

The Regulating Legal Provisions of the Removal of Commons by Disposal: The Real Estate Ownership Law of 2019

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Abstract

This study examines the legislative framework governing property disposal in Jordan, focusing on the Real Estate Property Law. Through a detailed analysis of the law's provisions and their practical implications, the research highlights several key insights. The amendments introduced by the Jordanian government aim to streamline the process of disposing of communal property, emphasizing economic value enhancement. However, criticisms exist, particularly regarding the lack of specialized resources dedicated to addressing decommunization matters within the Department of Lands and Surveys. Despite these challenges, the Real Estate Property Law is crucial for resolving property disputes and fostering economic development. Addressing identified deficiencies and ensuring effective implementation of the law will be essential for realizing its intended benefits and promoting a fair property disposal process. Practical recommendations are provided to enhance the protection of owners' and renters' rights and to address deconsolidation issues within the Department of Lands and Survey. Future research should focus on potential revisions of the Real Estate Property Law to streamline processes and ensure fair proceedings.

Keywords: Real rights, Real Estate Ownership Law, transfer of ownership, judicial division, and public auction sale.

Introduction

Legislation plays an indispensable role in delineating and safeguarding financial rights, with property rights ranking among the most foundational (Husovec, 2019; Abu Huson et al., 2023; Obeidat et al., 2022; Aljawarneh et al., 2021). In Jordan, the legal framework concerning property rights has undergone substantial evolution, underscoring the significance of this entitlement in upholding public order and fostering economic growth (Abdel-Fattah et al.,

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2022; Abedini, 2020; Al-Qudah et al., 2022; Aljawarneh, 2024). While separate ownership affords individuals exclusive dominion over their assets, common ownership poses distinct challenges, particularly within the real estate domain, where it can hinder economic utilization and impede transactions (Doss et al., 2020; Layish, 2023).

Historically, property rights connoted absolute control over one's possessions. However, as societal norms advanced, so did the regulatory paradigm surrounding property, emphasizing not only individual rights but also communal and societal interests (Muheisn & Muhammad, 2023; Al-Raggad et al., 2024; Abu Orabi et al., 2023; Qudah et al., 2024; Aljawarneh, 2024). In this context, the enactment of Real Estate Property Law No. 13 of 2019 by the Jordanian legislature represents a significant milestone, aimed at streamlining real estate transactions, resolving disputes, and augmenting economic value (Abdel-Fattah et al., 2022; Albalawee, 2024).

The primary focus of this study is to elucidate the problems and challenges arising subsequent to the passage of Jordanian Real Estate Property Law No. 13 of 2019. This legislation mandated the removal of common ownership in real estate through the intervention of the Real Estate Removal Committee, involving the sale of properties via public auction, thereby significantly impacting the interests of property partners. Subsequently, an endeavor will be made to refine this novel mechanism by proposing solutions within the purview of the Jordanian legislature.

One of the central objectives of this law is the elimination of common ownership, facilitated through public auctions overseen by the Real Estate Removal Committee. While intended to optimize economic benefits, this approach has raised concerns regarding its impact on the interests of property partners (Wojnarowski, 2023). Consequently, this study aims to critically examine the implications of this legal provision, identifying challenges and proposing solutions to address stakeholders' concerns.

Research Questions:

RQ1. What are the main challenges and issues encountered after the implementation of Jordanian Real Estate Property Law No. 13 of 2019, particularly regarding the removal of common ownership through public auctions?

RQ2. How do the provisions outlined in Real Estate Property Law No. 13 of 2019 affect the interests and rights of property partners within the Jordanian real estate market?

RQ₃. What potential legislative amendments or refinements can be proposed to mitigate the identified challenges and address the concerns surrounding the removal of common ownership in real estate transactions within the Jordanian legal framework?

Methodology

The research adopted a comprehensive descriptive-analytical methodology to delve into the recent legislative revisions stipulating that the Real Estate Removal Committee must conduct public auctions for the disposal of properties, in accordance with both the Implementation Law and the Jordanian Real Estate Property Law. Furthermore, the study aimed to evaluate the multifaceted implications of these alterations on various stakeholders. This investigation was conducted with the primary objective of safeguarding the interests of partners engaged in such real estate holdings (Alkhasawneh et al., 2021).

Literature Review

The literature examines the legal framework for disposing of common property, offering diverse perspectives. Mitchell, (2014) and Libecap, (2003) discuss methods for transferring common property ownership, including selling the entire property to change ownership. Obaidat (2020) highlights legal transactions, such as sales or leases, with or without compensation, like gifts. NESHEIWAT, (2012) elucidates the Civil Code's stance, emphasizing the rights and limitations of joint owners in utilizing and disposing of common property. Alrahamneh & Almuhareb, (2022) analyzes the Real Estate Property Law of 2019, introducing methods to end joint ownership through various actions, each requiring specific conditions. According to the Jordanian Judicial Council (1976), partners can dispose of entire common property, subject to specific conditions, while Stewart, (2021) emphasizes the importance of legal disposition in achieving legislative goals. Researchers conclude that legislative success in this area aims to enhance economic values and minimize disputes among partners, ensuring a practical legal framework conducive to real estate investment and economic growth (Abualoush et al., 2022; Al-Karabsheh et al., 2023; Huson et al., 2024). The review underscores the need for comprehensive legislation to address the complexities of common property disposal effectively.

Transfer of Ownership Action

Obaidat (2020) focuses on legal disposition, stressing its relevance in transferring ownership. Article 9(4) of the Real Property Law emphasizes transferring ownership as a means to remove common property, excluding arrangements of other real rights like mortgages. While sale is commonly mentioned, the legislator's intent extends beyond mere transactions, aiming to end

common ownership comprehensively. Researchers assert that the term "sale" serves as an example, permitting various forms of ownership transfer, including gifts, as long as they align with legislative goals. The legislator's aim is to safeguard minority rights and ensure the complete termination of common ownership, promoting stability in real estate ownership and bolstering economic values. The discussion emphasizes interpreting legal texts holistically to achieve legislative objectives effectively.

Methods for Disposing of Common Property

The Real Estate Property Law of 2019 outlines both general and specific prerequisites, along with the procedural steps overseen by the appropriate authority. It delineates three methods to eliminate common property, thereby transforming it from communal to individually owned. The intent behind each of these forms of disposal is as follows:

A. Consensual Action

As per Article 95 of the Real Estate Property Law, "jointly owned property shall be disposed of by the unanimous agreement of all partners to sell it and distribute the proceeds among them, each in proportion to their share of ownership." It's noteworthy that this provision mandates absolute unanimity among all partners, or their representatives, for the disposal of common property to be valid. If any partner dissents, regardless of their share in the property, disposal through consensus becomes unfeasible. The law does not address the issue of full legal capacity or presence of all partners. Instead, Article 99 allows disposal even in the absence of some partners or those lacking legal capacity, provided that their interests are represented by a guardian, custodian, or trustee. This aspect may pose injustices against those with diminished capacity or competency.

However, achieving absolute consensus among partners is often impractical due to differing opinions and preferences. This challenge prompted legislators to devise alternative methods for disposing of common property, which will be elucidated in the following section: compulsory disposal.

B. Compulsory Action

Article 96 of the Real Estate Property Law outlines the process for disposing of jointly owned property if unanimous agreement among partners is unattainable. In this scenario, a request is made to the registration director to refer the matter to the Joint Properties Removal Committee. The disposal is authorized if owners representing at least three-quarters of the property shares request it, provided the remaining shares cannot be individually or jointly divided. If the remaining partners do not assent or refrain from expressing their opinion, the

disposal proceeds, and they retain the right to seek compensation for any resulting damages.

It's crucial to note that this mechanism addresses the impasse when partners fail to agree on disposal. Thus, it empowers the majority of share owners—those holding three-quarters of the shares—to dispose of the property. While certain conditions must be met, some objective and others formal, safeguards are provided for the non-consenting minority partners.

C. Administrative Action

Paragraph (b) of Article 96 permits partners holding less than three-quarters of the shares to apply for property disposal if agreement cannot be reached. If the remaining partners endorse the request, disposal proceeds; otherwise, the matter is referred to the relevant committee. This highlights the legislature's emphasis on protecting the interests of majority shareholders, albeit at the expense of potential injustices toward minority partners.

The authority vested in the Joint Properties Removal Committee by Articles 96 and 97 allows for the disposal of entire common properties by either the majority of partners or the committee itself, under specific conditions. While these legislative innovations expand avenues for divesting common property, they may inadvertently infringe upon the rights of minority partners. Therefore, careful consideration is warranted to ensure fairness and flexibility in these processes.

Committee's Powers in Removing the Common Property by Disposing of Property in the Real Estate Property Law

The Real Estate Property Law of 2019 outlines provisions regarding the removal of common property by means of disposing of the entire shared asset. This can be initiated either by partners who collectively hold three-quarters of the property shares or by a committee tasked with eliminating communal ownership, as specified in Articles (96) and (97). While these provisions represent novel concepts not previously seen in Jordanian legislation, they introduce innovative mechanisms for disposing of common property without requiring unanimous consent from all partners. Additionally, Articles (96) and (97) allow for the complete disposal of common property by any individual partner, provided that the legal conditions outlined in these articles are met. Furthermore, the law empowers the Committee for the Removal of Communities to sell the entire property through a public auction, even in cases where some partners oppose this action, as indicated in Article (97) of the Real Estate Property Law.

The fundamental right to property ownership holds significant social and economic implications (Albalawee et al., 2024). The introduction of various

methods for relinquishing common property ownership aims to enable partners to realize the economic benefits associated with such transactions. However, it is important to recognize that these legislative innovations may sometimes result in unfairness or injustice towards certain partners. For instance, Article (96/A) allows owners holding three-quarters of the property shares to dispose of the asset without seeking approval from the remaining minority. Similarly, Article (97) grants the committee authority to sell the entire property via public auction, even if some partners object to this course of action.

Legal Provisions: Disposition of Property in the Real Estate Property Law

Article 96, paragraph (A), of the Real Estate Property Law of 2019 stipulates that if all partners cannot reach an agreement and three-quarters of them wish to sell the entire jointly owned property, the sale can proceed without the consent of the remaining partners. Subsequently, the minority partners have the option to file a claim for damages to their shares in the common property within thirty days from the date the sale is registered.

Paragraph (B) of Article 96 outlines that partners who hold less than three-quarters of the shares in the property are permitted to submit an application to dispose of the property. If the remaining partners approve the request, the applicants may proceed with the disposition. However, if the application is rejected or the partners abstain from expressing their opinion, the registration director must refer the application to the Real Estate Decomposition Committee. The committee, in accordance with Article 97, evaluates the situation. If the shares are indivisible, the committee determines the value of the share of the partner seeking disposal, based on an expert's assessment. Partners are then given the opportunity to express their interest in purchasing the share within fifteen days. If some or all partners express interest, the share is sold equally among them. If a partner refuses the sale, the share is auctioned among the partners, with the highest bidder obtaining the share. If partners abstain from expressing their position, the common property is sold at a public auction.

In the event of a lawsuit under Article 118, paragraph (A), partners or their legal representatives cannot seek the cancellation or nullification of public auction-based transfers of property.

The perspective on these legislative measures suggests potential risks, as they could favor the majority partners who own at least three-quarters of the shares, without requiring consent from the minority. This could lead to unfair treatment of partners who hold less than a quarter of the shares. Consequently, there may be violations of real property rights and overarching principles governing these rights. This legal innovation may also conflict with constitutional

principles protecting property rights and individual ownership. Disposing of shared property without the consent of all partners could be interpreted as infringing upon their individual and equitable property rights, thereby contradicting principles of social justice and the rule of law.

Legislative Deficiencies in the Provisions for Disposal of Property by the Jordanian Legislation

Article 97 stipulates that the Commons Removal Committee is authorized to auction off all common property through the Enforcement Department if dissenting parties fail to agree on its sale within fifteen (15) days of receiving written notice. Al-Ibrahim (2023) criticizes this provision, arguing that it overlooks the harsh economic and social realities faced by Jordanians, including high rates of poverty and unemployment. These conditions make it challenging, if not impossible, for many co-owners to afford buying out dissenting partners, particularly when real estate values are high, sometimes exceeding a thousand Jordanian dinars per square meter.

Partners who refuse to sell are left with two undesirable choices: either agree to sell the entire property or have their shares forcibly purchased at a value determined by the De-Communization Committee. Failure to respond within the stipulated time frame allows the Enforcement Department to auction the property, starting at a price no less than half the committee's valuation.

These provisions are criticized for their lack of flexibility and social justice. The absence of any cap on the auction price set by the committee means that the property could be sold at a significantly lower value, depriving partners of their rightful returns. This approach disregards partners' rights and exacerbates financial strains on many Jordanians.

Legal rulings on property removal highlight numerous judicial concerns. Court decisions demonstrate the unfair treatment of partners and advocate for legal reforms to safeguard their rights. Some judicial rulings also clarify that property auctions by the Enforcement Department fall under Enforcement Law rather than Real Estate Property Law.

Interpretive Resolution No. 5 of 2021 emphasizes that post-enactment of the Real Property Law, the Implementation Law governs forced sales. However, rules from repealed laws can still apply to ongoing processes until completion.

The Real Estate Property Law outlines the duties of de-communicization committees, whose decisions carry judicial weight and can be appealed before the First Instance Court. This legal framework aims to ensure justice in de-communicization procedures and protect partners' rights.

It's crucial to align procedural legal texts with the legislative philosophy of the Real Property Law, emphasizing fairness and protecting partners' interests. Failure to do so could undermine the law's objectives and harm property owners affected by public auctions. **Findings**

The analysis yielded several key findings. Firstly, the Jordanian government introduced notable amendments to the real estate property law, distinguishing it from civil law by permitting only the sale of common property and stipulating that partners could exclusively transact common movable property among themselves until the entirety of communal movable assets was publicly auctioned. Secondly, the overarching objective of the real estate property law is to broaden avenues for disposing of communal property, with a specific focus on terminating communal property arrangements to bolster economic value.

Thirdly, commendation is due to the legislator for codifying novel methodologies not previously addressed in Jordanian or Arab legislation, thereby safeguarding both public and private interests, albeit with occasional partiality towards one party. Additionally, the legislature's decision to grant partners or third parties the right to challenge decisions made by the Committee for the Elimination of Communism before the Human Rights Court of First Instance is noteworthy. Conversely, the Department of Lands and Surveys exhibited shortcomings, particularly in the absence of a specialized team dedicated to addressing decommunization matters.

This operational deficiency, characterized by only a fraction of departmental resources being allocated to such issues, results in delays in resolving cases before the committee, thereby hindering the realization of the intended benefits of the real estate property law.

Conclusion

This research has provided a comprehensive examination of the legislative framework governing property disposal in Jordan, with a specific focus on the Real Estate Property Law. By analyzing the law's provisions and their practical implications, significant insights have been uncovered. The amendments implemented by the Jordanian government represent a notable advancement in the streamlining of communal property disposal, emphasizing the enhancement of economic value. However, despite introducing innovative methods and safeguarding public and private interests, the legislation is not without criticism, particularly regarding the lack of specialized resources dedicated to addressing decommunization matters within the Department of Lands and Surveys. Nonetheless, the Real Estate Property Law serves as a critical legal framework for resolving property disputes and fostering economic development in Jordan.

Addressing identified deficiencies and ensuring effective implementation of the law will be crucial in realizing its intended benefits and promoting a fair and transparent property disposal process.

Practical Contributions

These findings suggest that future amendments to the Real Property Law should prioritize the protection and security of owners' and renters' rights in the disposal of Jordanian real estate. Additionally, recommendations are proposed to address deconsolidation issues within the Department of Lands and Survey, aligning with the legislative philosophy underpinning the Real Property Law and ensuring diverse perspectives in the review of deconsolidation requests.

Future Implications

Researchers advocate for further investigation into potential revisions of the Real Estate Property Law to require legal representation for individuals appearing before de-communism committees. This proposed change aims to streamline the process, benefiting both citizens and the Land Department by reducing the likelihood of errors and ensuring fair proceedings.

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