibits standing against third parties in all cases of title trust agreements regardless of the intentions (good or wrongful) of the third parties.<sup>26</sup>

However, in cases where the seller does not know about the title trust (a case with a good intention), the title trust between the trustor and the trustee becomes void as per Article 4 (1) of AREAT, meanwhile the title transfer from the seller to the trustee is valid under the proviso Article 4 (2) of AREAT. Additionally, the trustor does not have any contractual obligation with the seller, hence the trustor cannot make any claims to the seller, and the title trust is invalid, hence the trustor cannot claim a title transfer as per the title trust agreement.

In this case, there is a problem with the return of wrongfully gained profits. The Supreme Court explains that in cases where the trustor can acquire ownership of the real estate under

25. Article 76 of the Civil Law prohibits claims for monetary return in cases where any property or labor is sacrificed under illegal transactions (e.g. gamble).

26. The Ministry of Finance and Economy (1999), p. 27.

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the current AREAT (i.e. title trust agreement entered into prior to AREAT), the real estate itself becomes wrongfully gained profits,<sup>27</sup> meanwhile in cases where the ownership cannot be acquired (i.e. title trust entered into after AREAT), the purchase price becomes the wrongfully gained profits.<sup>28</sup>

In contrast, if the seller knows about the title trust agreement (a case with a wrongful intention), the title trust agreement between the trustor and the trustee becomes invalid, and the title transfer to the trustee also becomes invalid since the proviso of Article 4 (2) of AREAT does not apply, therefore the ownership stays with the seller. The sale and purchase agreement between the seller and the trustor also becomes invalid, and the problems of recovery remains. Also, the return of wrongfully gained profits between the trustor and the trustee due to invalidation of the title trust is another matter to resolve. The seller should return the selling price back to the trustee as a return of the wrongfully gained profits, and the trustee should return the fund back to the trustor. The trustor cannot claim a title transfer to the seller since they do not have any direct legal relationship.<sup>29</sup>

### **3.3.5. Invalidation of Title Trust Agreements Entered into after July 1, 1995**

After AREAT came into effect on July 1, 1995, no one can register a property under a third party's name.<sup>30</sup> Also, any title trust agreements or relevant title registrations were invalid. If the real-name registration, disposal by sale, etc. were not finalized within the grace period, the invalidation shall apply to the effect of the title trust agreements and the title transfers after such period elapses as per Article 12 (1) of AREAT.

However, if a person who has never made a registration under a title trust agreement before June 30, 1995 files a registration pretending that it is a real-name registration, he/she shall be punished by imprisonment for not more than five years, or by a fine not exceeding 200 million Won as per Article 12 (3) of AREAT.<sup>31</sup>

27. Supreme Court decision 2008DA62687, 2008. 11. 27.

28. Supreme Court decision 2007DA90432, 2010. 10. 14.

29. For more details, refer to Kang, B.S., "A Study on the Return of Excessive Profits about Contract Title Trust", Hongik Law Study, 2014, pp. 148-166.

30. Article 3 (1) of AREAT states: "No person shall register any real right to real estate under the name of the title trustee pursuant to the title trust agreement."

31. In addition, title trustee and anyone who instigates the title trustee shall be punished by imprisonment for not more than three years, or by a fine not exceeding 100 million Won. Anyone who aids and abets the title trust agreement shall be punished by imprisonment for not more than one year, or by a fine not exceeding 30 million Won.

If a person does not comply with real-name registration after the imposition of the initial penalty, 10% of the assessed value of real estate shall be imposed on him/her as charges for compelling performance after one year has passed from the date on which the initial penalty has been imposed. When two years pass from the initial penalty, he/she must pay an additional 20% of the assessed value of real estate as charges for compelling performance. However, title trust agreements between the families of the same clan or spouses are allowed as exceptions only to the extent that there are no intentions to evade tax or avoid compulsory execution of acts or limitations by various regulations. The contents of AREAT are summarized in <Table 1-4>.

**Table 1-4 | Summary of Punishments in Cases of Violation of AREAT**

Administrative	Criminal
<ul style="list-style-type: none"> <li>• Initial penalty: 30% of the assessed value of real estate</li> <li>• Charges for compelling performance after one year from the initial penalty: 10% of the assessed value of real estate</li> <li>• Charges for compelling performance after two years from the initial penalty: 20% of the assessed value of real estate</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment for not more than five years, or a fine not exceeding 200 million Won</li> </ul>

### **3.3.6. Invitations to Voluntary Real-name Registration for Title Trust Agreements Entered before July 1, 1995**

The title registration under a third party’s name as per the title trust agreement entered into before July 1, 1995 had to be transferred to the actual interest holder within one year (by June 30, 1996) from the date when AREAT became effective. If anyone failed to do so, he/she was liable to pay 30% of the assessed value of real estate as a fine.

However, among the previously existing title trust agreements, those entered into by religious groups (only those qualified as substantive religious groups by central or local government) for the purpose of their own religious activities with respect to farm lands, were exempted from real-name registration only to the extent that there were no intentions to evade tax or avoid compulsory execution of acts.

In order to have the title trust cancelled, in cases where there were disputes between the trustor and the trustee, it had to be resolved by reconciliations or courts proceedings. In all other cases, one had to apply for a transfer of ownership registration through the registry

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office given the cancellation of the title trust agreement with provisions of 「agreement to terminate title trust」 and 「title trustee's certificate of seal」.

### 3.4. Harmful Consequences from Real Estate Title Trust Agreement

Harmful consequences from transactions based on real estate title trust agreements are as follows.

#### 3.4.1. Tax Evasion

One of the primary harmful effects of title trust agreements is tax evasion. Firstly, the Korean inheritance tax is in the form of an estate tax that is imposed on properties belonging to the benefactor. Therefore, if the benefactor transfers his/her properties under a third party's name under a title trust, those properties are excluded from the inheritance tax. Although they belong to the benefactor, if the benefactor and the third party set up a tax avoidance scheme in which the benefactor's properties are disguised as the third party's properties being registered under the benefactor's name pursuant to a title trust agreement between them, they successfully claim for the title transfer based on the cancellation of the title trust before the inheritance takes place (event of death), hence those properties would be excluded from the inheritance tax. Later when the statutory time limit expires (generally the inheritance tax can be imposed within ten years from the event of inheritance), the properties are transferred back to the inheritor.<sup>32</sup>

The second scheme is to bequeath real estate properties to minor children under the name of a third party through a title trust agreement until the statutory time limit expires. When it expires, the parents successfully claim a cancellation of the title trust agreement and transfer the real estate to their children. Although the tax authority knows that the real estate is bequeathed to the minors, inheritance tax cannot be imposed since the statutory time limit is expired (generally the inheritance tax can be imposed within ten years from the date of inheritance).

32. Current Inheritance Tax Act extends the statutory limit to prevent a tax avoidance scheme. Article 26-2 (4-1) of Framework Act on National Taxes states the limitation period for national tax assessment as: Where a successor or recipient possesses the property of the benefactor or donor concerned under a title of a third party, or a conversion by real name is made under his/her name, the inheritance tax and gift tax may be levied within one year from the date on which the inheritance or gift of the relevant property is known by the tax authority. Therefore the statutory time limit has been unlimitedly extended.



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Thirdly, it is possible to evade capital gains tax through a title trust. The capital gains tax allows tax exemptions for the first house (below a certain size) of a household. Therefore those with more than two houses enter into a title trust for capital gains tax evasion by registering the second house under a third party's name, and exempted from capital gains tax in the event the first house is sold under the exemption rules. Later when the statutory time limit expires, the second house (being subject to the title trust agreement) is transferred back to the trustor.

Fourthly, the corporate tax can be evaded by a title trust agreement. If a company owns non-commercial real estate, the interest on the loan borrowed to acquire the real estate is not deductible. The company can evade corporate tax by registering the real estate under a third party's name while it actually owns and manages the real estate.

### **3.4.2. Features of Non-compliances**

Title trust agreements can possibly instigate real estate speculations and invalidate legal relations of real estate transactions. Firstly, the restrictions under the Farmland Act, which only allows farmers to own farmlands, can be easily avoided by registering farmlands under a farmer's name, while the farmlands are actually acquired and owned by those who are not farmers. Therefore, the rules that only allow the farmers residing in the same location to acquire farmlands and restricts people from other locations from acquiring farmlands can be easily avoided by title trust agreements. These all make real estate speculation possible.

Secondly, the evasion of debt is possible through a title trust. In order to avoid repayments of a bank loan, the real estate registered under his/her name is deliberately transferred to a third party.

Thirdly, senior government officials can conceal their properties with title trusts. Senior government officials or social leaders become subject to public criticism if they own excessive numbers of real estate properties, which are suspected of being purchased with funds acquired from bribery. Also, senior government officials are obliged to report their own properties. In order to avoid the reporting obligation, they transfer the title of their properties to a third party by entering into a title trust agreement.

**Table 1-5 | Summary of Harmful Consequences of Real Estate Title Trust**

Classification	Violated Rules	Details
Tax Evasion	Inheritance Tax	A real estate registered under a third party's name by a title trust can be excluded from the inheritance tax
	Gift Tax	After the statutory time limit expires, the title trust agreement is terminated and the title is transferred to children
	Capital Gains Tax	A real estate property is transferred to a third party without houses by a title trust in order to be entitled for tax exemptions to the first house of a household
	Corporate Income Tax	A real estate owned by a company is registered under its employee's name and later it is sold off to raise slush funds without paying relevant corporate income tax
Non-compliance	Farmland Reform Act	A company not capable of acquiring farmlands acquires a farmland under a name of resident farmer by a title trust agreement
	Foreigner's Land Acquisition and Management Act	A piece of land is acquired and registered by a third party who is a domestic resident through a title trust agreement in order to avoid the restrictions against foreigners
	Residential Land Ceiling Act	A piece of land is acquired and registered by a third party through a title trust for the purpose of speculations and residential usages
	Credit Management Regulation	A title trust agreement with a third party in order to be excluded from the non-commercial real estate and aggregate land tax
Property Concealment	Compelling Performance or Exclusion from Default	Acquisition of land under a third party's name to avoid compelling performance or tax authority's delinquency disposition
	Avoidance of Property Registration by Senior Government Officials	Distribution of the ownership by a title trust agreement with a third party in order not to be suspected for possessing excessive properties
	Avoidance of Tax Audit	A title trust agreement with a third party to avoid tax audits a company's excessive holding of non-commercial real estate

Source: Summarized from Noh, Y.H. (1997), p. 15 and extracts from the Ministry of Finance and Economy, 「AREAT White Papers」, 1997, p.83.

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## 3.5. Analysis on Korean Real Estate Registration System

One of the reasons behind the title trust agreement deeply rooted in Korea was the weakness in title registration system. The title trust agreement would have been meaningless if the title registration system clearly verified that a real estate property must belong to its title holder under the Civil Law or Public Law. Countries with a strict title registration system do not have systems like the Korean title trust agreement.

The title trust agreement has not been completely eliminated since the Korean title registration system still has potential for allowing real estate to be registered to someone else as the title holder. The features of the Korean title registration system are (1) realfolium, (2) joint application, (3) the cadastre system and (4) requisites for an establishment also apply when an application is made for a title registration. Korean title registration system denies public confidence of registration, but admits power of the inference in registration. More details of these features are explained below.<sup>33</sup>

### 3.5.1. Realfolium

The structure of the Korea real estate registration accords with realfolium. In other words, one lot is allocated to a piece of land or a building. Lands and buildings have to be registered separately on different registers. A register consists of a registration number, a section for describing the title, “Gap”-section and “Eul”-section. A section for describing the title indicates the land or building and any changes to them. “Gap”-section specifies ownership status of the real estate according to the ranks for priority, including the preliminary registration, entrustment registration, title trust agreement and transfer for security. In cases of disputes between multiple ownership rights, the priority is determined by the application number of registration. “Eul”-section keeps records of any other rights apart from the ownership, such as the surface rights, easement, leasehold rights, mortgage, etc.

### 3.5.2. Joint Application

A title registration has to be applied by the involved parties or commissioned by a government office. The person entitled to the registration and the person responsible for the registration or their nominees have to be present in the registry office to submit the application. Since the title registration makes changes to the real rights, the application should be made jointly by both concerned parties, the person entitled to the registration and the person responsible for the registration.

33. For further details, refer to Ahn, G.J. “Real-name Registration and Registration System on Real Estate”, Judicial scrivener, Vol. 346, 1996.

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### 3.5.3. Cadastre System

The cadastre system refers to the scope of review upon the application for registration, which is only limited to the legitimacy of formal procedures as opposed to the merit approach, which includes substantive reviews on natural reasons, causes and effects of the application. Focusing on the purpose of this article, in cases of title trust agreements, if the parties comply with all the procedural requirements under the Registration Act, the title registration shall be done as per the application regardless of the fact that it is made under the title trust agreement. In contrast, if the merit approach is adopted, the title registration as per the title trust agreement could be rejected.<sup>34</sup> The cadastre system allows fast and prompt review for registrations but weaknesses remain with high risks of the title registration not being fully reconciled with the actual status.

### 3.5.4. Requisite for Establishment

It implies that the changes of the real rights are effectuated by the title registration. Article 186 of our Civil Law states “the acquisition, loss of, or any alteration in, a real right by a juristic act over an immovable takes effect upon its registration” Therefore, a title registration is a prerequisite for changes of the real rights on the real estate proclaiming the adoption of principles related to the requisite for establishment and public notice.<sup>35</sup>

### 3.5.5. Denial of Public Confidence

Would the title registration constitute the title holder as a real owner? The Korean title registration system denies the public confidence. It is because of that the current Real Property Registration Act only prescribes formal written review, which cannot completely prevent unreliable registration involving a false title holder. There is no explicit provision denying the public confidence, but the case law supports the view that the public confidence of registration should be denied meanwhile the power of inference in registrations is respected.<sup>36</sup> Consequently, government may admit the title holder as the owner, but in cases with other evidences (e.g. a title trust agreement), the real estate can be deemed to belong to the trustor (actual owner) instead of the trustee (title holder under the register).

34. However, the Real Property Registration Act was amended in 1984 to adopt the merit approach for multi-unit dwellings like apartments by allowing the registry officer to investigate the actual statue of the building.

35. In contrast, France adopted requisites for counteraction, which allows the changes of the real rights effectuated by the expression of intention under the Civil Law.

36. Supreme Court decision 68DA199, 1969. 6. 10. and many others.

## 4. Effectiveness of AREAT

AREAT has been successfully settled in Korea with the government's strong efforts to root out real estate speculation combined with public support and cooperation from relevant ministries. It still currently functions as a very effective tool to improve transparency of real estate transactions and deter tax avoidance activities. In this part, (1) the results of the real-name registration will be analyzed and (2) the impacts of real-name registration on real estate price will be illustrated by an increase rate of real estate prices. Additionally, (3) statistics of penalty impositions caused by not undertaking real-name registration will be explained followed by (4) an analysis of the impacts of AREAT on Korean society.

### 4.1. The Results of Real-name Registration

Initially, the Korean government estimated the number of title trust agreements in place would amount to 20,000~100,000, however, the number of actual real-name registrations reached 140,000. This was a result of the active education and promotion programs provided to the public. The detailed statistics are illustrated in <Table 1-6>.

**Table 1-6 | Statistics for Real-name Registration**

Classification	Statistics
Cancellation of Title Trust	65,651
Request Made to Adjustment Corporation for Disposal	325
Law Suit	4,970
Real-name Registration (excluding disposal)	70,946
Disposals (estimated)	70,000
Total Number of Real-name Registration	140,946

Source: The Ministry of Finance and Economy 「AREAT White Papers」, 1997, p. 68.

The number of real-name registrations during the grace period is illustrated in <Table 1-7>.

**Table 1-7 | Number of Real-name Registrations**

(as per the official land value announced on July 1, 1995)

Classification	Total	Building	Land
Number	65,976	11,676	54,300
Area (in 000m <sup>2</sup> per single registration)	431,399m <sup>2</sup> (6.5)	30,967 (2.7)	400,432 (7.4)
Amount (in hundred million Won per single registration)	44,416 (0.7)	12,016 (1.0)	32,400 (0.6)

Source: The Ministry of Finance and Economy 「AREAT White Papers」, 1997, p. 69.

The number of real-name registrations can be divided into building and land as shown in <Table 1-8>.

**Table 1-8 | Real-name Registration by Building and Land**

(Unit: thousands m<sup>2</sup>, in hundred million Won)

Classification	Total	Building			Land				
		Sub-total	Residential	Others	Sub-total	Site	Farmland	Forest	Others
Number (rate)	65,976 (100)	11,676 (17.7)	6,624 (10.0)	5,052 (7.7)	54,300 (82.3)	10,430 (15.8)	22,072 (33.4)	19,235 (29.2)	2,563 (3.9)
Area (%)	431,399 (100)	30,967 (7.2)	23,726 (5.5)	7,241 (1.7)	400,432 (92.8)	12,652 (2.9)	55,710 (12.9)	317,786 (73.7)	14,284 (3.3)
Amount (%)	44,416 (100)	12,016 (27.1)	6,253 (14.1)	5,763 (13.0)	32,400 (72.9)	9,547 (21.5)	9,311 (21.0)	8,862 (19.9)	4,680 (10.5)

※ Buildings includes curtilage.

Source: The Ministry of Finance and Economy 「AREAT White Papers」, 1997, p. 70.

The real-name registration statistics can also be classified by trustors as shown in <Table 1-9>.

**Table 1-9 | Real-name Registration by Trustors**

Total	Individuals			Companies		
	Sub-total	Individuals → Companies	Companies → Individuals	Sub-total	Individuals → Companies	Companies → Individuals
65,976 (100%)	64,292 (97.5%)	59,955 (90.9%)	4,337 (6.6%)	1,684 (2.5%)	1,461 (2.2%)	223 (0.3%)

Source: The Ministry of Finance and Economy 「AREAT White Papers」, 1997, p. 71.

Further details of individuals' real-name registration are illustrated in <Table 1-10>.

**Table 1-10 | Details of Individuals' Real-name Registration**

(Unit: hundred million Won)

Classification		Total	Number of Real-name Registration			
			1	2~5	6~10	More than 11
Total	Persons	51,240	43,680	7,205	271	84
	Number of registration	64,090	43,680	16,839	1,934	1,637
	Amount	38,479	25,665	10,815	1,245	754
50 million Won or less	Persons	36,713	32,614	3,973	93	33
	Number of registration	42,840	32,614	9,008	675	543
	Amount	6,222	5,491	708	19	4
50 million~300 million Won	Persons	12,307	9,657	2,534	107	19
	Number of registration	16,699	9,657	6,001	739	302
	Amount	14,201	11,010	3,008	154	29
300 million~1 billion Won	Persons	1,843	1,235	545	43	20
	Number of registration	3,533	1,235	1,382	312	604
	Amount	8,982	5,861	2,777	240	104
More than 1 billion Won	Persons	377	174	163	28	12
	Number of registration	1,018	174	448	208	188
	Amount	9,074	3,303	4,322	832	617

Source: The Ministry of Finance and Economy 「AREAT White Papers」, 1997, p. 72.

**Table 1-11 | Details of Companies' Real-name Registration**

(Unit: hundred million Won)

Classification	Total			Individuals → Companies			Companies → Companies		
	Number of Companies	Number of Registration	Amount	Number of Companies	Number of Registration	Amount	Number of Companies	Number of Registration	Amount
Total	1,066	1,684	5,702	904	1,451	2,337	162	233	3,365
50 million Won or Less	591	685	105	490	578	91	101	107	14
50 million-300 million Won	322	442	405	281	378	363	41	64	42
300 million - 1 billion Won	106	282	514	97	246	469	9	36	45
More than 1 billion Won	47	275	4,678	36	249	1,414	11	26	3,264

Source: The Ministry of Finance and Economy 「AREAT White Papers」, 1997, p. 73.

Details of companies' real-name registration are illustrated in <Table 1-11>.

Instead of the real-name registration, the number of cases where requests are made to the Adjustment Corporation to dispose of the real estate involved in the title trust agreement are illustrated in <Table 1-12>.

**Table 1-12 | Statistics on Requests Made to Adjustment Corporation to Dispose of Real Estate**(Unit: thousands m<sup>2</sup>, in hundred million Won)

Classification		Total	Individual	Companies
Total	Number of Requests	325	142	183
	Area	1,184	706	478
	Amount	306	177	129
Residential	Number of Requests	6	4	2
	Area	0.4	0.2	0.2
	Amount	5	4	1
Sites	Number of Requests	8	3	5
	Area	1.2	0.6	0.6
	Amount	22	21	1



Classification		Total	Individual	Companies
Farmlands	Number of Requests	256	111	145
	Area	415	172	243
	Amount	159	74	85
Forests	Number of Requests	31	12	19
	Area	728	506	222
	Amount	74	38	36
Others	Number of Requests	24	12	12
	Area	39	27	12
	Amount	46	40	6

Source: The Ministry of Finance and Economy 「AREAT White Papers」, 1997, p. 74.

## 4.2. Analysis of the Increase in Real Estate Price

After AREAT, speculative activities decreased and real estate prices stabilized. In 1995, land value increased by 0.55% annually, and after AREAT, land value increased by 0.95%, but bearing in mind the inflation rate of 4.5%, the real estate price appeared to be stabilized. This was due to the disappearance of speculative demands after AREAT resulted in stabilizing the real estate trade order.

**Table 1-13** | Statistics on the Increase Rate of Real Estate Price

(Unit: %)

Classification	'91	'92	'93	'94	'95	'96	'97	Annual Average ('92~'97)
Rate of Changes in Land Values	12.8	△1.3	△7.4	△0.6	0.6	1.0	0.3	△1.2
GNP Growth Rate	9.1	5.0	5.8	8.4	8.7	7.2	4.9	6.7
Consumer Price	9.2	4.4	5.7	5.5	4.7	4.5	6.4	5.2

Source: Choi, H.J., "Development of Real-name Registration and Information system of real estate", Korea Research Institute for Human Settlements, 1999. p. 14.

The increase in land value and housing price during 1995~1997 (a period of rising price in the real estate cycle) was insignificant compared to the consumer prices. Specially, in 1998, the speculative bubbles in real estate price, which was excessively high compared to the actual price, were alleviated because of the economic recession, as well as the disappearance of speculative demands and stabilization in real estate trades mainly undertaken by the real buyers. The annual changes of the real estate price are shown in <Table 1-14>.

**Table 1-14 | Changes of Real Estate Price 1994~1999**

(Unit: %)

Classification	1994	1995	1996	1997	1998	1999. 6.
Land value	△0.6	1.0	0.3	0.3	△13.6	1.1
Housing Price	△0.1	△0.2	1.5	2.0	△12.4	2.1
Consumer Price	5.6	4.7	4.9	6.6	4.0	0.0

Source: The Ministry of Finance and Economy (1999), p. 14.

### 4.3. Analysis on the Imposition of Penalties and their Amounts

The penalties imposed on non-compliances to the real-name registration within the AREAT grace period are shown in <Table 1-15>.

**Table 1-15 | Statistics on Penalty Impositions**

(Unit: thousand Won)

Classification	Total	'96.8	'96.9	'96.10	'96.11	'96.12	'97.1	'97.2
Number of Imposition	31	1	2	8	7	5	1	7
Amount	1,060,560	493	2,520	56,017	262,330	554,433	88,261	96,506

Source: The Ministry of Finance and Economy 「AREAT White Papers」, 1997, p. 90.

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## 4.4. Economic and Social Impacts

AREAT has made corrections to the wrongful customs, such as title trust agreements and long-term non-registrations, and enhanced normalization and transparency in real estate trades. Furthermore, AREAT has blocked chances of unlawful unearned income and promoted the legalization of a shadow economy.<sup>37</sup> In other words, the vicious circle of <real estate speculations → increase in speculative funds → high interest rate → real estate speculations → increase in real estate price> has converted into the virtuous cycle of <radication of real estate speculations → decreased demands on speculative funds → stabilized lower interest rate → ordinary real estate investment → stability in real estate price>. Further discussions in relation to the (1) land market, (2) housing market and (3) share market are as follows.

### 4.4.1. Land Market

The changes in land transactions prior to AREAT are illustrated in <Table 1-17>. In the first quarter of 1995, immediately after the announcement of AREAT, the number of land transactions declined sharply, and the rate of decrease in traded area was absolutely higher than that of the decrease in number of trades, which indicated that only land transactions that were absolutely necessary were undertaken under the uncertain environment.<sup>38</sup> Especially in 1995, the number of real estate transactions increased by 0.55%, which was insignificant compared to the previous year. The number increased to 0.95% in 1996, however, in comparison to the 4.5% inflation rate of that year, it seemed to indicate overall stability.<sup>39</sup>

37. Of course, these positive changes resulted not only from AREAT, but also from various other real estate policies.

38. Noh, Y.H. (1997), p. 68.

39. The Ministry of Finance and Economy (1997), p. 84.

**Table 1-16 | Changes in Number of Land Transactions**

Classification	1994 (3/4)		1994 (4/4)		1995 (1/4)		1995 (2/4)	
Number (%)	Number	Change rate	Number	Change rate	Number	Change rate	Number	Change rate
	207,300	11.5	284,766	19.9	242,217	15.8	300,201	13.5
Area (in thousand m <sup>2</sup> , %)	Area	Change rate	Area	Change rate	Area	Change rate	Area	Change rate
	214,629	23.7	292,262	36.5	285,737	24.4	327,811	33.0

Classification	1995 (3/4)		1995 (4/4)		1996 (1/4)		1996 (2/4)	
Number (%)	Number	Change rate	Number	Change rate	Number	Change rate	Number	Change rate
	241,325	16.4	300,389	5.5	300,811	24.2	397,596	32.4
Area (in thousand m <sup>2</sup> , %)	Area	Change rate	Area	Change rate	Area	Change rate	Area	Change rate
	284,075	32.4	353,284	20.9	424,237	48.5	769,021	134.6

※ The change rate is computed in comparison to the same quarter of previous years.

Source: Rearranged the extracts from Noh, Y.H. (1997), pp. 62~63.

## 4.2.2. Housing Market

The major impacts from AREAT on the housing market were the increased number of houses that urgently needed to be sold and the consumer's wait-and-see attitude. Particularly, those with the existing title trust agreements entered into in pursuit of illegal intents or tax avoidance scheme tried to sell off their houses to third parties disguising them as genuine trades instead of real-name registration. The housing price gradually declined due to the changes in the housing market with high potentials for drops in the selling prices caused by increased supplies and the changes in consumer composition with more genuine buyers.<sup>40</sup>

In 1995, the housing price declined by 0.2% compared to the end of 1994. In 1996 the housing price increased by merely 1.5%, which reflects the impacts from AREAT.<sup>41</sup>

40. Noh, Y.H. (1997), p. 70.

41. The Ministry of Finance and Economy (1997), p. 84.

**Table 1-17 | Changes in Housing Market**

Classification	1995 (1 <sup>st</sup> quarter)				2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	Last Quarter	1996		
	January	February	March	Sub-total				1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter
Large	△0.55	△0.55	△0.44	△0.44	△0.22	△0.33	△0.22	△0.18	△0.09	△0.40
Medium	△1.32	△1.22	△1.11	△1.11	△0.67	△0.67	△0.45	△0.06	△0.10	△0.60
Small	0.22	0.11	0.22	0.22	0.54	0.22	0.11	0.70	0.80	1.29

Source: Rearranged with extracts from Noh, Y.H. (1997), pp. 73.

#### 4.4.3. Share Market

When AREAT was initiated, it was expected that the real estate funds would flow into the share market. The share market had ideal conditions to attract investments since there was no general tax system established for the capital gains generated from share tradings. However, the share market was experiencing a downturn and the real estate funds did not seem to have moved to the share market as illustrated in <Table 1-18>.

**Table 1-18 | Changes in Share Market**

(Unit: Number of shares)

Classification	1995. 1. 6.	1995. 1. 9.	1995. 1. 23.	1995. 1. 27
Price Index of Stocks	975.32	998.32	935.38	907.05
Change Rate	-	23.00	△ 62.94	△ 28.33
Trading Volume	50,930,140	51,621,630	24,445,430	21,560,720

Source: Recited from Noh, Y.H. (1997), pp. 74.

#### 4.4.4. Other Effects

AREAT, together with the real-name financial transaction system enacted in 1993, was considered as meaningful efforts to consolidate the foundation for economic justice. It paved the way to deter illegal unearned income generated from inadequate real estate transactions and to establish a society with a sound economy. Consequently, it had positive impacts on the Korean society, achieving stable public order and enhanced transparency.

**Table 1-19 | Timeline of AREAT**

Date	Particulars
1994. 10~12	Conjoint research study on real-name registration for real estate among relevant ministries
1995. 1. 6.	Plans to promote real-name registration proclaimed at the Presidential new year press conference
1995. 1. 9.	Statement announcement on main contents and timeline for implementation of real-name registration
1995. 1. 10.	Established a team responsible for a countermeasure force on real estate practices by renaming 「TF team for real-name financial transaction system」 to 「TF team for real-name financial and real estate transaction system」
1995. 1. 27.	Pre-announcement of AREAT draft
1995. 2. 8.	Public hearing held at Korea Institute of Public Finance on AREAT draft
1995. 2. 23.	AREAT draft submitted to special session of the Assembly (172 <sup>nd</sup> )
1995. 3. 18.	AREAT draft passed by the Parliament
1995. 3. 20.	AREAT (Act no. 4944) proclaimed and published
1995. 3. 24.	Advertisement promoting AREAT through the major national daily newspapers
1995. 3. 31.	Advertisement promoting the execution of AREAT through economic newspapers
1995. 4. 4.	Pre-announcement of draft of Enforcement Decree for AREAT
1995. 4. 26.	AREAT promotional booklets published and distributed
1995. 4. 27~5. 31.	AREAT roadshow to educate relevant government officials
1995. 5. 9.	Enforcement Decree of AREAT passed the Cabinet Council
1995. 5. 19.	Enforcement Decree of AREAT (Presidential Decree No. 14650) proclaimed and published
1995. 6. 17.	Enforcement Rules of AREAT (Ordinance of the Prime Minister No. 508) proclaimed and published
1995. 7. 1.	Execution of real-name registration for real estate properties
1995. 12. 4.	AREAT leaflets distributed
1996. 1. 26.	1 <sup>st</sup> case of a person arrested for non-compliance of real-name registration
1996. 7. 1.	Grace period for real-name registration expired
1996. 7. 13.	Commentaries for real-name registration and announcements made for detailing ways to impose penalties
1996. 8. 14.	1 <sup>st</sup> case of a penalty imposition for non-compliance of real-name registration (Yeongcheon, North Gyeongsang Province)

Source: Summarized extracts from The Ministry of Finance and Economy 「AREAT White Papers」, 1997, p. 109~110.

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## 5. General Summary

AREAT paved the way for radical reform in real estate transactions in Korea. Real estate property must be registered under the name of the person acquiring the property, however, it had long been registered under a third party's name due to the title trust agreement. Therefore many counter measures against real estate speculations had not been very successful. The title trust agreement initiated during the Japanese colonial era, and even after the independence, the Supreme Court allowed title trust agreements. There were no efforts to make corrections through amendments to the Civil Law or the Real Property Registration Act, hence the title trust agreement was considered a cancer for real estate transactions. Specially, the real estate registration records did not have the public's confidence under the Real Property Registration Act, which resulted in the lack of regulation controlling registration records that were different from actual ownership. AREAT was enacted in 1995 mainly to invalidate title trust agreements under the private law. It enforced real-name registration to the title trust agreements entered into before the enactment of AREAT within a one year grace period, and imposed criminal punishment in cases of non-compliances.

The contributions of AREAT on Korean laws and systems relate to the deterrence of real estate speculations. Real estate speculations helped Korea move from an agrarian society to an industrial society after the five-year economic development plan in 1962. Consequently, the rural population flowed into overly crowded cities causing problems with housing shortages and skyrocketing real estate prices. The real estate speculations, which manipulated these phenomena were prevalent, and the Korean government implemented various counter measures. However, as long as the registration under a third party's name was legally allowed in real estate transactions, those counter measures had limitations. The counter measures often included capital gains tax, but excessive usage of the tax system on this matter were beyond the original purposes of the tax system.

In fact, at the time of skyrocketing real estate prices, the imposition of an additional tax was not enough to deter real estate speculation due to the large profits still made after paying the taxes. The right path to dealing with the increased demands is to increase the volume of supplies. Additionally, title registrations and tax returns should match up with the actual owner and actual purchase price. In the absence of this basic social system, real estate speculation prevails. It was AREAT together with the real-name registration that resolved problems with real estate speculations.

The Korean government put significant efforts toward settling the real-name registration in Korea. It was remarkable that the government promoted public education, provided public

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services to offer immediate solutions for the difficulties with real-name registration, and cooperated with judicial departments to resolve problems involved with the title registration of real estate property.

After AREAT, real estate speculations appeared to have declined compared to the past. It was also because of the economic depression that reduced demands for real estate. The real estate price is not expected to bear a high increase rate compared to other investment instruments (e.g. shares).

However, a price jump in real estate property can always instigate speculative fever. Nevertheless, as long as AREAT invalidates title trust agreements in real estate transactions, the speculative bubbles that prevailed in the 1970's and 1980's beyond the government's control is very unlikely to reappear in the future.



2014 Modularization of Korea's Development Experience  
Enhancing Transparency in Real Estate Ownership  
and Transaction: Cases of Two Policy Reforms in Korea

## Chapter 2

### Real Estate Transaction Reporting System

1. Introduction
2. Background and Process of Implementation
3. Operation of Real Estate Transaction Reporting System
4. Building Real Estate Trade Management System
5. Controversial Issues Surrounding Operation of Real Estate Transaction Reporting System
6. Assessment of Real Estate Transaction Reporting System's Achievements
7. General Summary

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# Real Estate Transaction Reporting System

## 1. Introduction

The real estate transaction reporting system is a system under which it is mandatory to report the actual transaction price when concluding a sales and purchase contract for real estate or real estate acquisition rights. It was adopted for the purpose of eliminating double contracts, which was a widespread practice in Korea until 2006, and for realizing fair taxation and preventing property speculation. Previous governments attempted to tackle the issue of writing up double contracts by introducing policies such as certified contracts and the real estate real-name system, but the actual transaction price was not easily identified and thus the practice of signing double contracts continued. Against this backdrop, filing a report on the actual price for a real estate transaction became mandatory as a part of the policies enforced for a more transparent real estate market coming into the Roh Moo-hyun administration, and as a result, the writing up of double contracts gradually subsided.

The adoption of the system for real estate transaction reporting is assessed to have numerous positive outcomes, one being the elimination of double contracts, an essential factor for fair taxation. Another achievement is that infrastructure was put in place for a more effective real estate market by enhancing transparency of prices and transaction information in the real estate market. However, there was also considerable friction and controversy over the course of introducing and enforcing the system, and limitations still remain as the market is not completely free of the practice of reporting prices at a lower or higher amount than the actual transaction price.

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This chapter begins by documenting the Korean real estate market and policies at the time when real estate transaction reporting was first adopted and closely examines the process of its introduction. It also describes details on the institutional framework for reporting and then looks into the real estate transaction management system (RTMS), which plays a central role in running the reporting system. The chapter moves on to investigate institutional issues that arise in the course of operating the system, the credibility of reported prices, and issues concerning the increased tax burden. Finally, it discusses the achievements obtained through real estate transaction reporting.

## **2. Background and Process of Implementation**

### **2.1. Background for Real Estate Transaction Reporting System**

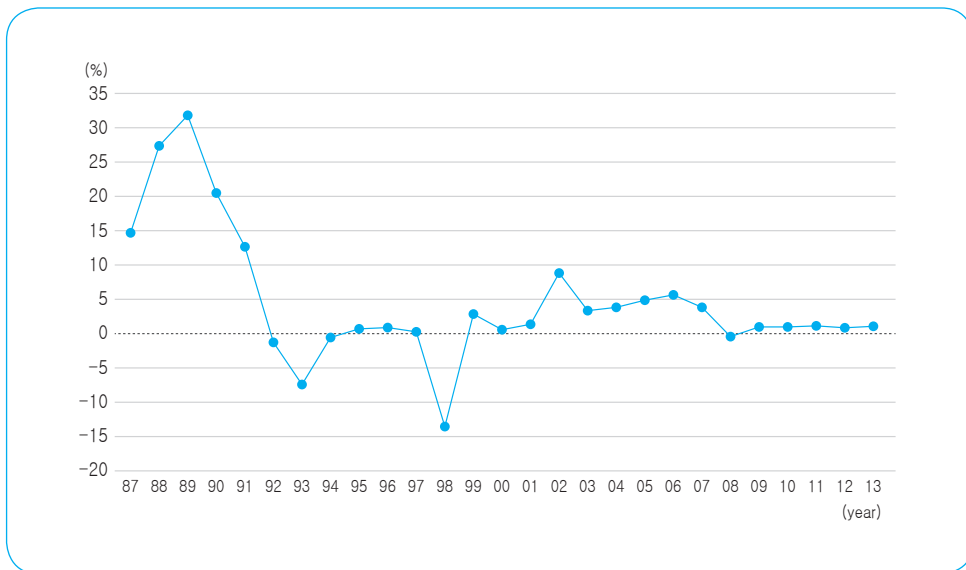
#### **2.1.1. Real Estate Market and Relevant Policies Prior to the Real Estate Transaction Reporting System**

The Korean real estate market repeats a cycle of recession and rapid recovery, which is viewed to further fluctuate because the government constantly relaxes and tightens regulations through policies. However, at a point when real estate prices skyrocketed, the consequences of real estate speculation sparked widespread social tension. Hence, the government has been constantly leaning efforts towards constraining real estate speculation and stabilizing real estate prices through policies on taxation or transaction constraints whenever the real estate market becomes overheated.

In the 1960s, a Five-Year Economic Development Plan was established and provided the framework for the country's economic development. Korea managed to achieve continuous and rapid economic growth, but together with this economic development emerged the periodic return of uncertainty in the real estate market. In the 1970s, an overheated real estate market led to surging land prices and a severe lack of housing in the urban area, which drew mostly regulation-focused real estate policies. To this end, anti-speculation policies were implemented including the land transaction approval and registration system. In addition, a taxation policy was enacted to prevent an overheated real estate market, especially land, and the government concentrated on increasing the supply of housing.

Then, to recover from a real estate market recession triggered by the onset of the second global oil shock and political instability, economic stimulus policies were implemented for the purpose of reviving the real estate market. These policies included an exemption period for capital gains tax in the early 1980s and relaxing conditions for mortgage loans. In the late 1980s, amidst another overheated real estate market and in tandem with the hosting of the 1988 Seoul Olympics, the government switched back to policies that legislated stronger taxation, a development charge system, and a concept of public ownership of land.

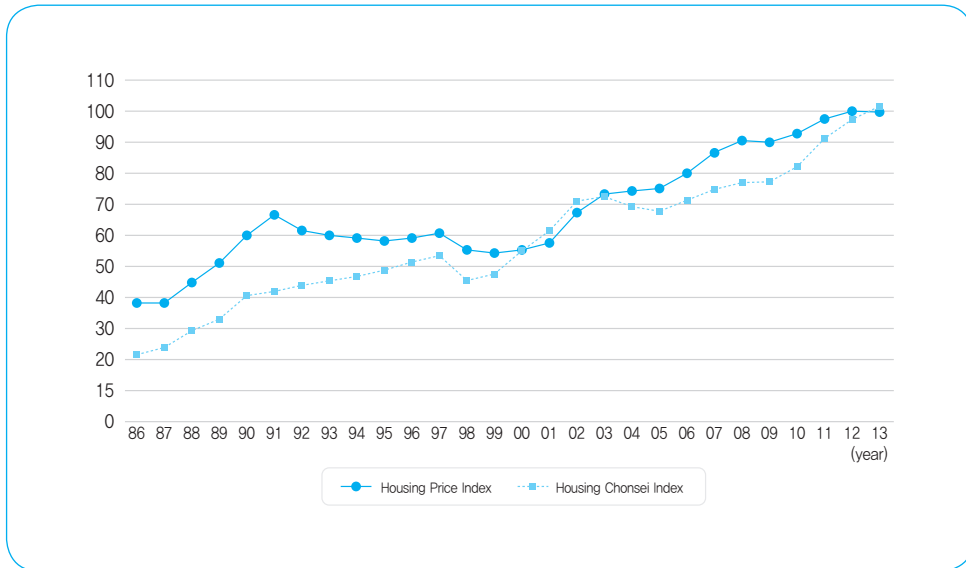
Figure 2-1 | Change in Nationwide Land Prices



Source: Onnara Real Estate Information Provider ([www.onnara.go.kr](http://www.onnara.go.kr)).

Coming into the 1990s, practical efforts such various anti-speculation measures in the late 1980s and housing supply policies like the two million housing unit construction plan ushered in a period of stability in the real estate market. After this, land prices remained relatively stable, and with a mass supply of housing available, a decline in housing prices and nominal prices continued until the latter half of the 1990s. Then Korea encountered an economic crisis sparked by the Asian financial crisis in the late 1990s, which led to a sharp contraction in housing demand. This led to policies directed toward stimulating the real estate market, including removing the ceiling of land ownership and deferring the development charge system.

**Figure 2-2 |** Trend in Nationwide Housing Price Index and Jeonse (lump-sum rent deposit)



Source: Kookmin Bank Housing Price Index and Housing Jeonse Index.

Afterwards, real estate policies underwent a policy change that was more focused on the real estate market rather than the relatively stabilized land market. The Kim Dae-jung administration that came into office after the Asian Financial Crisis initiated real estate market revitalization measures, released in May 1998, and continuously pursued economic stimulus measures. This contributed to a surge in jeonse (lump-sum rent deposit) prices and a sharp rise in housing prices beginning in late 2001. When the Roh Moo-hyun administration took office in 2003, real estate prices were on an upward trend, and the government thus placed housing market stabilization among its top priorities and implemented roughly ten rounds of relevant measures. As a part of such efforts, comprehensive measures for housing market stabilization was released on October 29, 2003, which included plans to introduce the real estate transaction reporting system for the purpose of establishing a foundation for fair taxation based on actual transaction prices.

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### 2.1.2. Issues Concerning Double Contracts

The issue of signing double contracts, which was openly carried out to reduce taxes in real estate transactions, was a major contributor to the introduction of real estate transaction reporting. Before the reporting system was adopted, the tax base for acquisition and registration tax was the higher amount from among either the reported price or the statutory standard price<sup>42</sup>. Therefore, most real estate purchasers sought to report a lower-than-actual transaction price. Moreover, in capital gains tax calculations, the standard market price<sup>43</sup> was used as the base for the acquisition price instead of the reported price, which meant that reporting an amount lower than the actual transaction price also reduced the capital gains tax burden. For such reasons, writing up double contracts was openly carried out.

To address the issue of double contracts, a certified contract system was set up in 1988. Under this system, it was required that a contract with the inspection seal of the city/county/district office be submitted to register the transfer of ownership upon signing a real estate contract. Despite the system, however, it remained difficult to identify false information reported in the contract, and furthermore, there was no particular penalty for any violation. Therefore, the practice of writing up double contracts went on unresolved.

Under such circumstances, it was necessary for the district office to visit each of the contracting parties and confirm whether the contract listed the actual transaction amount, but this was not realistically viable, and so acquisition and registration taxes were imposed only at the statutory standard price level when it was higher than the reported amount. If found that the reported amount differed from the actual transaction amount, the party concerned was imposed an additional fine of 20 percent of the tax, but the certified judicial scrivener or real estate agent that acted as a proxy in the transaction did not receive any penalties. Naturally, most real estate agents maintained the practice of providing contracting parties with a double contract; one with the actual transaction price and then a separate contract (listing the statutory standard price).

42. The price that is the tax base of local tax, which uses the real estate price as its tax base. It is disclosed pursuant to the Public Notice of Values and Appraisal of Real Estate Act.

43. The amount that is released by the NTS every year after consistently assessing real estate so that it may be used for imposing different kinds of taxes on real estate holders, which is used as the tax base when the actual transaction price is indefinite.

**Table 2-1 | Certified Contract System**

<b>Purpose</b>	Introduced to regulate acts of illegal real estate transaction such as an unregistered sale and to prevent real estate speculation
<b>Background</b>	Enforced on October 1, 1988, pursuant to indications of property speculation and increase in land prices following the mid-1980s
<b>Key Content</b>	In the event of applying to register a real estate, an officially sealed sales and purchase contract with an inspection seal from the competent administrative office must be submitted, and when applying to register the transfer of ownership for the purpose of sales or exchange, a contract with the inspection seal of the mayor/governor must be submitted.
<b>Contract Details</b>	Parties concerned; real estate in question; contract date; purchase price and matters pertaining to the payment, such as the payment date, or the appraised value and matters pertaining to the adjustment of the difference in the appraised value; when there is a real estate broker, the name of the real estate broker; when terms and conditions or a time limit exist for the contract, such terms and conditions or time limit.
<b>Relevant Laws</b>	Act on Special Measures for the Registration of Real Estate, Act on the Licensed Real Estate Agent's Business and the Report on Real Estate Transactions

Then after 2000, in line with the economic recovery, real estate prices skyrocketed. This led to an intensifying gap between the actual transaction price and the standard market price, and highlighted the need for a reporting system to identify the actual transaction price, which is essential for solving the socially controversial issue of double contracts and gathering accurate information on real estate prices.

### **2.1.3. Lack of Credible Housing Price Data**

Before actual transaction prices were collected through the real estate transaction reporting system, information on real estate transaction prices was mostly gathered for apartments, as they were the standard form of residence and it was relatively easier to identify the market rate. This rate was provided by real estate agencies nationwide, and thus although there was some likelihood that the actual transaction price would be reflected in the rate, it was highly probable that the rate would be impacted by the “asking price,” which is the price desired by the property owner. This price would likely differ from the price levels generally expected by the contracting parties. Under such circumstances, in 2005, before the real estate transaction reporting system was introduced, it was common to witness the rate of an apartment surge tens of millions of Won in merely a week, for

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the same sized apartment unit in an apartment complex where there were no transactions. This rate, which would be closer to an asking price, was perceived to drive the house price hike in the neighborhood, and this led to a growing awareness for the need to access actual transaction prices.

## 2.2. Introduction of Real Estate Transaction Reporting System

### 2.2.1. Legislation Process

Actual transaction price reporting was specifically addressed for the first time on August 13, 2001 at the Property and Consumption Tax Subcommittee of the Taxation Development Deliberation Committee. At the time, a number of committee members argued that real estate taxation should be based on the actual transaction price and not the standard market price. Two years later on September.

26, 2003, the (then) Ministry of Construction and Transportation announced plans to issue a legislative notice for the draft revision of the Real Estate Agency Act in which it would be mandatory to report the actual transaction price, and expressed intentions to make it effective from the second half of 2004. The key details of the revision draft was to stipulate the prohibition of double contracts, and make it mandatory to notify the registration office in the competent city/county/district of the contract information. Also, although contracts had previously been kept by the real estate agency, the revision prescribed that a copy of the contract shall be submitted to the registration office or contract information logged into the land management information system. It also specified that in the case of a real estate brokerage contract, the real estate agent who writes up the double contract would be imposed a heavy penalty of imprisonment for not more than three years or a fine not exceeding 20 million Won and his/her real estate agency license cancelled. However, this proposal was not immediately put into action. The revision plan was met with strong and persistent opposition from the National Real Estate Brokers Association, which argued that the burden of reporting real estate transaction prices was placed excessively on the real estate agent, while there were no obligations or penalty clauses addressing the main actors of the contract, who would be the parties in the transaction.<sup>44</sup> To settle these issues, the

44. Until the real estate transaction reporting system was put in place, the association continuously opposed the system through several methods, including a rally to prevent the revision in August 2008.



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government and ruling party held a closed-door meeting in February 2005 and modified the revision plan so that not only real estate agents, but also the contracting parties would be subject to mandatory reporting of the actual transaction price. Still, the Real Estate Agency Act revision was delayed, largely on the part of strong opposition from the National Real Estate Brokers Association. It is in many ways true that a real estate agent should just be given the duty of brokering a transaction, and the obligation to report transactions placed on the contracting parties, but in order to swiftly get the system running properly, the best option at the time was reporting through a real estate agent. This is due to the fact that for housing, most transactions are carried out via real estate agents rather than in the form of a direct transaction between two parties. The opposition of the National Real Estate Brokers Association was settled under the condition that real estate agents be granted the role of a purchasing agent and a modified calculation method that translated into higher brokerage commission.

In June 2005, the Real Estate Agency Act was revised and renamed Act on the Licensed Real Estate Agent's Business and the Report on Real Estate Transactions. On July 29, 2005, the revised Act was promulgated (Act No. 7638), and the real estate transaction price reporting system was effective from January 1, 2006. Furthermore, in line with reporting the actual transaction price of real estate, the listing of the reported actual transaction price on the register of real estate was enacted in June 2006 to enhance the effectiveness of the policy. Pursuant to the Act on the Licensed Real Estate Agent's Business and the Report on Real Estate Transactions, the contracting parties and the real estate agent shall report transaction details to the mayor's office/regional office/local district office within 30 days from the agreement date of the contract, and if a double contract exists or the transaction amount is reported at a lower-than-actual amount, a fine equivalent to not more than three times the amount of acquisition tax shall be imposed. Due to heated controversy over the provision that prescribed that false contracts shall be punished by imprisonment for not more than three years or a fine not more than three times the amount of evaded tax, the provision was changed to stipulate a lighter penalty of a "fine not exceeding five million Won and/or cancellation of registration or business suspension."

**Table 2-2 | Real Estate Agency Act Legislation Process**

Period	Key Content
2003	<ul style="list-style-type: none"> <li>• Real Estate Agency Act revision plan announced               <ul style="list-style-type: none"> <li>- includes clause prohibiting the writing up of double contracts in the section that prohibits false documentation of transaction details including the transaction amount</li> <li>- the obligation to notify the contract details did not exist previously, but the revision prescribes that the contract details of a transaction contract shall be notified to the registration office</li> </ul> </li> <li>• Penalties in the event of a violation               <ul style="list-style-type: none"> <li>- in the case of writing up a false contract or double contract:                   <ul style="list-style-type: none"> <li>→ cancellation of real estate agency license → imprisonment for not more than three years or a fine not exceeding 20 million Won</li> </ul> </li> <li>- in the case the contract details were not notified or notified falsely:                   <ul style="list-style-type: none"> <li>→ a fine not exceeding five million Won</li> </ul> </li> </ul> </li> </ul>
Aug. 2004	<ul style="list-style-type: none"> <li>• Real Estate Agency Act revision plan partially submitted to the National Assembly</li> <li>• When signing a sales and purchase contract for real estate, the real estate agent is required to report the details to the mayor's office/ regional office/local district office, in an attempt to obtain the actual transaction price through comparing and verifying the inspection seal information and the information provided by the real estate agent, and inputting the data in the verification system set up by the Ministry of Construction and Transportation</li> </ul>
Feb. 2005	<ul style="list-style-type: none"> <li>• Construction and Transportation Committee submitted an alternative proposal to the National Assembly</li> <li>• Real Estate Agency Act renamed Act on the Licensed Real Estate Agent's Business and the Report on Real Estate Transactions</li> <li>• Contracting parties jointly assume the obligation to report transaction information within 30 days from the agreement date of real estate sales and purchase contract (in the case of a real estate brokerage transaction, the real estate agent shall assume the reporting obligation)</li> <li>• Ministry of Construction and Transportation built and operated a verification system for the reported prices</li> </ul>
Jun. 30, 2005	<ul style="list-style-type: none"> <li>• Construction and Transportation Committee's alternative proposal for the National Assembly passed</li> </ul>
Jan.1, 2006	<ul style="list-style-type: none"> <li>• Real estate transaction reporting system enforced</li> </ul>

### 2.2.2. Revision Process

Since the introduction of the real estate transaction reporting system, there have been several revisions that included a wider range of transactions required to be reported and an extension of the reporting period, and excluding the exempted housing required to report within the housing transaction reporting area. On December 28, 2006, the reporting system was revised, and the holding of apartment ownership rights and housing association residential rights were included among transactions required to report the actual transaction price. Unlike land and structures, these transactions had not been among those subject to mandatory reporting, which gave rise to an issue on fair taxation.<sup>45</sup> As a result, if a person trades an ownership right or residential right and falsely reports the transaction amount, a penalty fine shall be imposed, determined by the gap between the actual transaction amount and the reported amount. Secondly, the contracting party or real estate agent had been granted 30 days to file a transaction report for real estate, but in the real estate market, changes in contract details occur frequently even after signing the contract. Consequently, the reporting duty was not being properly carried out. Taking this into account, the reporting period for filing a report on real estate transactions was extended from 30 days to 60 days. Finally, if details of the report on the actual transaction amount are deemed to be omitted or inaccurate, the mayor/governor/head of the district office may have a government official under his/her control demand relevant documents, including the contract to the contracting party. The revisions mentioned above took effect on June 29, 2007.

The second revision took place on June 13, 2008. Pursuant to this revision, if one contracting party refuses to report the actual transaction price, the other party shall be able to file the report, and the party that refuses to file the report shall be imposed a penalty fine. In addition, if the housing transaction contract is written up and provided by a real estate agent, even in areas for reporting on housing transactions<sup>46</sup> that have been maintained regionally for the purpose of containing real estate speculation, the real estate agent and not the contracting party shall assume the obligation to file a report on the details of the transaction. A person failing to report the transaction shall be imposed a fine not exceeding

45. Therefore, the transactions that were required to be reported expanded to the following: 1. land and structure, 2. a status as an occupant obtained through the authorization of the management and disposal plans pursuant to the provision of Article 48 of the [Act on the Maintenance and Improvement of Urban Areas and Dwelling Conditions for Residents] 3. a status as an occupant of a housing that has gained business plan approval pursuant to the provision of Article 16 of the [Housing Act].

46. A system where if an apartment is sold within an area designated as a housing transaction reporting area because of concerns of speculation, the actual transaction price must be reported to the competent city/county/district within 15 days of signing the contract. It took effect on March 30, 2004 pursuant to the revised Housing Act.

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five million Won, and if a report is filed falsely, a fine not exceeding three times the equivalent of the acquisition tax of the housing. The mayor/governor/head of a local district may demand that documents evidencing the payment of transaction be submitted in order to verify the reported details on the real estate transaction. If the documents concerned are not submitted, a fine not exceeding 20 million Won shall be imposed. Finally, modifications were made regarding the administrative office in charge of imposing fines. Previously, in the case of real estate transactions, a report was filed to an administrative office at the location of the real estate, but in the case of a reporting violation, the fine was imposed by the administrative office at the location of the real estate agency, which caused confusion. As such, following the revision, in the event of a reporting violation regarding real estate transactions, a fine shall be imposed by the administrative office where the real estate transaction report was initially registered, and this office shall in turn give notice of the fine to the competent registration office at the location of the real estate agency.

Then, on December 5, 2013, the previous penalty fine provision was modified. The penalty for false reporting had only been imposed on the person with the reporting obligation, and thus double contracts remained an unsolved issue. After the revision, however, for a real estate brokerage contract, a fine shall be imposed on the contracting party if he/she encourages or aids the act of filing a false report, even if the reporting duty is with the real estate agent.

In 2014, the Act on the Report on Real Estate Transactions was separated from the Act on the Licensed Real Estate Agent's Business and the Report on Real Estate Transactions, and came into effect on July 29, 2014.<sup>47</sup> This modification was carried out because although real estate transaction reporting is an obligation placed on both the contracting parties and the real estate agent, the title of the Act misled people to assume that it was only the licensed real estate agent who carried the obligation. Therefore, the law was renamed to enhance awareness and provide a proper understanding.

Ever since the real estate transaction reporting system was first adopted, the Korea Association of Realtors has been continuously pushing to remove the reporting obligation placed on real estate agents. Before the reporting system was set out, the association claimed that it was an over-regulation to place the reporting duty only on the real estate agent without any duty or penalty clause addressing the contracting parties, and that it went against the human rights of real estate agents to place all the blame for double contracts on them. As a result, the contracting parties were included in the reporting obligations

47. Act on the Licensed Real Estate Agent's Business and the Report on Real Estate Transactions was divided into the Act on the Licensed Real Estate Agents and Act on the Report on Real Estate Transactions.

and penalty provisions. Then, in January 2006, before the reporting system was launched, the Korea Association of Realtors announced intentions to take strong measures such as making a constitutional appeal that such reporting obligations would sharply drive up tax burdens and trigger a decrease in real estate transactions, thus threatening the very existence of real estate agents. In 2007, the association also opposed the measures for real estate agents to directly report the actual transaction price when brokering a deal within a real estate transaction reporting area and raised an unconstitutionality lawsuit. However, despite such protests, the reporting duty of the real estate agent was incorporated into the real estate transaction reporting system.<sup>48</sup> In such ways, there was continuous friction with the association with regards to the adoption of the reporting system, as to which the association's views were partially reflected, and so it had a considerable impact on the development and implementation of the reporting system.

**Table 2-3 | Revision Process of Real Estate Transaction Reporting System**

Period	Key Content
Revised December 28, 2006	<ul style="list-style-type: none"> <li>• Apartment ownership rights and housing association residential rights included in the transactions required to be reported</li> <li>• Mandatory period for real estate transaction reporting extended from 30 days to 60 days</li> <li>• When reported details of the actual transaction are omitted or inaccurate, the government official in charge granted the authority to demand the necessary documents</li> </ul>
Revised June 13, 2008	<ul style="list-style-type: none"> <li>• When one of the contracting parties refuses to file the report, it is possible for the other party to file the report on his/her own</li> <li>• When real estate transactions are brokered within an area designated for housing transaction reporting, the real estate agent is placed with the reporting obligation</li> <li>• If the reporting obligation is violated, a penalty shall be imposed by the administrative office where the real estate transaction report was registered, not the administrative office at the location of the real estate agency</li> </ul>
Revised June 4, 2013	<ul style="list-style-type: none"> <li>• When encouraging or aiding a false report on real estate transaction, a penalty shall be imposed</li> <li>• When a party that does not assume reporting obligations conducts an act of false reporting, a penalty shall be imposed</li> </ul>
Revised July 29, 2014	<ul style="list-style-type: none"> <li>• Act on the Report on Real Estate Transactions separated from the Act on the Licensed Real Estate Agent's Business and the Report on Real Estate Transactions</li> </ul>

48. As the revision of the Act on the Licensed Real Estate Agent's Business and the Report on Real Estate Transactions was promulgated on June 3, 2008, beginning September 14, the licensed real estate agent, and not the contracting party, shall report the housing transaction details for transactions within the housing transaction reporting area.

## 3. Operation of Real Estate Transaction Reporting System

This following section examines the way in which the real estate transaction reporting system is operated. It describes the details of the reporting system including the transactions required to be reported, reporting details and the persons with reporting obligation, and investigates the system's operation process and penalties imposed in the event of a violation.

### 3.1. Details of Real Estate Transaction Reporting System

The Real Estate Transaction Reporting System is a scheme under which transaction details such as the actual transaction amount must be reported within 60 days of signing a real estate sales contract. It is applied to real estate or real estate acquisition rights, thus residential rights and ownership rights. In the event that a report is not filed within 60 days or is reported falsely, penalties such as a fine are imposed. In the case of a real estate brokerage contract, the real estate agent assumes the reporting obligation, and when one of the contracting parties refuses to file the report, the other party may file the report on his/her own.

**Table 2-4 |** Details on Real Estate Transaction Reporting System

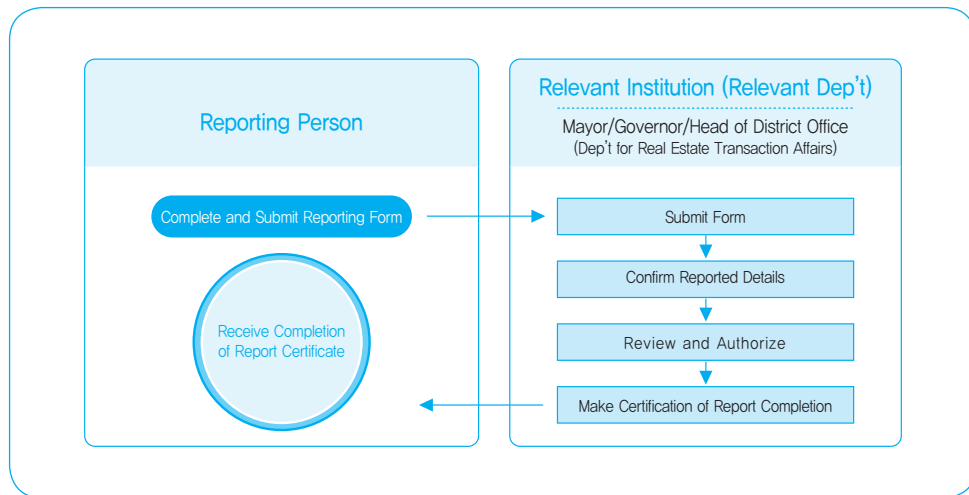
<b>Person with Reporting Obligation</b>	<ul style="list-style-type: none"><li>• Both contracting parties (if one of the parties refuses to report, the other party may file a report on its own pursuant to the Ministry of Land, Infrastructure and Transport Decree)</li><li>• When the sales and purchase contract is brokered by a real estate agent, the real estate agent</li></ul>
<b>Contract Required to be Reported</b>	<ul style="list-style-type: none"><li>• Transaction contract on the sale of land or structure</li></ul>
<b>Transactions Required to be Reported</b>	<ul style="list-style-type: none"><li>• Real estate or real estate acquisition rights</li><li>• Land or structure</li><li>• A status as an occupant obtained through the authorization of the management and disposal plans pursuant to the provision of Article 48 of the Act on the Maintenance and Improvement of Urban Areas and Dwelling Conditions for Residents</li><li>• A status as an occupant of a housing that has gained business plan approval pursuant to the provision of Article 16 of the Housing Act</li></ul>

<b>Reporting Details (Article 2 of Enforcement Decree)</b>	<ul style="list-style-type: none"> <li>• Personal information of the purchaser and seller</li> <li>• Agreement date of contract, date of second down payment and date of balance payment</li> <li>• Location, lot number, land category of the real estate concerned</li> <li>• Real estate category (if it is a sales contract for real estate acquisition rights, this refers to the real estate to which the person gains acquisition rights)</li> <li>• Area of the real estate concerned</li> <li>• Actual transaction price</li> <li>• If there are conditions or a time period to the contract, the conditions and time period</li> <li>• Personal information on the private real estate agent and matters regarding the registration of the real estate agency (in the case that the private real estate agent prepared and delivered the transaction contract)</li> </ul>
<b>Reporting Areas</b>	<ul style="list-style-type: none"> <li>• Nationwide</li> </ul>
<b>Reporting Period</b>	<ul style="list-style-type: none"> <li>• Within 60 days from the agreement date of the transaction contract</li> </ul>
<b>Reporting Means</b>	<ul style="list-style-type: none"> <li>• The contracting parties jointly sign or seal the reporting form for the real estate transaction contract and one of the parties submits it to the reporting office</li> </ul>
<b>Reporting Office</b>	<ul style="list-style-type: none"> <li>• Report to the competent mayor/governor/head of district office at the location of the real estate agency</li> </ul>
<b>Measures in Case of a Violation</b>	<ol style="list-style-type: none"> <li>1. A fine of not more than three times the equivalent of acquisition tax <ul style="list-style-type: none"> <li>- for the first false report after the real estate sale</li> </ul> </li> <li>2. An amount equivalent to not exceeding 5/100 of the acquisition price <ul style="list-style-type: none"> <li>- for a false report after the sale of the real estate acquisition rights</li> </ul> </li> <li>3. A fine not exceeding three million Won <ul style="list-style-type: none"> <li>- for not submitting documents or submitting false documents or not performing necessary measures</li> </ul> </li> <li>4. A fine not exceeding five million Won <ul style="list-style-type: none"> <li>- when a report is not filed or both parties refuse to file a report</li> <li>- when preventing the licensed real estate agent from filing a report or having him/her file a false report</li> <li>- when encouraging or aiding a false report</li> <li>- When failing to submit documents evidencing the transaction amount or submitting false documents (Article 3 of Act on Report on Real Estate Transaction)</li> </ul> </li> </ol>

When a report is filed by a contracting party, the parties concerned in the transaction shall jointly sign or seal (including electronic verification methods) the real estate transaction contract reporting form No. 21 in the annex of the Act on Report on Real Estate Transaction

Enforcement Rules, and one of the parties shall submit the form to the reporting office. If the real estate agent prepared and delivered the transaction contract, the real estate broker shall sign or seal the real estate transaction contract reporting form and submit it to the reporting office. The figure below illustrates a flowchart of the real estate transaction reporting system.

**Figure 2-3 |** Flow Chart for Real Estate Transaction Reporting System



Source: Ministry of Land, Transport and Maritime Affairs, Study on Operation Performance and Assessment of Real Estate Transaction Reporting System, 2008.

A more limited scheme that existed before the real estate transaction reporting system was the housing transaction reporting system. Pursuant to the revised Housing Act, areas in which housing speculation is prevalent or it is judged that there exist concerns over such speculation were designated as housing transaction reporting areas, and certain details regarding the housing transaction in that area concerned were required to be reported<sup>49</sup>. In

49. Areas where transactions of housing must be reported are: 1. area where the rising rate in the purchase and sale prices of apartments referred to in subparagraph 2 (a) of attached Table 1 of the Enforcement Decree of the Building Act is not less than 1.5 percent in the month immediately preceding the month that the date of designation belongs to; 2. area where the rising rate in the purchase and sale prices of apartments is not less than three percent for three months that are reckoned from the immediately preceding month; 3. area where the rising rate in the purchase and sale prices of apartments is not less than twice the nationwide rising rate for one year that is reckoned from the immediately preceding month; 4. area where the rate of increases in the monthly average transaction volume of apartments has increased by 20 percentages over three months that are reckoned from the immediately preceding month; 5. area that is demanded for designation by the head of city/county/district having jurisdiction over the area after he judges that the area is feared to be embroiled in a rampant speculation [Enforcement Decree of the Housing Act [Article 107-2)].



the housing transaction reporting area, when transferring ownership of a housing, all details regarding the housing transaction shall be reported to the competent mayor/governor/head of district office within 15 days of signing the contract. Also in this case, if the housing transaction contract was prepared and delivered by a real estate agent, the real estate agent has the obligation to report within 15 days. When the housing transaction report was made within a housing transaction reporting area, no additional reporting obligations shall be placed for real estate transactions.

The framework of the real estate transaction reporting system is in many ways similar to the housing transaction reporting system. However, while the latter was a special measure implemented regionally where real estate speculation was a concern and run under the purpose of containing real estate speculation, the former was a comprehensive system implemented nationwide.

**Table 2-5 | Real Estate Transaction Reporting System and Housing Transaction Reporting System**

Category	Real Estate Transaction Reporting System	Housing Transaction Reporting System
Rationale	<ul style="list-style-type: none"> <li>Act on Report on Real Estate Transaction</li> </ul>	<ul style="list-style-type: none"> <li>Housing Act</li> </ul>
Person with Reporting Obligation	<ul style="list-style-type: none"> <li>Contracting party (if sales and purchase contract is brokered by a real estate agent, the real estate agent)</li> </ul>	<ul style="list-style-type: none"> <li>Contracting party (if sales and purchase contract is brokered by a real estate agent, the real estate agent)</li> </ul>
Contract Required to be Reported	<ul style="list-style-type: none"> <li>Transaction contract related to sale of land or structure</li> </ul>	<ul style="list-style-type: none"> <li>Transaction through onerous contract for housing within housing transaction reporting area</li> </ul>
Reporting Details	See <Table 2-4>	<ul style="list-style-type: none"> <li>Similar to the real estate transaction reporting system, but when the transaction amount exceeds 600 million Won, the following two must also be reported:               <ul style="list-style-type: none"> <li>- Procurement plan for funds necessary to acquire the housing concerned</li> <li>- Plan for residence in the housing concerned</li> </ul> </li> </ul>

Category	Real Estate Transaction Reporting System	Housing Transaction Reporting System
Reporting Areas	<ul style="list-style-type: none"> <li>Nationwide</li> </ul>	<ul style="list-style-type: none"> <li>Housing Transaction Reporting Area<sup>50</sup> an area falling under any of the following subparagraphs may be designated as an area where the transactions of housings shall be reported:               <ol style="list-style-type: none"> <li>Area where the rising rate in the purchase and sale prices of apartments is not less than 1.5 percent in the month immediately preceding the month;</li> <li>Area where the rising rate in the purchase and sale prices of apartments is not less than three percent for three months that are reckoned from the immediately preceding month;</li> <li>Area where the rising rate in the purchase and sale prices of apartments is not less than twice the nationwide rising rate for one year that is reckoned from the immediately preceding month;</li> <li>Area where the rate of increases in the monthly average transaction volume of apartments has increased by 20 percentages over three months that are reckoned from the immediately preceding month;</li> <li>Area that is demanded for designation by the mayor/ governor/head of district office having jurisdiction over the area after he judges that the area is feared to be embroiled in rampant speculation (Article 107-2 of Enforcement Decree of Housing Act)</li> </ol> </li> </ul>

50. Gangnam, Seocho and Songpa districts in Seoul were designated as housing transaction reporting areas until May 2012, but this requirement was removed, and there are currently no housing transaction reporting areas as of 2014.

Category	Real Estate Transaction Reporting System	Housing Transaction Reporting System
Reporting Period	Within 60 days of transaction contract signing date	Within 15 days of transaction contract signing date
Reporting Means	The contracting parties jointly sign or seal the real estate transaction contract reporting form and one of the parties submits the form to the reporting office	Same as real estate transaction reporting system
Reporting Office	Report to the competent mayor/governor/head of district office at the location of the real estate agency	Report to the competent mayor/governor/head of district office at the location of the housing
Measures in the Event of a Violation	See <Table 2-4>	<ul style="list-style-type: none"> <li>- When the housing transaction contract report was not filed, or the report not filed for one year or more, a fine of 1~5 times the acquisition tax depending on the period of idleness</li> <li>- When the housing transaction amount has been filed falsely, 1~5 times the acquisition tax depending on the difference in amount<sup>51</sup></li> <li>- When a matter other than the transaction amount of filed falsely, 1 times the acquisition tax</li> </ul>
Relevant Laws	Act on Report on Real Estate Transaction Enforcement Decree of Act on Report on Real Estate Transaction Enforcement Rule of Act on Report on Real Estate Transaction	Article 80-2 (1) of Housing Act Article 107-2 of Enforcement Decree of Housing Act

51. In the case the transaction amount was falsely reported, a fine shall be imposed based on the actual transaction price.

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There are two methods of reporting the transactions: making a visit to the district office or online reporting.<sup>52</sup> When reporting in person, the real estate transaction contract shall be prepared with the signature or seal of both parties of the transaction, and jointly reported at the competent office of the location of the real estate. If the signing of the sales contract was mediated by a licensed real estate agent, then the reporting of the real estate transaction shall be delegated to the real estate broker and the transaction reporting form prepared and submitted. In this case, the mayor/governor/head of district office that receives the transaction report shall check and confirm the details, and if there is nothing out of order, shall deliver the certificate of report completion on the spot. This certificate shall be attached to the ownership transfer register (Lee Ho, 2009).

Online reporting can be done using the real estate trade management system (RTMS). When reporting a real estate transaction online, it is necessary to have an authenticated certificate,<sup>53</sup> and the online real estate transaction contract report submitted shall be verified by the overseeing government official, who will then issue online a certificate of report completion.<sup>54</sup> For online reporting, a separate inspection seal from the mayor's office/regional office/local district office is not necessary, and if the serial number of the completion certificate is recorded on the application form for the real estate register, the recorder's office can check the certificate online. If a contract is nullified or cancelled after details on the real estate transaction contract are reported, the contracting parties or the licensed real estate agent may complete a cancellation report form and submit it to the reporting office. Filing a cancellation report is not mandatory.

52. In this case it is possible to make a proxy report via a certified judicial scrivener or lawyer, and the documents that must be submitted are the personal identification of the proxy, the seal certification of the delegating person, and the proxy statement.

53. An e-signature issued by an accredited authentication institution for personal identification online that is necessary for various online financial transactions or other transactions.

54. For international readers: an authenticated certificate refers to a certified e-signature issued by an accredited authentication institute.

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Online reporting was made available to make the system more efficient and convenient, but many of the contracting parties or real estate agents who are middle-aged or older are unfamiliar with using the Internet, which results in incorrect or inappropriate transaction reports being filed unintentionally. There was an attempt to solve such issues at the Eunpyeong district in Seoul. From March 2014, it offered a personal transaction reporting help service in which a contracting party or real estate agent with difficulty in filing the real estate actual transaction reporting form may make a phone reservation, and then get a personal visit from an official of the district office's land register division who provides assistance in preparing the transaction reporting form.

## 3.2. Penalties for Violation of Reporting Obligations

### 3.2.1. Criteria for Imposing a Fine and Relevant Case Studies

In the case that the actual transaction price was not reported or reported falsely, a fine not exceeding three times the equivalent of the acquisition taxation shall be imposed on the seller, purchaser and real estate agent. In the case the contracting parties withhold the real estate agent from reporting the real estate transaction or demand that a false report be made, a fine not exceeding five million Won shall be imposed on the parties concerned. In the event that the real estate agent falsely files the report or prepares a double contract, his/her brokerage license shall be cancelled or suspended for a period within six months.

Different types of false reports include a “down contract,” which is reporting a lower-than-actual transaction price, an “up contract,” which is reporting a higher-than-actual transaction price, false reporting of details other than the transaction amount, reporting a brokerage agreement as a direct transaction between the parties concerned or not submitting relevant documentation. Such false reporting was recently illustrated in a press release provided by the Ministry of Land, Infrastructure and Transport as found in the table below.

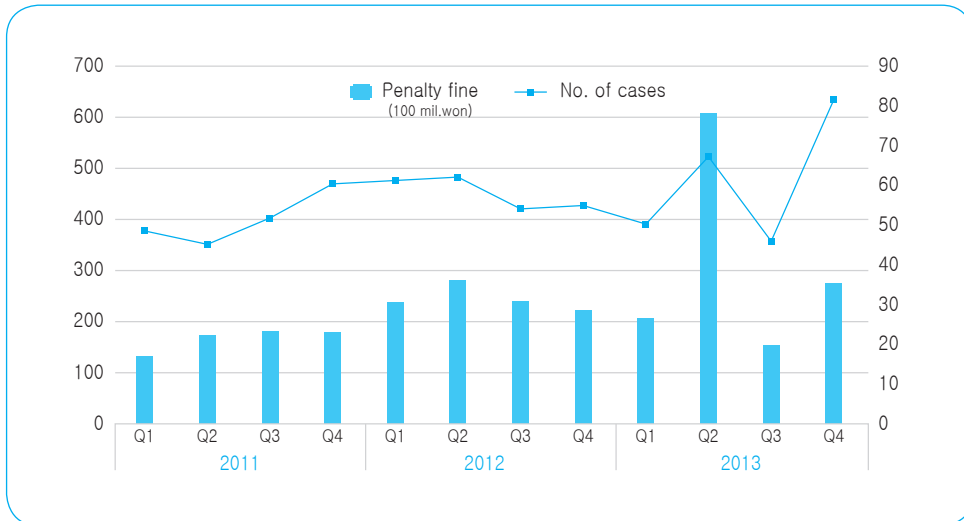
**Table 2-6 | Cases of Imposing Penalty Fines for a False Report**

Type of False Report	Example
Down Contract (reporting a lower-than-actual transaction price)	A piece of land (forest land) in Paju, Gyeonggi Province, was traded at 405 million Won, but was falsely reported to have been traded at 310 million Won. The contracting parties were each fined 24.3 million Won.
Up Contract (reporting a higher-than-actual transaction price)	An accommodation facility in Sasang-dong, Busan, was traded at 2.637 billion Won, but falsely reported to have been traded at 3.3 billion Won. The contracting parties were each fined 158.22 million Won.
False Reporting of Details other than the Transaction Amount	Land in Pyeongtaek, Gyeonggi Province, was traded at 416 million Won and reported, but the real estate agent who falsely reported the agreement date of contract was fined 8.32 million Won; Land in Suncheon, Jeonnam Province, was traded at 350 million Won and reported, but the contracting parties that falsely reported the agreement date of contract were each fined seven million Won.
Reporting a Brokerage Agreement as a Direct Transaction between the Parties Concerned	A piece of land in Daedeokgu, Daejeon, was traded at 214 million Won through a brokerage agreement with a real estate agent, and so the real estate agent is the person with reporting obligations, but he failed to file the report and was imposed a two million Won fine.
Not Submitting Relevant Documentation	A contracting party that failed to submit relevant documents for the investigation of transaction details on the real estate amount of 180 million Won for a multi-home housing in Namgu, Incheon, was imposed a seven million Won fine.
Transaction Parties Demanding that the Licensed Real Estate Agent File a False Report	After trading a piece of land in Namyangju, Gyeonggi Province, for 2.09 billion Won, contracting parties who demanded that the real estate agent falsely report the transaction as 2.5 billion Won were imposed a fine of four million Won each.

Source: Ministry of Land, Infrastructure and Transport press release, June 26, 2014.

[Figure 2-4] illustrates the trends of false reports and trends in fines by quarter as announced by the Ministry of Land, Infrastructure and Transport. Every year, the Ministry provides a report on the number of exposed false reporting cases and the fines imposed per quarter. Although the number of exposed cases does not completely demonstrate the extent of actual false reports filed, it is evident that there are still a high number of “up contracts” or “down contracts.” There is a need to raise a sound awareness of real estate transaction reporting by continuously exposing false reporting.

**Figure 2-4 |** Cases of Transaction Reporting Violation and Current Status of Imposing Fines



\* Penalty fine in 100 million Won (right axis), number of cases (left axis).

Source: Recomposed from Ministry of Land, Infrastructure and Transport press releases.<sup>55</sup>

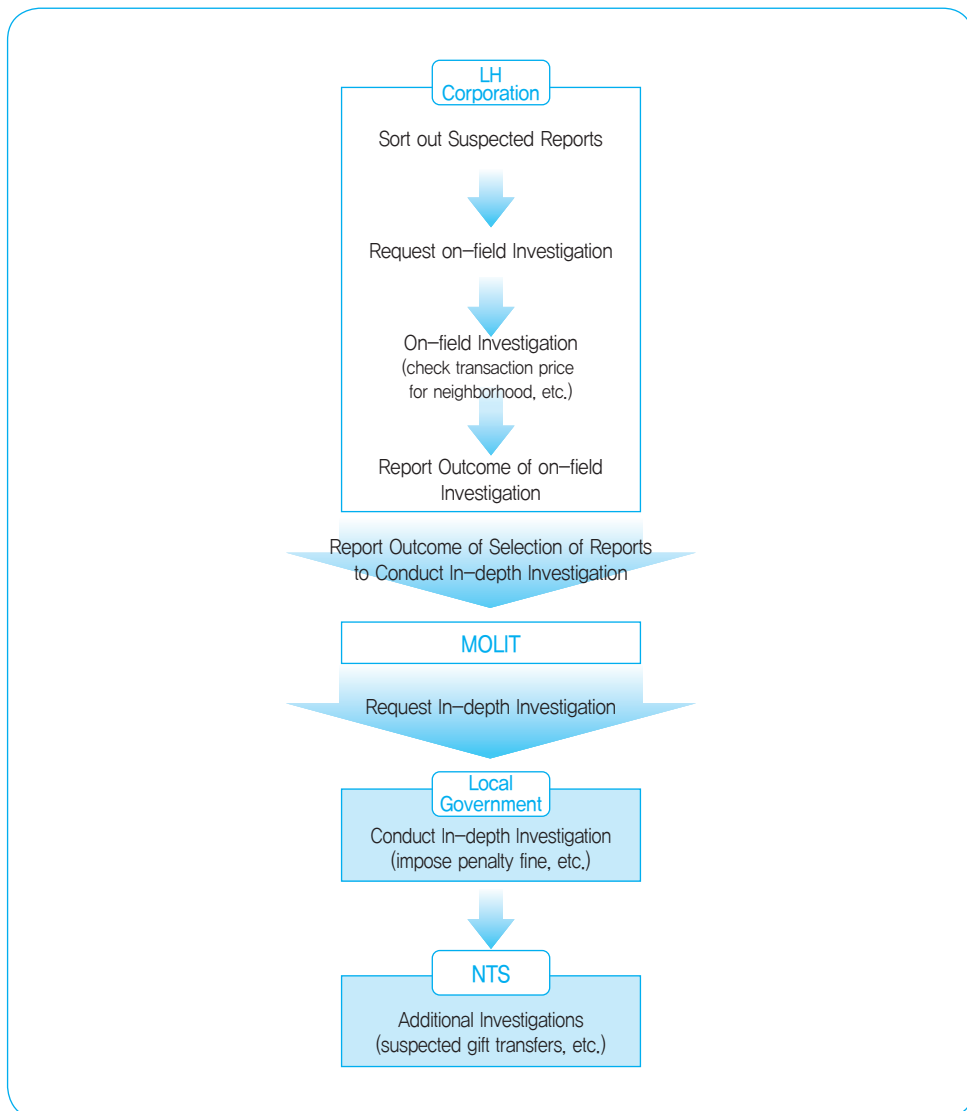
### 3.2.2. Exposing Violations Through In-depth Investigations

The Ministry of Land, Infrastructure and Transport’s in-depth investigation verifies whether the price of real estate transaction reporting is reasonable, and it is conducted using the Real Estate Trade Management System (RTMS). The Ministry compares the transaction with the rates of the surrounding area, and if it is 10 million Won lower than the standard rates, it is sorted out as a possible “down contract” and an investigation is requested to the National Tax Service (NTS). The NTS examines the account details such as the reseller, purchaser and the real estate agent, and identifies whether it is a “down contract.” In the self-investigation on the part of local governments, it examines whether any factors other than the transaction price were violated. Thus, it is a process of using the RTMS after the target for investigation is selected to uncover violations, and if a violation is discovered

55. A resource that puts together information from self-investigations by local governments and the in-depth investigations carried out by the Ministry of Land, Infrastructure and Transport (MOLIT). Until the fourth quarter of 2010, it only offered information on the exposed false reports and fines from the MOLIT’s investigation, and not the results of the self-investigation conducted by the local governments. Therefore, this paper only deals with resources available after 2011.

through an on-field survey and in-depth investigations, a penalty fine is imposed.<sup>56</sup> The in-depth investigations play an important role as a central process that prevents false reporting in the real estate transaction reporting system.

**Figure 2-5 |** Process of In-depth Investigation of Real Estate Transaction Reporting



Source: Recomposed from Ministry of Land, Infrastructure and Transport (MOLIT) press releases, June 26, 2014.

56. Gukje Newspaper, "100 Down Contract Cases Suspected at Daeyeon Innovative Apartment Complex," October 29, 2013.



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In the case a transaction report is significantly lower than the rates of the surrounding area, the city/county/local district designates the case to be suspected of an unreasonable price transaction and conducts an in-depth investigation. It reviews whether the actual transaction price was falsely reported to evade registration or capital gains tax or whether the transaction was actually a cover up for a gift transfer, or whether a double contract was prepared for the purpose of evading taxes. It also requests bank transaction records and other documents to the contracting parties to verify that the reported transaction price is the actual transaction price. If the investigation proves that there is no evidence of a contract settlement payment, the competent tax office is notified of charges of attempting to transfer by gift.

## 4. Building Real Estate Trade Management System

### 4.1. Introduction and Development Process of RTMS

The RTMS is operated based on the real estate transaction price reporting system after it was introduced on January 1, 2006 to enhance transparency in the real estate market and establish order in transactions. It is a system that enables the fast and convenient handling of real estate transaction related affairs, ranging from real estate transaction contract reporting to real estate registration. The real estate transaction reporting system's online reporting minimizes the inconvenience of having to visit a mayor's office/regional office/local district office building and also reduces the number of attached documents when reporting transactions of real estate.

The development of the RTMS was initiated under order of Presidential Decree in June 2003, with the mandate to remove real estate speculation by putting together transparent real-name transaction data and actual transaction price data for all real estate transactions. The RTMS was completed and began operations in January 2006, after which it has undergone a constant process of upgrades. The RTMS provides services that enable users to fill out a real estate transaction contract reporting form online after concluding real estate transactions as required under the land transaction approval system, real estate transaction reporting system and housing transaction reporting system.

**Table 2-7 | Process of Building RTMS**

<b>Jun. 2003</b>	Issued order to build real estate actual transaction price data base (Presidential order)
<b>Oct. 2003</b>	Concluded on introducing and building system (director-level meeting of relevant ministries headed by the Ministry of Finance and Economy)
<b>Mar. 2004</b>	Completed plan to build real estate trade management system (Land Management Division)
<b>Dec. 2004</b>	Completed outsourced research project on determining the reasonable price of real estate transactions (Korean Research Institute for Human Settlements)
<b>Sep. 2004</b>	Formed taskforce for building a real estate online database among related ministries
<b>Oct. 2004</b>	Launched development project for RTMS
<b>Jun. 2005</b>	Enacted Act on the Licensed Real Estate Agent's Business and the Report on Real Estate Transactions
<b>Jan. 2006</b>	Implemented real estate transaction reporting system, began operations of system and call center
<b>Jan. 2006</b>	Signed management MOU for operation of RTMS with former Korea Land Corporation
<b>Jun. 2007</b>	Began operations of the integrated RTMS for foreigners
<b>Aug. 2008</b>	Began operations of the integrated housing transaction reporting system
<b>Oct. 2009</b>	Established Future Development Strategy for RTMS
<b>Jan. 2011</b>	Began operations of the jeonse (lump-sum deposit rent)/wolse (monthly rent) transaction information system
<b>Feb. 2011</b>	Began disclosure of actual transaction price of apartment jeonse/wolse
<b>Jul. 2011</b>	Open smartphone app services providing actual transaction prices
<b>Dec. 2011</b>	Carried out renewal of actual transaction price website and expanded the coverage of jeonse/wolse apartments (all housing)

Source: LH News "RTMS, Foundation for a Transparent Market," August 16, 2012.

Operated by the Ministry of Land, Infrastructure and Transport, the RTMS was developed over the course of five stages. The first stage was aimed at developing and installing a system for online reporting and online handling of information in step with the implementation of the new system, and focused on preparing an online reporting system, report handling system, inspection seal input system, system for determining a reasonable transaction price, and real estate transaction analysis system. At the second stage, a service enabling users to

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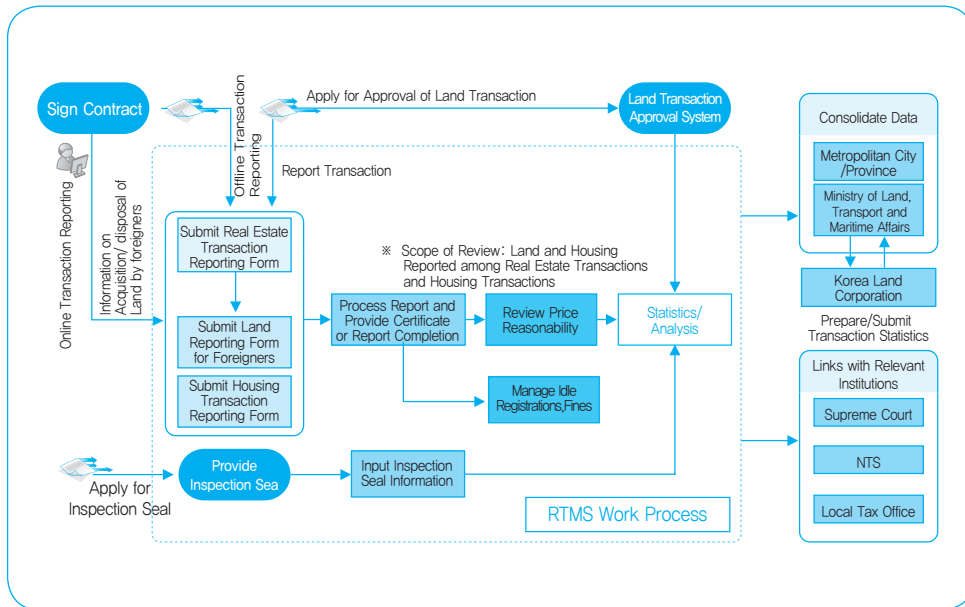
report corrections in the real estate transaction contract was introduced and user demands were also incorporated into the service. The Ministry added a RTMS for foreigners, enabled the collection of nationwide transaction information and began the operations of a call center and online discussion forum.

The third stage involved reinforcing the monitoring function of the real estate transaction market by linking it to the GIS system and integrating the housing transaction reporting system to create a single reporting system. As reporting the resale of housing residential rights and ownership rights became mandatory in June 2007, relevant services were also made available on the system. At the fourth stage, the system build-up involved improving website access and stabilizing the system. This build-up that took place from 2004 to 2009 contributed tremendously to a more fast and convenient real estate transaction reporting system.

The RTMS can be largely divided into four different systems and integrates real estate transaction reporting, checking reasonable reported prices and information sharing among administrative agencies in a single system. The four systems are: “online reporting system,” which enhances public access and efficiently handles any complaints; “system for determining reasonable transaction price,” which prevents the signing of double contracts that are a primary cause of tax evasion; “information system for relevant agencies,” which provides a one-stop administrative process for real estate transactions such as payment of acquisition tax, real estate registration, and reporting capital gains tax; and the “statistics and analysis system,” which provides real-time monitoring of the real estate market to support timely and effective policy formulation.

The reported real estate transaction undergoes an automatic process of determining whether the transaction price is reasonably based on the standard price and price fluctuations collected each month, taking into account the point in time and error range. The system was also interlinked with other systems so that the transaction information accumulated through RTMS may be used as baseline data for imposing national tax and local tax such as capital gains tax and acquisition tax (previously even registration tax). The process of the operation of RTMS is illustrated in the following figure.

Figure 2-6 | RTMS Work Process



Source: RTMS Project Plan, Ministry of Construction and Transportation, 2009.

The RTMS is a costly management system that falls under one of the government’s housing administrative database projects. Details on the annual budgets are found in the table below, and it demonstrates that running the system cost 2.4 billion Won in 2014.

Table 2-8 | Government Budget for RTMS by Year

(Unit: 100 mil. Won)

Category	Settlement of Accounts for 2012	Budget for 2013 (A)	Budget for 2014 (B)	Change (B-A)	%
□ Administrative database on housing	19.17	20.2	23.9	3.7	18.3%
- Real Estate Trade Management System	14.17	13.2	16.9	3.7	
- Housing Statistics Information System				-	
- Joint Housing Management System				-	

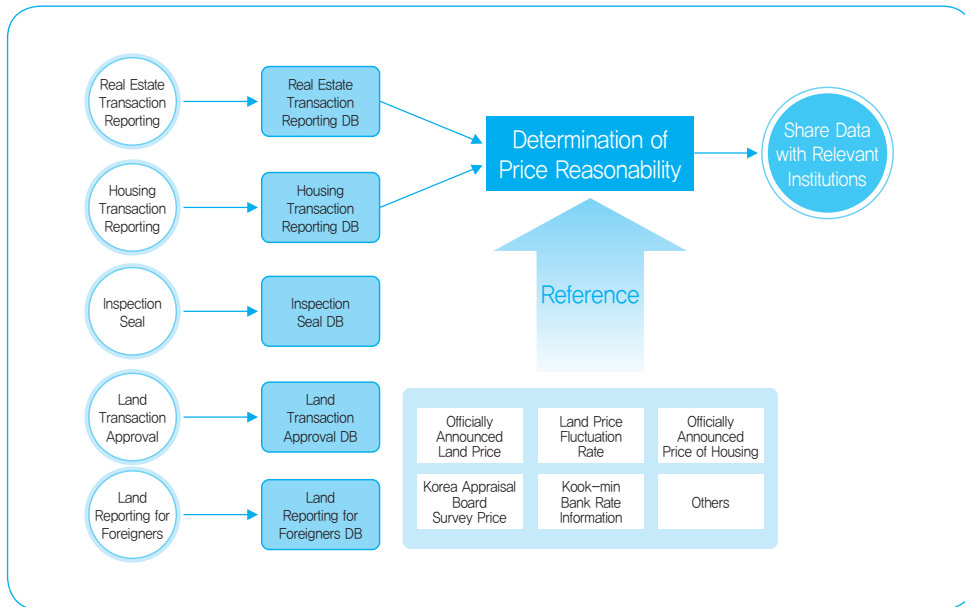
Category	Settlement of Accounts for 2012	Budget for 2013 (A)	Budget for 2014 (B)	Change (B-A)	%
□ Items of Expenditure (Total)		2,0.2	23.9	3.7	18.3%
- Outsourced operation costs (210-15)		13.4	16.8		
- Development costs (260)		3.0	3.3		
- Other tangible assets (430)		3.8	3.8		

Source: Outcome of Self-regulated Evaluation of Finance Projects for 2013 [database], Ministry of Land, Infrastructure and Transport, May 2014.

## 4.2. System for Determining Reasonable Transaction Price

In the RTMS, the real estate transaction price that has been reported is run through the model for determining the reasonable price, and once it is properly assessed, the relevant information is notified to the local tax divisions of the NTS and mayor's office/regional office/local district office for use in imposing taxes and tax investigations. With regards to the reported real estate, a reasonable standard price is based on the prices investigated by credible institutions. With regards to land, the officially assessed price of reference land; the investigated market price when calculating the individually assessed price of reference land; the realization rate by each town/township/village; the fluctuation in land prices as surveyed each month are all taken into consideration when setting the standard market price. In the case of apartments, the prices surveyed by Kookmin Bank and Korea Appraisal Board are used, while in the case of detached/tenement housing the officially assessed housing price is used to determine a reasonable standard price. The standard price assessment is categorized into "reasonable," "unreasonable" "assessment deferred (no comparable standard price)" or "assessment denied (when without building register such as an unlicensed building)." All transaction information, including the reason for such an assessment, is notified to the local tax division of the NTS and mayor's office/regional office/local district office and used as taxation reference material. The system for determining reasonable transaction prices is illustrated in the figure seen below.

Figure 2-7 | Verification System for Reasonable Pricing



Source: Construction Management Administration [Manual for Processing Real Estate Transaction Reporting], 2008.

### 4.3. Information Sharing System and Statistics Analysis System

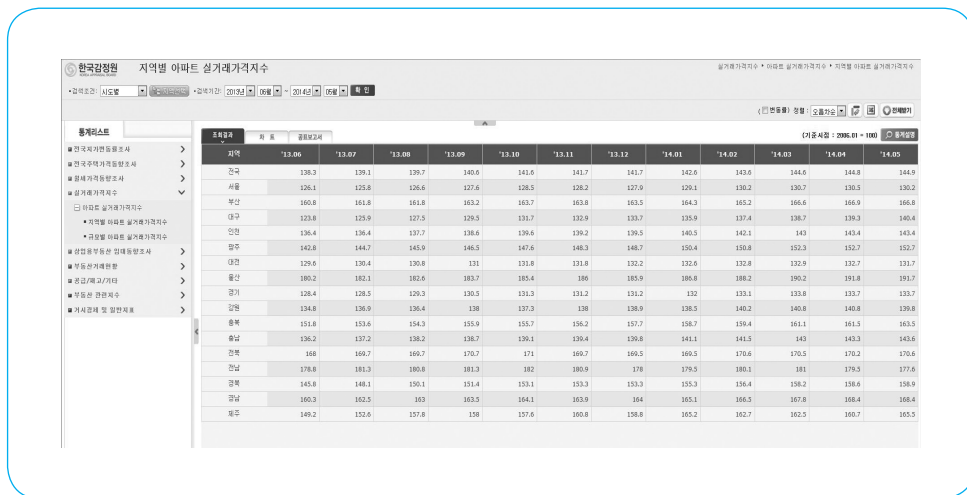
Documents that receive an inspection seal such as the results from determining the reasonable transaction price, and real estate transaction reporting, land transaction approval, real estate transaction reporting, rulings and gift transfers shall be shared with relevant institutions (Supreme Court, NTS, metropolitan local governments, mayor’s office/regional office/local district office’s regional tax division, etc.). The system shall be linked with the Supreme Court’s real estate registration database so as to share the transaction completion certificate and simplify the process for real estate registration, while the outcome from determining the reasonable price and transaction information shall be provided to the NTS global database on a monthly basis. The officials in charge of local tax have been using the RTMS to operate an information sharing system among relevant institutions that enables searching real-time transaction information and the results of determining the reasonable price.<sup>57</sup>

57. Cabinet Meeting, “Building Real Estate Trade Management System to Secure to Real Transaction Price”, 2006.

Documentation that received an inspection seal such as real estate transaction reporting data, land transaction approval, housing transacting report, inheritance/gift are integrated to automatically create land transaction statistics and structure transaction statistics, and these statistics are prepared on a basis of metropolitan city, province and nationwide units and used by these relevant agencies when formulating real estate policies.

Beginning July 2014, the Korea Appraisal Board is performing the role of creating statistics on the status of real estate transactions for RTMS' operation management and upgrade. The Board operates a real estate statistics information system, which provides relevant real estate statistics, apartment real transaction price index, land price trends, housing price trends, monthly rent trends using the RTMS' real transaction price data. The following two graphs [Figure 2-8] and [Figure 2-9] are screenshots of trade volume statistics and the actual transaction price index by region, which was created using the reported real transaction prices.

**Figure 2-8 | Korea Appraisal Board Actual Transaction Price Index by Region Screenshot**



Source: <http://rt.molit.go.kr/>.

Figure 2-9 | Korea Appraisal Board Trade Volume Statistics Screenshot



Source: <http://rt.molit.go.kr/>.

## 5. Controversial Issues Surrounding Operation of Real Estate Transaction Reporting System

### 5.1. Institutional Issues

#### 5.1.1. Reporting Party

For most real estate transactions in Korea, the contracting parties carry out the transaction through a real estate agent, and if not, then it is general practice to report transaction details through a certified judicial scrivener. With the introduction of real estate transaction reporting, real estate agents were required to file reports for brokerage transactions, which was met with fierce opposition from agents. This reporting obligation was placed on agents because the real estate brokerage system was under the jurisdiction of the Ministry of Land, Infrastructure and Transport, and at the time, involving agents was the most effective way of firmly establishing the new system. Given that real estate agents had to assume reporting obligations in addition to their brokerage responsibilities, their opposition to the new reporting obligations was understandable. Moreover, if any changes are made to contract details during the period before the balance payment, the real estate agent also carries the



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obligation of reporting the changes concerned. Therefore, it is controversial whether the real estate agent, who is not a party of the transaction contract, should have to assume such reporting obligations.

Another issue was that penalty provisions only addressed the party with reporting obligations. The reporting obligation was placed on the contracting parties for a direct transaction and the real estate agent for a brokerage transaction. Until the law was revised in June 2013, in the case a brokerage transaction was falsely reported as a direct transaction, even if the contracting party filed a false report through a certified judicial scrivener, the party could not be punished because he/she did not have a reporting obligation. It was only the real estate agent, bearing the reporting obligation, who was placed with a penalty fine not exceeding five million Won, and such loopholes in the system were used to carry out false reporting. Depending on the reporting period and transaction amount, the fine could be imposed at a level as low as 100,000~200,000 Won, and given that it was a light penalty, real estate agents would agree to false reporting if desired by the contracting party. To this end, false reporting became more widespread as there were no false reporting penalty provisions for a party not bearing reporting obligations and no provisions on penalty fines for a person encouraging or aiding false reporting.

To resolve such issues, the revision enacted in June 2013 prescribed that even when a person without reporting obligation files a false report, he/she shall be imposed the same penalty as the person bearing the reporting obligation, and a person who encourages or aids the process shall be imposed a fine of four million Won. The law revision on imposing fines regardless of reporting obligations appears to be contributing to the resolution of the issue mentioned above, but various additional issues may still arise in relation to the reporting obligation placed on the real estate agent and not the contracting party of a brokerage transaction.

### **5.1.2. Reporting Period**

Under the current system, the reporting period has been extended from 30 days to 60 days pursuant to the revision of the law, but problems still remain concerning the matter. For starters, there needs to be more clarity in the reporting deadline. To give an example, the deadline for the reporting period may be misunderstood to refer to the balance payment date instead of the down payment date, or the 60 day reporting period may be mistaken as two months, although in fact, because there are months that consist of 30 days or 31 days, and without particular attention to the matter, a fine may be imposed or a business suspended because the report is consequently a single day late. In particular, such instances are often

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found among sales and purchase contracts with more than a 60 day period between the agreement date of contract and balance payment date. To be precise, a report shall be filed from the day following the contract signing until 6 p.m. of the sixtieth day.

The second issue concerns the time period set out for reporting. The accumulation of actual transaction price data through the reporting system contributes to rationalizing real estate market information and acts as a basis for market indexes. However, given that the period between the actual transaction period and the reporting period is 60 days, the time between when the price is disclosed and the point of actual transaction can differ by up to two months, although it would be better if the transaction information could be disclosed right when the transaction is completed. An excessive surge or drop in transaction prices need to be promptly reflected in policies to maintain a stable market, but because it takes up to two months for the transaction amount to be reported, it is difficult to expect such outcomes. The reporting period was extended to 60 days from the initial 30 days largely because of the real estate agents who carry the reporting obligation. In the case of real estate, it generally takes around two months from the agreement date of the contract to the date of balance payment, and if the reporting period is set within two months, there would be circumstances where reporting would have been completed for even the cancelled contracts. This would mean that the income reported by the real estate agent would include cancelled contracts for which they received no commission, and that information would be shared with the NTS.

Real estate agents, who originally only assumed responsibility for brokerage transactions, were placed with a reporting obligation, and it was thus necessary to accommodate some of their views in the legislation. The housing transaction reporting system, which was implemented before the real estate transaction reporting system, prescribed that in the case of an apartment that was 198m<sup>2</sup> and located within the area for reporting on housing transactions, it was mandatory to report within 15 days of the transaction in order to prevent speculation. Some argue that if the same criteria as the housing transaction reporting system had been adopted when first introducing the new reporting system, regardless of opposition, then despite some turbulence at its initial stages, the two systems would have been more standardized and the general public would have found it much easier to understand. However, from the beginning, the reporting period was set differently, and later extended to 60 days, making it all the more confusing, while also having negative consequences in the aspect that it hinders promptly reflecting information and market conditions in policies. However, there are concerns that shortening the reporting period is not only a difficult matter with regards to the real estate agents, but that it could also place a burden on the contracting parties, and a satisfying conclusion has yet to be reached.

### 5.1.3. Calculation of Fines

If a person fails to report a transaction or files a false report, the seller, purchaser and real estate agent shall be imposed a fine not more than three times the acquisition tax, and if the transaction party keeps the real state agent from filing a report or demands that a false report be filed, a fine not exceeding five million Won shall be imposed. If a real estate agent falsely completes a transaction contract or writes up a double contract, his/her real estate broker license shall be cancelled or suspended for a period of within six months. Furthermore, if the person is later indicted on charges of tax evasion under the Punishment of Tax Evaders Act, a penalty of imprisonment for not more than three years or a fine not more than three times the equivalent of the evaded tax amount shall be imposed.<sup>58</sup>

These provisions reveal that when the real estate agent fails to carry out his/her real estate transaction reporting duties, he/she is imposed a fine based on the acquisition tax that is paid by the buyers and is not at all related with the real estate agent. When the sales and purchase contract is signed and the ownership transfer register is completed, the seller pays the capital gains tax and the purchaser the acquisition tax. The real estate agent only assumes tax obligations for value added tax for the brokerage commission and income tax. Despite such facts, the fine that is imposed when a real estate agent violates the reporting obligations is not based on the brokerage commission but the acquisition tax paid by the purchaser, and in terms of the effectiveness of the real transaction reporting system, this is an unreasonable and excessive penalty that raises doubt over whether it is legally beneficial and it could cause reporting parties to resort to other expedient solutions.

Yet, given the circumstances back when the real estate transaction reporting system was first legislated, it was a viable decision. Initially, a fine was to be set as a certain percentage of the transaction amount. When legislating a new system, however, previous legislations are taken into account, and the criteria for a negligence fine was mainly acquisition tax or registration tax. Therefore, in line with previous legislations, the fine was set based on acquisition tax. Therefore, rather than modifying the fine's calculation base, it is all the more important to improve the current criteria by seeking to impose fines in a more fair manner. For starters, there needs to be increased awareness that the acquisition tax used in this calculation is not the actually imposed tax amount after the final tax exemptions, but the amount prior to the exemptions. Furthermore, the provision regarding the fine should be adjusted according to tax adjustments of the acquisition tax so as to maintain the level of fines consistent. Also, when other laws are revised, relevant laws also need to be promptly modified in order to prevent any benefits or losses occurring as a result of the revision.

<sup>58</sup>. Article 3-2 (5) of the Punishment of Tax Evaders Act.

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### 5.1.4. Transactions Subject to Reporting

Residential rights were included in the transactions required to be reported after the law revision in 2007. However, the residential rights included in this revision were the residential rights under the Housing Act and Act on the Maintenance and Improvement of Urban Areas and Dwelling Conditions of Residents. The residential rights under the Building Act are subject to an inspection seal, but not categorized as being subject to reporting and the unit price of the building is not listed on the real estate register. If the unit price of the building is not listed on the real estate register, the actual unit price of the building may be recorded differently for the contract submitted for an inspection seal, and thus may be used for writing up a double contract. Therefore, if the criteria is standardized to place a reporting duty on all real estate and real estate related rights, it would be able to accurately identify the price trends of real estate and would also match the purpose of this system, which was introduced to establish order in the real estate market and also reduce confusion for the person with a reporting obligation.

### 5.2. Mismatch of Reported Price and Actual Transaction Price

Parties signing a real estate transaction contract agree to a mutually binding relationship under express or implied agreement pursuant to the needs of one party or both parties, and sign a separate contract other than the actual contract that lists the transaction price at a higher price (so-called “up contract”) or at a lower price (so-called “down contract”) and use it for documentation necessary for real estate registration or taxation. The two parties sign a double contract for different reasons: the purchaser in order to pay less tax and dues related to acquisition tax (previously acquisition tax and registration tax), while the seller seeks to pay less capital gains tax.

Ordinarily, if the reported amount is higher or lower than the transaction price, either the seller or purchaser carries a heavier tax burden. In other words, if the seller reports the transaction price at a higher amount, the capital gains tax would go up, and the purchaser would pay less capital gains tax when reselling the property in the future. If the transaction price is reported lower than the actual price, then the purchaser would have to pay a higher capital gains tax when he/she resells, but would be subject to lower acquisition tax upon purchasing the property. In such a case, the seller would pay less capital gains tax. The real estate transaction reporting system uses this relationship between the seller and purchaser as a key driver to promote the reporting of actual transaction prices.

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However, there are still ways this relationship can work out. In the case of the purchaser, even if it means taking on an additional burden in terms of acquisition tax when purchasing the real estate, he/she may choose to report the transactions price at a higher-than-actual amount to reduce the high tax burden of capital gains tax when reselling in the future. This is when an “up contract” would be signed. The seller in this contract would have no reason to refuse the request of the purchaser to sign such a contract as long as he/she does not face a higher capital gains tax burden. An example would be a seller who is a long-term holder of a single house and exempt from paying capital gains tax. Therefore, when the interests of the seller and purchasers are in line, the reported transaction price may still not be completely credible.

In the case where the purchaser is eligible for non-taxable benefits in capital gains tax when reselling in the future, if there should be the request of the seller, the purchaser may agree to signing a “down contract.” If he/she receives non-taxable benefits for capital gains tax when selling real estate, then he/she would be able to benefit from lower acquisition tax at the point in time if the acquisition price is reported lower than the actual price, while the seller may pay less capital gains tax because the transfer price is lower. For such reasons, there are still “up contracts” and “down contracts” that are being signed instead of contracts listing the actual transaction price.

It has been almost a decade since the real estate transaction reporting system has been in place, but the issue of double contracts has yet to be resolved. The Roh Moo-hyun administration reviewed the option of tentatively abolishing the tax exemption scheme and reducing the capital gains tax rate, but it encountered opposition from the current ruling party. Unless tax exemption benefits are removed, double contracts will not likely be completely eliminated.

## 5.3. Controversial Issues Surrounding Real Estate Transaction Tax

### 5.3.1. Increased Acquisition Tax Burden and Tax Rate Adjustments

Acquisition tax refers to local tax imposed at the stage of acquisition including the sale or exchange of real estate. With the introduction of the transaction price reporting system, the actual transaction price was set as the tax base, but in cases where the actual transaction price is unclear or is less than the statutory standard price, the statutory standard

price is used as the base.<sup>59</sup> The same tax base was also applied to both registration tax and acquisition tax. However, the implementation of the new reporting system resulted in excessively increasing the tax burden actually shouldered by the buyer. To address this matter, the tax rates of acquisition tax and registration tax were both lowered, but this caused a considerable amount of controversy regarding whether the tax rate cut was appropriate.

**Table 2-9 | Changes in Acquisition Tax Rate by Year**

Effective Date	Acquisition Price of Housing				
	Less than 600 mil. Won	600~900 mil. Won	Over 900 mil. Won	Over 1.2 bil. Won	Multi-house Owner
Prior to 2005	5 % (acquisition 2%, registration 3%)				
Jan. 5, 2005	3.5% (acquisition 2%, registration 1.5%)				
Jan. 1, 2006	2.5% (acquisition 1.5%, registration 1%)				
Sep. 1, 2006	2 % (acquisition 1%, registration 1%)				
Jan. 1, 2011	2%		4%		4%
Mar.22, 2011	1%		2%		2%
Jan. 1, 2012	2%		4%		4%
Sep. 29, 2012	1%		2%	3%	2%
Jul. 1, 2013	2%		4%		4%
Jan. 1, 2014	1%	2%	3%		Abolished imposing different levels of tax for multi-house owners

Furthermore, in accordance with the government’s decision to regulate the real estate market, the acquisition tax and registration tax would repeatedly fluctuate by different points in time. Along the course of such events, it was proposed that the acquisition tax rate be permanently cut. However, the Association of Metropolitan and Provincial Council Chairs protested this move at their regular meeting in 2013, passing a proposal that the measure to permanently cut acquisition tax rates be removed. Their argument was based on the grounds that acquisition tax rate accounts for 30~40 percent of the tax revenue of local governments, and if this tax rate is lowered, these institutions would face further

<sup>59</sup> Article 10-2 of Local Tax Act.

difficulties in their finances. Still, the revision of the Housing Act was passed at the regular session of the National Assembly in December 2013, and a permanent reduction in housing acquisition tax rates was implemented from January 1. It was decided that the additional tax burden due to the decrease in local tax revenue would be fully covered by tapping into reserve funds of the government budget for 2015.

### **5.3.2. Issues Concerning Capital Gains Tax**

Even before the real estate transaction reporting system was introduced, capital gains tax based on actual transaction prices was imposed on high-priced residences or possible speculation real estate. As an exception, there were cases where actual transaction prices were imposed taxes: high-priced residences (from Sep.18, 1999), a house being transferred from a owner of three houses in one household (from Oct. 1, 2002); and real estate within areas designated as speculative areas and land for non-business use, a household with two houses, a real estate being transferred within one year of acquisition, cases where real estate is acquired or transferred through unlawful means such as writing up a false contract (from Jan.1, 2003).

From January 1, 2007, a year after the implementation of the real estate transaction reporting system, the actual transaction price began to be applied instead of the standard market price as the calculation base of the acquisition price and transfer price used for calculating capital gains tax for all real estate. Given that the main framework of capital gains taxation had gone unchanged for three decades, adopting such changes was not an easy task, which was why it took an adjustment period of around one year after the introduction of the new reporting system.

Generally, there is a considerable difference between the standard market price and the actual transaction price. For instance, lets consider the case of Donga Apartment in Jeonnong-dong, Dongdaemun-gu, Seoul. The standard market price of this apartment, with an area of 57.9m<sup>2</sup> and located on the 13<sup>th</sup> floor of apartment number 102, was 196 million Won as disclosed on January 1, 2004, but the actual transaction price as of January 2014 for an apartment on the same floor of the same building was 265 million Won, which demonstrates that the standard market price is around 74 percent of the actual transaction amount<sup>60</sup>. In general, the standard market price is around 70~90 percent of the actual

60. The standard market price and actual transaction price can be viewed on the websites, House Price Provider and Actual Transaction Price Search, of the Ministry of Land, Infrastructure and Transport.

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transaction price, and therefore, if the capital gains tax on real estate is modified to be based on the actual transaction price, the tax burden would increase, and generate the problem that the seller would have to carry a heavier burden than he/she does currently.

## 6. Assessment of Real Estate Transaction Reporting System's Achievements

### 6.1. Transparency of Real Estate Transaction Market

As the real estate transaction reporting system made it mandatory to report actual transaction prices, accurate transaction information in real estate transactions started to come to light. Since 2006, the Ministry of Land, Infrastructure and Transport has been releasing quarterly information on persons who filed false reports and the fines imposed, and relevant agencies are intent on reinforcing their inspection of tax evasion.

In 2002, before the implementation of the real estate transaction reporting system, the NTS also released information on the persons involved in unfaithful reporting of capital gains tax. However, at the time, only those who reported a significantly lower capital gains tax than the rates were investigated, and given that the rates are lower than actual transaction prices, the number of exposed cases would be considerably lower than the number of cases that actually filed an unfaithful report of taxes. Therefore, after actual transaction reporting was made mandatory through the new reporting system, the overall level of transparency in the reporting of capital gains tax is likely to have improved.

In 2005, the NTS launched a real estate transaction monitoring task force to constantly monitor the transparency of real estate transactions and whether the taxes related to the transaction were being faithfully reported and paid. This taskforce was responsible for not only collecting information on the parties involved in real estate transactions, but also carried out statistical analysis on licensees likely to be involved in real estate speculation, and closely reviewed whether the real estate transaction details reported to the local governments were accurate.

In 2006, the Ministry of Finance and Economy announced the revision of the Act on Reporting Specified Financial Transaction Information, and had the Financial Intelligence Unit (FIU) provide the NTS with information on cash transactions of high-income business owners or real estate speculators with tax evasion charges. Now with real estate transaction reporting, contracting parties report the transaction amount, and if “down contracts” were



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signed, the FIU analyzes the financial transactions between the accounts of the parties suspected of signing a “down contract,” checks and finds where the amount was transferred, and notifies the NTS. Such measures were possible because it has become mandatory to report the actual transaction price through the real estate transaction reporting system.

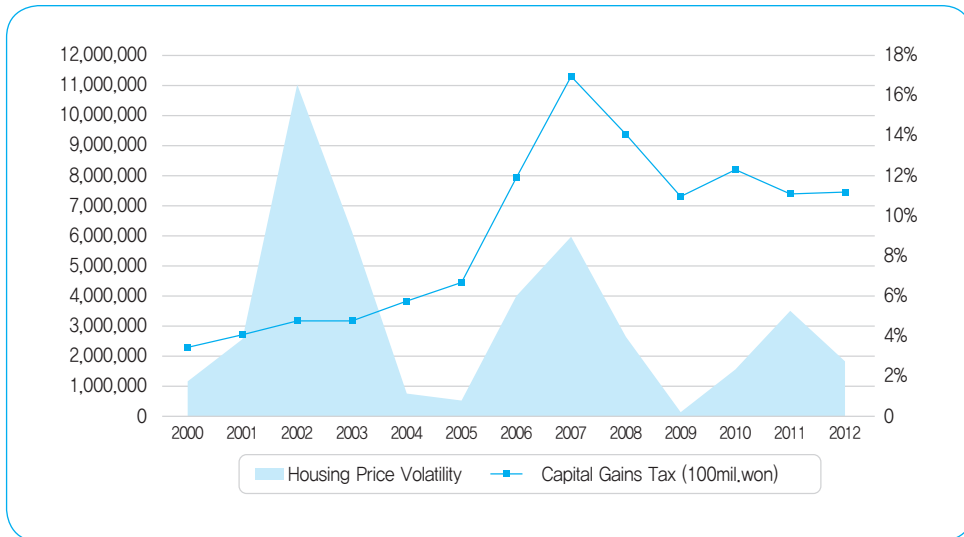
Until this system was introduced, power over a transaction was mainly with the seller. In the case of housing, the purchaser does not have access to information, and therefore transactions were concluded based on the asking price provided by the property owner. Notably, in 2005~2007, it was found that apartment representative associations engaged in price-fixing, and the seller held considerable influence over the transaction price. However, after transaction information was made public through the real estate transaction reporting system, when conducting transactions, the seller and purchaser can negotiate on level grounds. Furthermore, when writing up double contracts was widespread, there were difficulties in sharing information because the contract for paying acquisition tax, contract for paying capital gains tax, and the actual contract details all differed, but now that the transaction information is on database, the real estate market has become more transparent. The information on the actual transaction price is also shared with the NTS so that unfaithful reporting parties are exposed. For instance, even in the case where a person holding one house per household is eligible for non-taxable benefits after holding the housing for two years, if he/she is found to have filed a false report, the non-taxable benefits shall not apply. Therefore the NTS is also increasing its usage of actual transaction price data. Given all the points mentioned above, the real estate transaction reporting system can be deemed to have contributed significantly to improving transparency in Korea’s real estate market transactions.

## 6.2. Increase in Collected Tax

After the implementation of the real estate transaction reporting system, the requirement was revised to report capital gains tax using the capital gains calculated by the actual transfer price and acquisition price, not the previous capital gains tax calculated based on the standard market price. After the real estate transaction reporting system was enacted on January 1, 2006, it became possible to obtain transaction information for the actual transaction price taxation on capital gains tax. Up until December 31, 2006, actual transaction price taxation was mandatory only for high-priced residence, real estate acquisition rights, unregistered transferred assets, etc. and all other assets were taxed using the standard market price. However, all assets transferred after January 1, 2007 that are subject to capital gains tax are taxed using the actual transaction price. As shown below, the total capital gains tax

collected increased sharply from 2006. Although the growth in transaction volume is partly due to the rise in housing prices during this time, the effect of capital gains tax collection increase due to actual transaction price taxation is clearly evident. Capital gains tax in 2000 was in the lower 2 trillion Won range and increased continuously up to 3.8 trillion Won in 2005, then further increased to 7.9 trillion Won from 2006 when the reporting system was enacted. Afterwards, the capital gains tax reached 11 trillion in 2007, 7 trillion Won in 2009, and 7 trillion Won in 2011, which is distinctively different from the level of capital gains tax collected prior to 2006.

**Figure 2-10 | Trend in the Collection of Capital Gains Tax by Year**



Source: Kookmin Bank (housing price volatility), NTS (total amount of imposed capital gains tax).

Tax collection increased not only in relation to capital gains tax but because acquisition tax and registration tax, which are an important source of tax revenue for local governments, were also imposed using the actual transaction price basis. However, due to concerns on the sudden heavy tax burden, a decrease in the acquisition tax rate was applied at the same time as the taxation based on actual transaction price. As shown in <Table 2-9>, prior to 2006 when the real estate transaction reporting system was enacted, a rate of 3.5 percent was maintained for acquisition tax and registration tax combined, which was reduced to 2.5

percent on January 1, 2006 and further down to 2 percent on September 1. When taking into consideration that the acquisition tax and registration tax rate combined was 5 percent in 2005, the degree of reduction is considerable.

Until 2011, acquisition tax and registration tax were imposed, but beginning 2011, acquisition related items under registration tax were transferred to acquisition tax. Therefore, tax revenue until 2010 includes the combined amount of acquisition tax and registration tax collection, and from 2011, the acquisition tax revenue is reflected. As shown in [Figure 2-11], the imposed acquisition tax amount was sharply increasing prior to adopting the real estate transaction reporting system in 2006. This is seen as a result of the rise in housing prices, in addition to the construction of new housing and an increase in transaction volume of existing housing. However, after 2006, a slight decline can be identified in the acquisition tax revenue based on actual transaction price. This is likely the result of the nearly 50 percent cut in tax rate, in addition to the stabilization of the housing market due to the August 31 Real Estate Stabilization Measures implemented in 2006. However, taking into account the degree of impact, the housing market stabilization effect is viewed as the main factor rather than the reduction in tax rate.

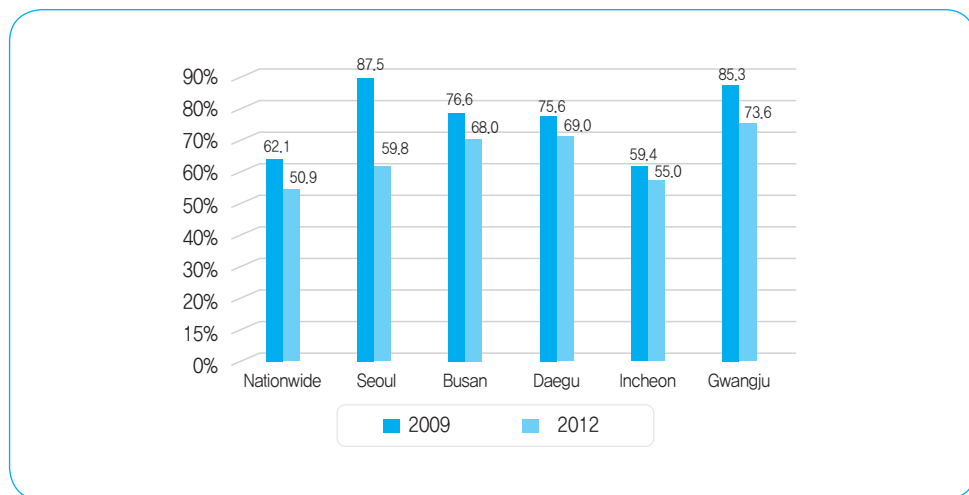
**Figure 2-11 | Trend in Collection of Acquisition Tax by Year**



Source: Korea Appraisal Board's Nationwide Housing Price Trend Survey (Housing Price Fluctuation), We Tax (acquisition tax and registration tax amount).

This trend also has an impact on the property tax. Property tax is imposed based on the statutory standard price, where the officially assessed price is reflected in the statutory standard price, and the actual transaction price is reflected in the officially assessed price. Although currently, the officially assessed price of reference land is perceived to reflect approximately 50~90 percent of the actual transaction price, continuous efforts are taking place to increase the rate of the actual transaction price to be reflected. As such, all aspects of real estate taxation are impacted either directly or indirectly by the actual transaction price reporting system.

**Figure 2-12 |** Rate of Actual Transaction Price Reflected in Officially Assessed Price of Reference Land



Source: Recomposed from Ministry of Land, Infrastructure and Transport, “Officially Assessed Price of Land Unable to Reflect Market Prices,” Korea Economic Daily, October 9, 2013.

**Table 2-10 | Rate of Real Transaction Amount Reflected in Officially Assessed Price of Detached Housing by Price Level in 2012**

(Unit: %)

Category (Won)	Less than 10 mil.	10 mil. or Above -less than 50 mil.	50 mil. or Above -less than 100 mil.	100 mil. or Above -less than 200 mil.	200 mil. or Above -less than 400 mil.	400 mil. or Above -less than 600 mil.	600 mil. or Above -less than 900 mil.	900 mil. or Above	Difference between Max. and Min.
Nationwide	51.6	55.1	56.0	54.6	52.9	52.5	54.8	48.9	7.1
Seoul	-	41.8	47.4	48.3	47.9	48.4	47.8	46.7	6.5
Busan	61.3	50.0	55.7	54.8	53.5	52.5	51.6	-	9.7
Daegu	-	61.4	60.6	61.0	58.1	60.9	-	-	3.3
Incheon	54.3	52.4	55.5	54.2	56.3	56.4	-	-	4.0
Gwangju	43.6	62.4	64.5	64.3	61.9	68.8	-	-	25.2
Daejeon	58.1	57.1	56.2	57.4	60.4	65.8	-	-	9.6
Ulsan	-	42.3	42.5	47.9	50.4	57.3	-	-	15.0
Sejong	34.8	53.1	47.0	50.7	56.5	-	-	-	21.7
Gyeonggi	73.8	51.6	51.8	55.8	54.8	59.1	68.0	64.6	22.2
Gangwon	44.1	53.6	54.3	58.3	60.6	53.9	-	-	16.5
Chungbuk	39.8	49.5	51.6	58.1	58.8	57.0	48.0	-	19.0
Chungnam	49.5	53.8	53.9	57.0	58.4	51.9	48.2	-	10.2
Jeonbuk	49.6	55.2	55.5	59.8	60.0	-	-	-	10.5
Jeonnam	57.8	57.0	56.4	53.8	61.9	-	-	-	8.1
Gyeongbuk	50.2	55.4	56.3	63.9	70.3	66.2	-	-	20.1
Gyeongnam	46.0	50.7	51.9	50.2	50.9	54.7	-	-	8.7
Jeju	49.4	59.8	60.8	57.1	55.7	55.5	-	-	11.4

Source: Korea Appraisal Board, analysis of rate of actual transaction price in officially assessed prices ([www.kais.kr](http://www.kais.kr)); Kim Yoo-dong (2013).

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## 6.3. Rationalizing Real Estate Market Information and Establishing a Market Index Base

### 6.3.1. Officially Assessed Price System Modification and Cost Reduction

The officially assessed price disclosed through the officially assessed price system is used as a reference in land information and taxation for land or housing transactions. However, a problem is that it differs from the price of the actual transactions in the real estate market. As it was pointed out in the parliamentary audit (2013), the realization rate of the officially assessed price of reference land is extremely low, which intensifies the gap between the officially assessed individual price and actual price.

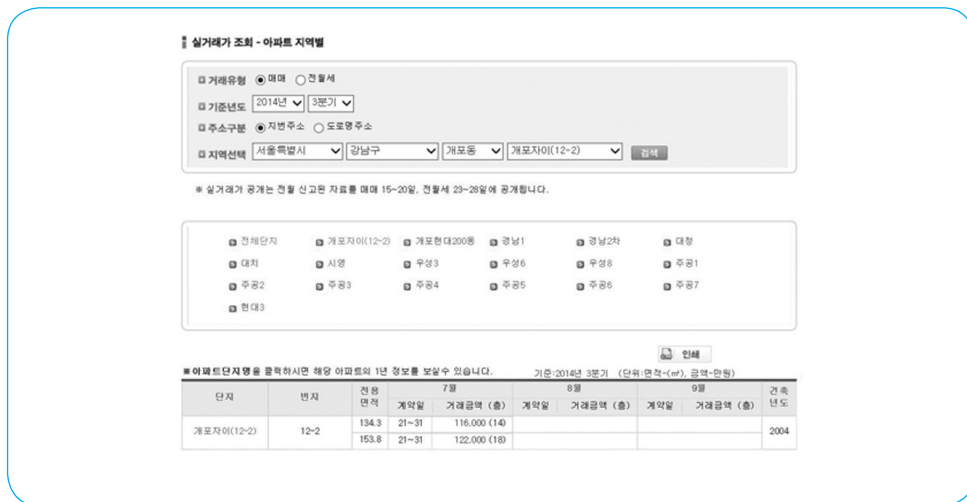
Even when the real estate transaction reporting system was introduced in 2006, the officially assessed price was significantly lower than the market price in the Gangnam area, and there were concerns that the officially assessed price was far from realistic. Back then, as the government implemented the new reporting system, it pledged that it would raise the officially assessed price realization rate up to the 80 percent level. However, even now, the officially assessed price for land is considerably different from the actual transaction price. From 2009 until September 2010, the nationwide officially assessed prices were compared for the most high-priced apartment of each apartment size, and it was found that for certain apartments, there was almost a two-fold difference between the officially assessed price and actual transaction price.<sup>61</sup> In 2014, the Ministry of Land, Infrastructure and Transport revised the officially assessed price system, with the aim of implementing the revised version in 2016. It announced that in this revised system, it would raise the percentage of the actual transaction price reflected in the calculation of the officially assessed price. Currently, when calculating the officially assessed price, the actual transaction price is virtually only a reference, but the revision will change the system so that the officially assessed price assessment model is based on the actual transaction price.

61. Reference to article published by CNEWS NEWS November 1, 2010, "Apartment Actual Transaction Price- Officially Assessed Price up to 2.97 billion Won Difference": Ministry of Land, Transport and Maritime Affairs' "Current Status of Officially Assessed Prices of Apartments That Are Actually Transacted, Based on the Apartment Transacted at Highest Price by Region and Size After 2009" compared the officially assessed price of the most high-priced apartments for each apartment size from among all apartments nationwide, and found that the apartment that showed the most significant difference between the actual transaction price and officially assessed price was "Park Tower Apartment" in Yongsan-dong 5, Yongsan-gu, Seoul. The 243.87m<sup>2</sup> sized apartment was sold at a price of 5.65 billion Won in December 2009, but its officially assessed price for January 1, 2010 was 2.68 billion Won, which was 2.97 billion Won lower than the actual transaction price.

### 6.3.2. Establishing a Market Index Base

After the Real Estate Transaction Reporting System was introduced, apartment actual transaction price disclosure began in August 2006. From then on, every month, the Ministry of Land, Transport and Maritime Affairs has been disclosing the transactions of reported apartment transaction prices on its website, excluding any unlawful cases. After selecting the region and apartment name, it is possible to check the transaction price for each quarter. [Figure 2-13] is a screen shot of the actual transaction price of the Gaepo Xi Apartment located in Gaepo-dong, Gangnam-gu, Seoul. Upon designating the transaction period and quarter, it is possible to search for information such as the apartment size, transaction price, floor and year of construction.

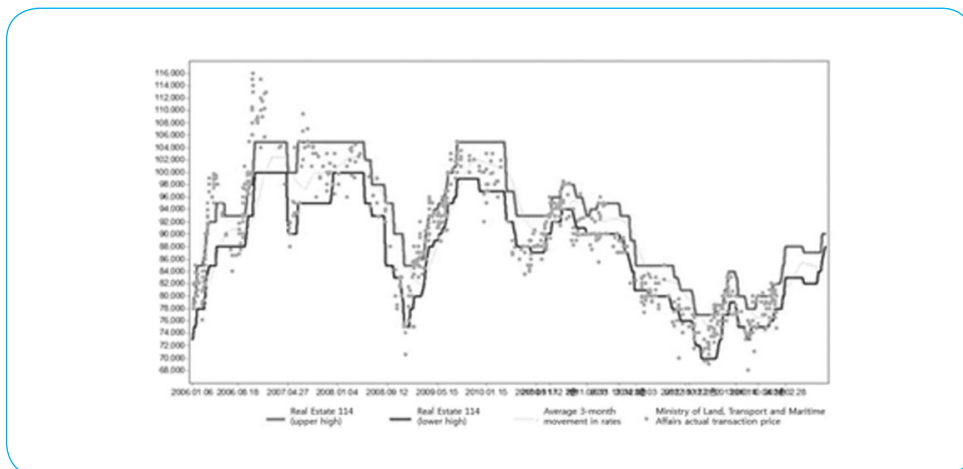
Figure 2-13 | Screenshot of Actual Transaction Price on Ministry of Land, Transport and Maritime Affairs Website



As a result, a market information infrastructure was established in which actually traded prices could be identified instead of the apartment price information based on asking prices provided by real estate agencies as it had been done in the past, and thereby contributed to creating more reasonable transaction prices. This information on apartment actual transaction prices is used for running a market analysis system on a private real estate information website. An example of this is the online-based Real Estate Power Solution (REPS, which was developed by a private real estate information provider Real Estate114). [Figure 2-14] illustrates a graph as provided by REPS that demonstrates the trends in rates

and actual transaction prices for an apartment complex in Seoul that has been drawing interest over possible reconstruction. As seen in the graph, the trends in the actual transaction precede the rate trend.

**Figure 2-14 |** Example of Using Apartment Actual Transaction Price Released by a Private Real Estate Information Provider



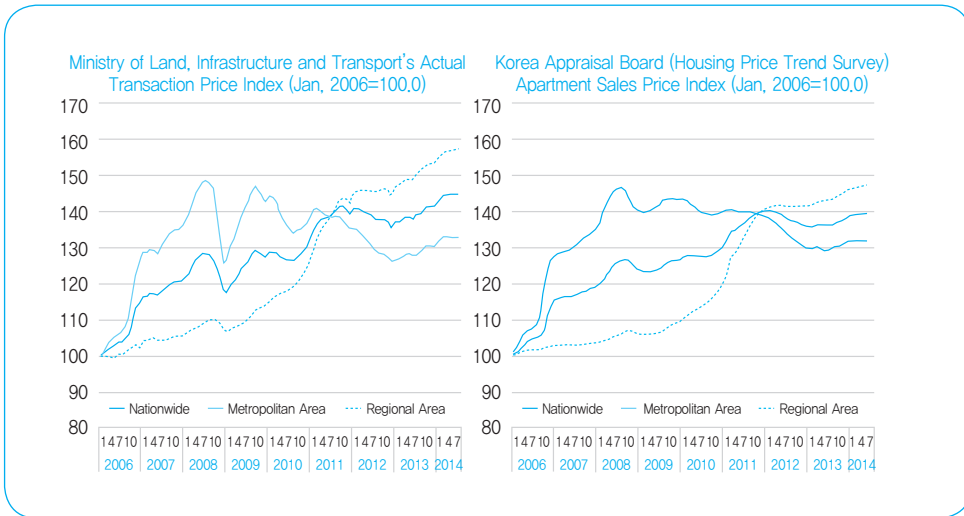
Source: Real Estate 114 (rates), Ministry of Land, Transport and Maritime Affairs (actual transaction price).

By accumulating such resources, it became possible to discard the previous apartment price index based on the market price, which was strongly influenced by asking prices, and an index based on the actual transaction price was established and operated. Since December 2009, the Ministry of Land, Infrastructure and Transport has been providing a monthly release of the actual transaction price index based on the repeated sales and purchase index after January 2006.<sup>62</sup> [Figure 2-15] shows the calculated apartment actual transaction price index and main apartment rates index. As is easily evident, the actual transaction price index shows a more sensitive movement than the rates index, and it precedes the rates index by around two to three months. Also notably, the period of recovery in apartment prices that began in early 2013, which cannot be observed in the recent rate index, is clearly identified in the actual transaction price index.

62. The index from January 2006 to September 2009 was released on December 24, 2009 to begin the official disclosure of the apartment actual transaction price index. The actual transaction index is announced on the 15<sup>th</sup> day of the following month, two months after the month concerned (The actual transaction index for January 14 is announced on April 15).

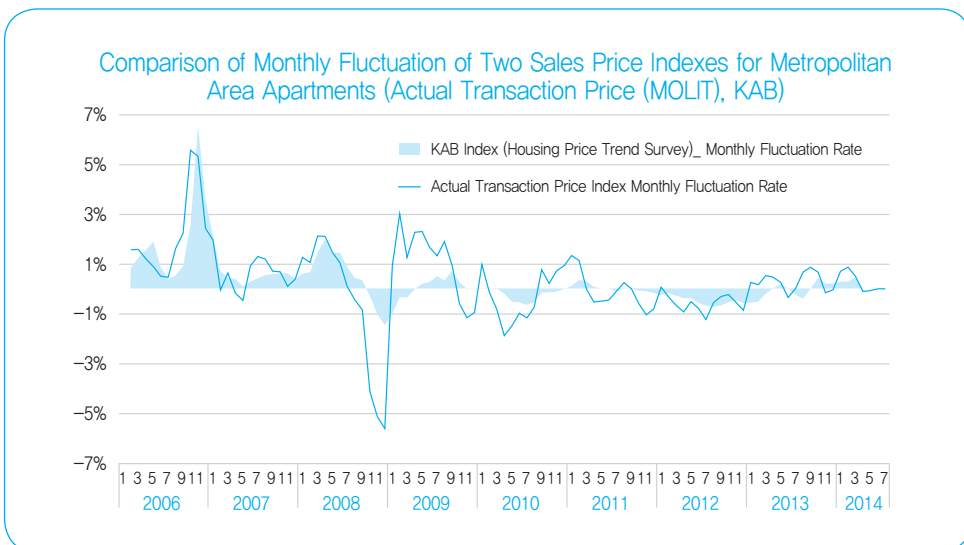


**Figure 2-15 | Comparison of Actual Transaction Price Index and Rates Index for Apartments**



Source: Ministry of Land, Infrastructure and Transport's apartment actual transaction price index; Korea Appraisal Board's housing price trend survey.

**Figure 2-16 | Trend in Fluctuation Rate of Actual Transaction Price Index and Rates Index for Metropolitan Apartment**



Source: Ministry of Land, Infrastructure and Transport's apartment actual transaction price index; Korea Appraisal Board (KAB)'s housing price trend survey.

In such ways, the real estate transaction reporting system has played a positive role on improving market transparency, and it provides more reasonable market information for selecting real estate market policies. Every month, the Ministry of Land, Infrastructure and Transport surveys and provides the check price of nationwide collective housing, newly constructed housing and houses built for sale for the verification of reported prices (actual transaction price) of real estate transaction, and executes a considerable budget to provide the actual transaction price index price based on the actual transaction price accumulated from 2006. Taking a look at the Ministry of Land, Infrastructure and Transport's yearly budget plan executed for producing the actual transaction price index, it is demonstrated that a budget of 900 million Won was spent in 2014.

**Table 2-11 | Detailed Budget of Ministry of Land, Infrastructure and Transport's Project on Verifying Collective Housing Price and Releasing Actual Transaction Price Index**

(Unit: 100 mil. Won)

Category	Budget for 2012	Budget for 2013 (A)	Budget for 2014 (B)	Change	
				(B-A)	%
□ Verifying Collective Housing Price and Releasing Actual Transaction Price Index	8.5	8.5	9	0.5	
- Survey of Collective Housing Check Price	5.9	6.7	7.2	0.5	
- Release Actual Transaction Price Index	2.6	1.8	1.8	-	
□ Items of Annual Expenditure Budget	8.5	8.5	9	0.5	
- Research and Development [260]	8.5	8.5	9	0.5	

Source: Ministry of Land, Transport and Maritime Affairs, [Outcome of Self-Regulated Evaluation of Finance Projects for 2013 (General Finance)], 2014.

## 7. General Summary

Korea is the only country with nationwide mandatory actual transaction price reporting, and this presented many difficulties at the initial stages of adopting the system as there were no other countries that could be noted for reference.<sup>63</sup> For instance, when the real estate transaction reporting system was adopted in Korea, even neighboring Japan showed

63. In the case of Japan or the US, the actual transaction prices are not all reported, and relevant incentives are provided for reporting.

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interest in its development.<sup>64</sup> Given such circumstances, Korea's real estate transaction reporting system managed to be successfully put in place because it was actively supported and implemented as a national project.

The system greatly contributed to improving transparency in the real estate market in several aspects, especially in that it became possible to gain access to market information, which is a clear advancement from the past when fair taxation could not be carried out because of dual contracts and price information was mostly influenced by asking prices. However, under the current taxation framework that still provides exemption of capital gains tax to a wide range of real estate transactions, dual contracts have not been completely uprooted, and there are limitations to the system in that dual contracts are still being written up for a significant number of transactions. There needs to be continuous improvement measures to address this matter.

A considerable amount of effort and expenses have been invested into the introduction and operation of this system, but this is outweighed by the positive social function that has been gained from the transparent circulation of market information, and the system provides important information necessary for effectively managing the real estate market. Notably, by establishing a base for real estate prices, which is the base for real estate taxation, this will be able to replace the officially assessed land prices or officially assessed housing prices, which are indirect institutional frameworks that cost tens of millions of Won every year, thereby contributing to reducing social expenses.

As economic growth continues in South East Asia and other developing countries, they are likely to encounter prevalent real estate speculation like that experienced in Korea, and when faced with a similar situation, efforts need to be made to effectively manage the real estate market. Under such circumstances, if a market information infrastructure like the real estate transaction reporting system is introduced, it will greatly contribute to managing the real estate market more effectively. In particular, if such a system, which was adopted belatedly in Korea, were to be set up in advance, it would likely play a central role in establishing transparency, order and fair taxation in the real estate market, which is ultimately the purpose of adopting the real estate transaction reporting system.

64. When Korea made a presentation at the Korea-Japan Cooperative Meeting organized by Korea's Ministry of Construction and Transportation and Japan's Ministry of Land, Infrastructure and Transport, Japan requested information on Korea's real estate transaction reporting system, and asked for material on relevant budget and law revisions in 2005.

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## Interview about the Real-name Registration

Namgoong Hoon

(Head of the Tax Department in the Ministry of Finance and Economy at the time of adopting real-name registration)

***(Q) What made Korea experience such severe real estate speculations compared to other developing countries in similar positions?***

(A) The real estate speculation in Korea was initiated by rapid industrialization and urbanization that resulted from the five-year economic development plan in 1962. It was inevitable regarding the facts that we had scarce land with a large population, and, furthermore, significant population flowed into large cities and industrial complexes. Also, the five-year economic development plan was very successful and massive inflows of trading and development funds went into the real estate market in the absence of other more appropriate investment means.

***(Q) Korea's real estate speculation appeared to have recurred every ten years since 1962. What were the main features of the speculations?***

(A) Since 1962, there had been cycles of speculation and stabilization every 3~4 years. The most intense speculations took place in 1968~1969 (166.2%), 1977~1978 (99.0%) and 1988~1989 (68.2%). In 1997, the real estate price collapsed due to the IMF crisis, and the Korean government came up with the measures to stimulate the economy in order to recover from the IMF crisis. This ignited speculation with apartments in the 2000's, which seemed to have been stabilized lately due to the recent economic depression.

***(Q) What were the countermeasures implemented by the government to deter the real estate speculations?***



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(A) The main countermeasure was the Act for special measures against real estate speculations, which was announced in 1967. This Act imposed 50% of capital gains tax on lands which had been left as empty lots for more than two years or had curtilage ten times bigger than its building. This was ineffective since the increase in real estate price was larger than the additional tax.

In 1973, heavier property tax was imposed on luxury lands, and in 1974, the aggregate tax system and capital gains tax were introduced together with the special value added tax for companies in addition to the existing corporate income tax. Later in 1978, 8.8 measures implemented license and reporting systems for land transactions, as well as the extra document requirements for the real estate registration and heavier capital gains tax.

In 1980, the government adopted the land transaction permits and public notification systems for certain areas to deter real estate speculations.

In the 1990's, the Law Concept of Public Ownership of Land, real-name financial transaction system, compulsory registration and real-name registration were implemented, as well as the Land Management Information System, which all together established more enhanced and systematic systems to deter real estate speculations. As a result, real estate price declined and began to stabilize, which led to collapses of speculative bubbles and companies grown or maintained by speculative activities. A series of company bankruptcies led to failures of the financial sector, causing the IMF crisis. The real estate speculations that started in the 1960's eventually gave fundamental causes for the IMF crisis.

***(Q) What would be the reasons behind the unsuccessful measures implemented by the government to deter the real estate speculations?***

(A) Most of all, title trust agreements were allowed, therefore, the measures with heavier tax among various anti-speculation measures did not function well. Tax laws adopted progressive tax rates, which could be avoided by transactions under a third party's name. There was no effective way to prevent the transactions under a third party's name. It was also due to the shortage of the investigative power experienced by the tax authority and the lack of infrastructures monitoring real estate transactions effectively.

***(Q) What were the main damages from the real estate speculations?***

(A) Real estate speculation induced rapid increase in land value and housing price in a short period of time, which made it difficult for ordinary people to buy houses and live on higher dwelling expenses. Additionally, it increased consumer prices and reduced the real income of ordinary people. Also, companies made investments on real estate properties instead of production facilities in pursuit of speculative profits, which might have been profitable in a short term, but it certainly caused our companies to be left behind with lower international competitiveness.

Furthermore, real estate speculation resulted in a soar in real estate prices, which widened the gaps and conflicts between the rich with real estate properties and poor without them. A massive amount of unearned income was possessed exclusively by a few real estate holders, which caused bi-polarization of income distribution, as well as deprivations suffered by laborers with a declining motivation to work.

***(Q) What was the background of AREAT in 1995?***

(A) From the 1960's through the 1980's, the most important political subject was to pursue economic development and to raise domestic capitals to meet demands for various developments. Therefore, 「Secrecy Act for Savings」 was enacted to enable financial transactions under a no name or false name. Title trust agreements were allowed in real estate transactions under the Civil Law. Because of these, a shadow economy prevailed and market economy was distorted.

Also, there was a need for changes in national policies for the enhancement of social justice and fairness as economic development improved the level of national consciousness in the 1990's. Therefore, the government implemented the real name financial transaction system on August 12, 1993 to enforce every financial transaction to be undertaken under the actual names of the involved parties and prohibited transactions by no name or false name. The aggregate taxation on financing income was also adopted in pursuit of the equity of taxation.

Finally, AREAT was enacted on July 1, 1995 to establish foundations to prohibit or invalidate registration under the title trust agreement and cut off tax evasions and non-compliances. There was a concern about the transfer of funds with no real name from the financial market to the real estate market as a result of the real name financial transaction system. In order to prevent the real estate speculations, real-name registration in real estate transactions was implemented in advance.

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***(Q) What was the most difficult part of planning for the implementation of the real-name registration?***

(A) The most difficult part was the provisions in AREAT that denied judicial effects of title trust agreements under the private law. This could violate property rights and principles of freedom of contract protected by the Constitutions. Also, in the course of legalizing the existing title trust agreements, we had to think of the countermeasures against cases where people made the actual inheritance or property sale by way of disguising them to be cancellations of title trust agreements. There were other concerns about scope of exceptions in cases with clan properties, etc.

***(Q) There must have been severe resistance from the public against real-name registration. How did you persuade them?***

(A) In Korea, there had been customs that allowed acquisition of a company's lands under its employee's name (sellers often increased the selling price excessively when a company directly acquired the land), hence there was a request to exclude corporate land purchases from the real-name registration considering the corporate competitiveness. The government did not allow the exceptions and maintained equality with individual land purchases. Instead, it came up with comprehensive countermeasures, which enabled smooth acquisition process of commercial lands for companies.

In addition, there was a problem related to the drastic increase of a tax burden on the actual property owners that resulted by real-name registrations. This was revolved by suggesting mid-long term plans to improve the aggregate land tax system, capital gains tax system, and all other taxes on real estate property.

***(Q) What were the impacts from real-name registration of real estate properties?***

(A) Land transactions are now being undertaken by the actual consumers, hence real estate speculations have been successfully controlled, which contributes to stability in real estate prices. Also, property concealment and tax avoidance available under the system of title trust agreements have been eradicated since profits from these schemes are not larger than the risks on property protection, penalties, and criminal punishment imposed on non-compliances. As a consequence, sound social order with enhanced transparency is now well settled in Korea.

***(Q) What were the most successful means of implementing the real-name registration for real estate transactions?***

(A) It was very helpful that various prominent experts (legal and industrial) participated in the enforcement team for real-name registration. Also, we promptly implemented real-name registration for real estate properties taking the social atmosphere formed after the real-name financial transaction system. Finally, we tried to minimize the scope of exceptions from the real-name registration with various alternatives suggested to the complaining parties.

***(Q) Was there any unsatisfactory part in the course of implementing the real-name registration for real estate transactions?***

(A) We reviewed 「substantive evaluation system for the real estate registration」 to secure the effectiveness of the real-name registration. However, because the administration environment was not fully prepared for this system, it has been put off as a task to handle with a long-term view.

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## Interview 1 on Real Estate Transaction Reporting System

Hae-Chul Jung

[Researcher in charge of implementation of the Real Estate Transaction Reporting System and establishing RTMS at Korea Research Institute for Human Settlements when the new systems were introduced]

***(Q) What implications does the real estate transaction reporting system present to developing countries?***

(A) When we implemented the real estate transaction reporting system, Japan showed a great amount of interest. I believe Japan was interested because, similar to Korea, it also sees severe speculation in real estate prices. Southeast Asian countries that were under Japanese occupation in the past also have similar land systems to Korea. For Southeast Asian countries and other developing countries, real estate speculation problems will intensify with economic development, similar to Korea or Japan. If such a system is implemented in advance, such problems can be managed effectively when the situation occurs. In addition, the accumulation of actual real estate transaction prices will also be beneficial from the perspective of establishing and enforcing real estate policies.

Furthermore, several hundreds of billions of Won is used every year to maintain Korea's price disclosure system. By making full use of the accumulated information on actual transaction prices, we have been reducing costs that arise from maintaining the disclosure system. If developing countries make a practice of registering actual transaction prices in advance, they will be able to reduce such budgets as well.

***(Q) Almost a decade has passed since the real estate transaction reporting system was enforced. What are your thoughts on the effects of the implementation of the system?***

(A) In the case of the Nation Tax Service, the legislation was amended to disallow tax exemption to persons charged with false reporting in relation to the transfer tax exemption provided to 'one house per household' owners on property held for more than two years. We are becoming more and more reliant on the actual transaction price data. Disclosing transaction prices contributes greatly to transparency. The

actual price sold of a specific property, on a specific floor, of a specific size, at a specific apartment can be compared. Previously, no information was available to the buyer. Prices were typically negotiated based on the asking price, of which this asking price was usually set by the property holder and therefore was unfavorable to the buyer. Now that transaction prices are disclosed, the bargaining power is equal on both sides. Previously, the contracts for acquisition tax payment, capital gains tax payment, and actual transaction settlement were different. Improvements were made on information sharing, which was not possible in the past when everything was performed offline. The disclosure of transaction prices has made enormous contributions to the transparency of the real estate market.

***(Q) The problem with dual contracts still seems to exist. What are your thoughts on this?***

(A) I agree that dual contracts are still prevalent. Limitations still exist due to the tax-exemption policy. During the Roh Moo-hyun administration, a plan to temporarily abolish the tax-exemption policy and decrease the capital gains tax rate was considered but it was not easy to implement. I believe there is a need for change in the overall social culture. Now, becoming a government minister becomes an obstacle if you are involved in writing a dual contract. This sort of social consensus has a positive effect. Also, recently there are cases where one party will refuse to write a dual contract. If legislations are amended in further detail, for example by offering larger exemptions when one turns himself in voluntarily, it may contribute to stabilizing the reporting system and prevent the write-up of dual contracts.

***(Q) There was some controversy in that the basis for the amount of fine imposed when a licensed real estate agent makes a false report in acquisition tax. How was the basis for the fine decided at the time of legislation?***

(A) When new legislations are enacted, precedent legislation cases are referenced. There was a case where the basis for acquisition tax was based on acquisition cost. However, as fines were based on either acquisition tax or registration tax, the acquisition tax basis was applied using the precedent case.

In relation to this fine, if the acquisition tax rate changes, I believe the basis for fine will also need to be adjusted in a timely manner, in accordance with the change in

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acquisition tax rate, to prevent any problems in fairness or cause any unnecessary confusion. To address this matter, revisions should be made based on the transaction amount and not the acquisition tax rate. In addition, some misunderstand the acquisition tax as the basis for a fine as the ultimate tax imposed, but this is not the case and it should be made clear that the amount used for the basis of a fine is prior to any exemptions and non-taxable amounts.

***(Q) There is controversy on the reporting deadline of 60 days. Do you think 60 days is a reasonable period?***

(A) At the initial stage of implementation, the reporting deadline was set at 60 days, but there was a strong demand from the real estate industry, and so through National Assembly legislation, it was revised to 60 days. The reason for the revision was that the short deadline causes more idleness in reporting.

When typically engaging in a mediated transaction, most of the transactions are completed within two months, starting from the signing of the contract until the balance of payments. Therefore, real estate agents tend to want to report after confirming the contract has been carried out. This is because if reporting is made prior to completion, the income of the real estate agent is disclosed even though the actual transaction has not been completed with the final balance settlement.

Shortening the reporting deadline can be perceived as yet another regulation, and there probably needs to be a valid reason in order to restrict the deadline to a shorter period.

## Interview 2 about on Real Estate Transaction Reporting System

Hong-Gi Kim

[Deputy Director in charge of Real Estate Act policy at the Ministry of Land, Infrastructure, and Transport when the new reporting system was introduced]

***(Q) What were the difficulties, if any, in implementing the real estate transaction reporting system?***

(A) As this increased the duties of the real estate agent, there was strong objection from the real estate agents. This was due to several reasons. For starters, the real estate agent would face financial disadvantages such as a penalty fine if he/she did not properly performing his/her reporting duty, while there were no benefits in return. The contract parties could also face tax-related disadvantages because their actual transaction prices would be disclosed through the reporting of the real estate agent, which would cause them to avoid transactions through real estate agents. Furthermore, the brokerage commission of the real estate agent, which had not been previously disclosed, would also be made available together with the reporting of the actual transaction price, and so this also gave rise to the uncertainty of being charged with higher business income.

Therefore, for the purpose of compensating the real estate agents, it was proposed that real estate agents also be given the right to auction under the Civil Execution Act and act as a public auction agent under the National Tax Collection Act. However, this was met with strong opposition from the Korean Bar Association and Korea Association of Beommusa Lawyer (Certified Judicial Scriveners), which argued that the right to auction fell under the specific business of lawyers and could not be performed by real estate agents. Eventually, the proposal was whittled down to grant real estate agents the right to analyze real estate ownership, broker acquisitions and act as the purchase application agent or auction application agent for auctions under the Civil Execution Act and public auctioned real estate under the National Tax Collection Act and other relevant laws.

Also, the calculation criteria for monthly rent commission was changed from “(deposit+monthly rent×number of contract months)×commission rate” to “(deposit+monthly rent×100)×commission rate” as requested by real estate agents at the time. Following this revision, there were reports in the media that the brokerage



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commission for some monthly rents had more than tripled, and so the criteria was hurriedly changed so that when “deposit+monthly rent×100” amounted to 50 million Won or less, the criteria “(deposit+monthly rent×70)×commission rate” would be applied.

***(Q) We understand there was opposition to reporting obligations were imposed on real estate agents although a real estate agent’s business is to perform brokerage services. Why were reporting obligations imposed on real estate agents?***

(A) Back then, when the new reporting system was first enforced, it was common to think of paying less capital gains tax or other taxes by reporting a lower price than the actual transaction price as a way of cutting taxes, somewhat illegally. Therefore, there was no choice but to bring together all possible means of quickly getting the actual transaction price reporting system in place. Because real estate agents are the ones who can observe real estate transactions from an objective third party perspective, they were given the reporting duty. In reality, the easiest way to implement the system was through the real estate agents. They were also the most familiar persons with the Ministry of Land, Infrastructure, and Transport. I can, of course, understand the opposition from the real estate agents’ perspective. After all, in the case of marriage, the marriage broker only arranges the match and the marriage registration is the responsibility of the parties involved.

***(Q) Almost ten years has passed since the Real Estate Transaction Reporting System was enforced. How do you evaluate it so far?***

(A) Fair taxation is considered to have been established through this system, and this was possible because accurate information was provided to the parties seeking real estate transactions and uncertainty was removed from real estate transactions. Around 2005, when the real estate prices surged, apartment representative associations led price-fixing, where some of the members posted notice bulletins around the apartment complex stating that apartments should be traded above a certain amount and placed pressure on the real estate agencies in the neighborhood. But by disclosing the actual transaction price of apartments in areas where such price-fixing took place, the buyer was no longer influenced by the asking price and could take the actual transaction price into consideration when negotiating prices.

One disappointing factor is that the reporting deadline is 60 days after signing the contract. If 60 days pass after signing the contract, it is difficult to detect real estate speculation early on, and this can result in ineffective policies. Under the housing transaction reporting system, which was implemented prior to the real estate transaction reporting system, the housing transaction was reported within 15 days of contracting a sale. This 15 day deadline was decided to detect any speculative indications early on and take appropriate measures, and so it is unfortunate that the reporting deadline was extended. This may seem less of a problem these days, given the slow real estate market.

***(Q) What are the improvement points, if any, needed in the Real Estate Transaction Reporting System?***

- (A) This is something that I recently proposed. The transactions required to be reported includes the right to residency under the Housing Act and Act on the Maintenance and Improvement of Urban Areas and Dwelling Conditions for Residents, but not the residency right for a house under the Building Act. In the case of the latter housing, the unit price for a building is also not recorded on the real estate register. In the case of residency rights under the Building Act, there is room for evading taxes by preparing two different contracts—one that receives the inspection seal, and the other that is the actual transaction contract. Therefore, it would be desirable to include residency rights for housing under the Building Act among transactions that are required to report the actual transaction price. This would also resolve confusion as to whether residency rights fall under a transaction that needs to report the actual transaction price or receive an inspection seal.

When a transaction contract is signed through a real estate agent, the agent is the one with the reporting duty. However, in situations where the contract parties ask the real estate agent to prepare a double contract and the situation gets tricky, the agent may step back and the transaction may be covered up to appear as if it were a direct transaction between the two parties. To prevent this, the real estate agent is required to guarantee every single transaction that he/she is has taken part in. Real estate appraisers are required to guarantee each case that they appraise, and in the same way, if the same method is applied to real estate agents, then it would be possible to easily identify the violation of actual price reporting by comparing the guaranteed case with the transaction price report. It would also make it easier to

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provide a remedy for any damage suffered by the parties in a real estate brokerage mishap.

Because a real estate brokerage contract is one that is signed between the real estate agents and contracting parties, it would be appropriate to describe it as the real estate agent getting involved in the signing of the transaction contract.

***(Q) What implications, if any, does the real estate transaction reporting system present to developing countries?***

(A) There was difficulty in establishing the real estate transaction reporting system as it is linked to tax matters and there were protests from the interested parties. It is hard to go against the desire to pay less taxes. Therefore, if there is no friction with taxes, the system will be easily established, and if friction does arise, then there will likely be those opposing the introduction of the system. At the initial stage, it would be desirable to run the system separately from taxes.





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