



Legal Deposit and Implementation of the Procedure for Notarizing Documents Subject to Real Estate Notarization

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Abstract:

After depositing the contracts and documents related to real property subject to notarization by their editors in the Department of Deposit and Accounting Operations in the regionally competent real estate governorate, the real estate conservator verifies the validity of the actions and information contained in all the documents deposited at his level, and the extent to which they meet the legal conditions required for this according to the applicable legislation, when this is achieved, the real estate conservator will accept the deposit and carry out the notarizing process.

Keywords: accepting deposits; implementing the procedure; real estate conservator; real estate notarizing; real property...

I. Introduction:

The regionally competent real estate governorate handles the notarization of formal contracts and real properties papers. Persons legally authorized to draft these contracts and documents, such as notaries public, registrars, or administrative authorities, are required to deposit them with the regionally competent real estate governorate, specifically the Deposit and Accounting Department, within the deadlines. The precise legal processes for this, which occur once the papers have been registered at the Registration and Stamping Department and assigned a fixed date.

The real estate conservator is the first person in charge of the real estate notarizing procedure at the governorate level, and he does so using the authorities assigned to him by law. The real estate conservator acknowledges the availability of these contracts and documentation via the deposit and accounting department's representatives. Regarding formal and substantive requirements.

If these contracts and documentation are in order, the real estate conservator will receive their deposit and proceed with the real estate notarizing procedure. However, if the real estate conservator detects a flaw or inaccuracies in the deposited papers during his fast review, the deposit is rejected and denied to be notarized. The document's owner will be notified in line with a reasoned decision.

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This topic raises the question of *how the legal deposit of real property documents subject to real estate notarizing is implemented?*

To what degree are the processes for notarizing documents acceptable for deposit in the real estate governorate carried out?

This problem was addressed in the following sections:

Section One: Acceptance of depositing documents subject to real estate notarizing

Section Two: The execution of Real estate notarization procedure for deposited documents

Section One: Acceptance of depositing documents subject to real estate notarizing

The procedure of receiving the deposit entails documenting the deposited docs in a specific register maintained by the Real Estate Conservator through Deposit and Accounting Department agents. The Real Estate Conservator then examines the deposited docs within the scope of his legal authority to guarantee the availability of the aforementioned legal prerequisites. If this is followed, the docs will be marked Deposited, and to complete the notarization process, the real estate conservator either creates a card and land registers using the initial approach, or produces new land cards and registers as needed (Baouchri, 2014, p.96).

1. The deposit concept and subject

A- The concept of deposit

Depositing contracts and docs pertaining to real property is regarded as a preliminary legal activity required throughout the notarization process. According to the language of Article 04 of Decree 63-76(Decree, 1976), the Deposit and Accounting Operations Department based in the regionally competent real estate governorate, i.e. the authority in which the property being disposed of is located, performs this function. Contracts and docs to be notarized are placed in their official form, as stated in Article

61 of Decree 76/63: "Every contract that is subject to notarization in the real estate governorate must be presented in the official form"(Decree,1976, 04).

The Algerian lawmaker highlighted that the deposit procedure should be carried out by those legally competent to write official contracts and docs, such as notaries public, registrars, administrative employees, or Persons charged with public service. This is in accordance with Article 90 of Decree 63/76. However, if the deposit was done by an assistance to individuals listed above, this category must be indicated by an official document establishing the assistant's position, which must be submitted whether depositing or withdrawing docs(Note, 1995); this is done to prevent the deposited documents from being lost or used illegally, and to ensure that the real estate governor familiar with the identity of the person whom is dealing with.

B- The subject of deposit

According to Article 92 of Decree 76/63, deposit with the Real Estate Governorate necessitates the simultaneous deposit of two photos or copies of the contracts or decisions that are the subject of the notarization process, blanked out in a special extract called I.P. No.6 PR6, or I.P. P No.6 bis PR6 bis, to be accepted in form. In case of several properties, the administration delivers the subject of the deposit free of charge to the contract editors, on pain of deposit rejection.

One of these copies, or photos, must be returned to the depositor once the real estate conservator has stamped it, showing its legality and the lack of any deficiencies, and therefore stamped with the notarization stamp (Ramoul, 2001, p.85). Regarding the second copy, it is needed that the visa validate the parties' identities and personal conditions, and it is maintained in the relevant real estate governorate and placed within the archive, after marking the notarization, size, and number in the prescribed frame.

The last paragraph of the aforementioned Article 92 requires that mortgage contracts should include the facts specified in the third paragraph of 1-5 of Article 93, or the deposit would be rejected. This data includes:

- Set up creditor and debtor appointments.
- The creditor's option of domicile in any area within the Judicial Council's jurisdiction for the property's location.
- Mention the date, kind of title, and The reason for the debt secured by a lien or mortgage.
- Mention the debt's capital, its accessories, and the customary repayment duration. In all hypotheses, the applicant must calculate rents, services, and rights that are not mentioned, feasible, or stipulated.
- Designating all of the properties for which registration was sought(Decree, 1976, 93).

2. The deposit deadlines

The legislation requires notarized contract and document drafters to take the initiative to submit the docs with the appropriate real estate governorate within the time frames stipulated by law. The deadlines vary based on the document to be notarized, and according to Article 99 of Decree 63/76 cited above, they are as follows:

- Notarized certificates covering property transfer via death must be deposited within two months of the day the petition was submitted to the notary public. This term may be extended to four months if one of the parties involved resides overseas, and this extension is regarded one of the unique deadlines imposed by practical situations that the Real Estate Conservator may daily receive when studying the documents subject to deposit. It should be mentioned that the Algerian legislature has imposed civil legal duty on the new owners of in-kind rights if the petition is presented to the notary public longer than six (06) months after death(Decree, 1976, 99).

- Eight days from the date of expropriation orders.
- If a judicial ruling has become final, it must be filed within two months after that date.
- Other contracts, regardless of their type, shall be lodged with the appropriate real estate governorate on the day of issuance.

If the notarization must be completed in two or more offices, the deadlines will be extended by fifteen full days for each office over the initial time. Failure to meet the dates shall result in a penalty, regardless of the consequences of the absence of notarization. Contract editors or new right holders who have not resort to notary's office to seek a post-mortem certificate from a public employee will face a fine of 100 DZD.

These deadlines were subject to two key amendments: the first was in compliance with the Finance Law of 1999, and the second was in accordance with Article 10 of the Finance Law of 2014. The amendments made by the 1999 Finance Law(Law, 1998) were described in Article 31, which altered Article 353/3 bis of the Registration Law to become as follows:

- Certificates after death must be deposited with the relevant real estate governorate after three months of issuance. If one of the parties involved resides overseas, the term is extended to five (5) months.

- Judicial verdicts must be deposited within 3 months after becoming final. Other contracts and documentation must be provided within two (2) months of issue.

The amendments made by the Finance Law of 2004 are specified in Article 10, Paragraph 07, and they are related to other contracts to which a one-month period was added, and the period for depositing them must now be within three (03) months of their date, while the other depositing deadlines were maintained by the Finance Law of 1999(Law, 1998, 10/7).

It is critical to note these deadlines, which are considered part of public order. Failure to comply subjected contract applicants to civil financial penalties, the value of which was fixed at 100 DZD under Article 99 of Decree 63/76, and given this symbolic amount in comparison to the value of the property being disposed of, it was increased. According to Article 31 of the Finance Law of 1999, the fine is 1,000 DZD from the date of writing until the date of deposit, excluding the time spent by the editor at the registration department.

3. Keeping the deposit record

After receiving the contracts and documents to be notarized, the real estate conservator thoroughly examines them to ensure that they contain the data and elements required to carry out the real estate notarization process and are thus eligible for deposit.

The Algerian legislator has required the real estate conservator to keep a record of the deposit, in which he counts day by day, according to the numerical order for the delivery of contracts and judicial decisions, as well as the schedules and documents deposited, in order to implement the notarization's procedure, and to hand over the receipt document to the depositor, indicating the deposit reference, history, and rank.

The legislator stipulated this issue, and as a result, the real estate conservator must keep a deposit record in which he records, day by day and numerically, contract deliveries and judicial decisions, as well as the schedules of documents deposited for the purpose of implementing a special notarization procedure.

The petitioner will be provided a deed detailing the deposit record references under which each delivery was recorded, and the processes will be carried out on the dates and in the sequence in which they occurred.

After completing the processes, the deposit deeds must be recovered and packaged in the correct numerical sequence.

If the parties are unable to repay this bond when withdrawing these documents, they must sign a stamp-duty-free release for these papers on the deposit record in the margin of the related material.

If papers pertaining to the same property are provided on the same day, this instance is recorded in the deposit record on the appropriate card or cards, as well as on the document returned to the petitioner, and the procedures are followed as usual (Decree, 1976, 41).

The purpose beyond this restriction is to determine precedence in the deposit process as well as the notarization-long process, particularly in the case of multiple incoming transactions on the same property, if a real estate sale contract and a donation contract were filed on the same day on the same property. In this case, it is necessary to ensure the prior disposition of the deposit and the procedure, as a person cannot dispose of a property unless ownership is transferred to him, because the process of acquiring real rights, whether original or accessory, entails registering and registering on real estate cards. If a real estate sale contract and a donation contract were deposited on the same day on the same property, it is necessary to ensure the prior disposition of the deposit and procedure, as a person cannot dispose of a property unless property is transferred to him because the work is in acquiring rem rights., whether original or subsidiary, by notarization and registration on real estate cards.

Given its significance, the legislator has created procedural regulations that regulate the process of retaining and conserving it, keeping it free from infringement or forgery, which are as follows:

- It must be numbered and signed by the president of the court that covers the real estate governorate.
- It must be annotated immediately after depositing the document for notarization, leaving no blank space or writing between the lines.
- The real estate conservator must lock it each day.
- It must be prepared in two copies so that copies of the deposit records closed the previous year can be deposited at no cost at the Territorially Competent Judicial Council's clerks' office each year (Decree, 1976, 43).

Following the deposit procedure and broad review of the submitted papers, the complete, accurate, and in-depth examination begins. If the real estate conservator agrees throughout the procedure that there is no cause to reject it, he begins the notarization process by marking the submitted document with new final notarization references (size, number, and date of notarization) (Baouchri, 2014, p.101).

The real estate governor is regarded an accounting employee since he is in charge of collecting the public treasury's dues, which are fees levied on it. These fees and fines are taken from depositors' accounts at the public treasury and credited to the state's accounts. The real estate governorate's assistant accountant produces a monthly accounting.

The value of real estate notarization fees varies each year as financial regulations change. These laws are concerned with determining the percentages of real estate notarization fees on documents deposited in the real estate governorates in order to obtain their declaration, and they are deducted by the real estate conservator based on a percentage of the price or evaluation recorded in the deposited document, imparted by its editor based on the parties' declarations and other times in accordance with set fees specified by these regulations; the real estate conservator must consider cases of deposits exempt from the real estate notarizing charge during the collection process.

Its editor's absence of it is based on the parties' declarations and sometimes in accordance with set fees specified by these regulations, and the real estate portfolio

must account for deposits that are excluded from the real estate advertising charge during the collection process.

After confirming that all legal prerequisites for the deposit procedure, including legal deadlines, are met, the real estate conservator commences the real estate notarization.

Section Two: The execution of Real estate notarization procedure for deposited documents

After confirming the legal deposit of the contracts and docs that require notarization, the real estate conservator completes the notarization procedure within 15 days after the deposit date. The real estate notarization takes effect immediately and will only last till the legal transaction is completed, thus, the real right in rem arises, as the property right and all other real rights do not exist, whether between the contracting parties or towards third parties, except from the date of their declaration in the Real Estate Governorate, as stipulated in Articles 15 and 16 of Order 74/75(Order, 1975).

The notarization procedure results in the creation of the property record cards **(A)** and the delivery of the land register **(B)**.

1. Annotation on the property record cards

The cadastre includes two types of real estate cards: a temporary real estate card held in an individual form, and in-kind real estate cards that differ according to the locations of the real estate subject to disposal(Brassi & Messalmi, 2019, p.214).

A- Personal real estate cards

The real estate conservator(Khelfouni, 2017, p.199) is responsible for maintaining a set of temporary and personal real estate cards for unsurvey rural areas. This is done according to the alphabetical order of the notarized rights holders and according to a special form decided by a decision of the Minister of Finance, pursuant to the text of Article 27 of Order 75/74, which states: "Judicial contracts and decisions that are subject to notarization in the real estate governorate, and which relate to real estate or rural real estate rights located in a municipality in which land surveying has not yet been conducted, are transitionally indexed in a set of temporary real estate cards stored on an individual basis in accordance with a decree-determined modalities."

According to Article 114 of the aforementioned Decree 63/76, each card provides adequate information to identify the rights holders and properties for disposal. For each unsurvey property, the type, location, and content must be specified(Decree, 1976, 144).

Personal real estate cards are arranged in an organized manner. Cards for natural people are grouped alphabetically by rights holder titles and notarization dates. Legal individuals' cards are organized in a separate category based on their number order. When the collection of personal real estate cards is arranged in this manner, an alphabetical index is created(Brassi & Messalmi, 2019, p.114).

B- In-kind real estate cards

The Real Estate Conservator keeps in-kind real estate cards, which apply to municipal survey lands, and records the property's legal and descriptive status. These cards are generated once the survey documents are deposited in the Real Estate Governorate, and the Real Estate Conservator indicates every legal action taken on a property on both the created card and the land register(Khelfouni, 2017, p.200).

As stated in Article 20 of Decree 63/76, "Real estate cards include, for each municipality, "Land sector cards, urban real estate cards" under the jurisdiction of the real estate governorate.

- Land plots cards(Ferdi, 2008, p.107).

A land plots card is created for each real estate unit found in the prepared land survey, and the real estate unit is defined as: "the sum of adjacent plots that constitute a single property or a co-ownership property, are burdened with the same rights and

burdens, and are arranged within a distinct group according to each municipality and in alphabetical order of sections, with each section is arranged in increasing sequence of land survey plan numbers, as specified in Article 26 of the aforementioned Decree 63/76.

- Urban real estate cards

Urban real estate has been defined in law as “Considered as urban real estate and subject to the creation of real estate cards as stipulated in Article 20 above, built or un-built real estate located on regularly numbered routes or residential areas affiliated with municipalities whose population exceeds 2,000 people”(Decree, 1976, 21).

When organizing these cards, the real estate conservator must distinguish between two categories.

There is a general real estate card: it occurs when a built property is intended for collective use, and it includes all of the data, procedures, and actions contained in the total parts of the property, as well as a card Real estate documents related to co-ownership, which occur for each property that has been divided and retailed from the total or collective property owned in this manner(Brassi & Messalmi, 2019, p.215), and the private cards are arranged according to the arrangement of the compatible general cards and according to the numerical arrangement of the pieces, as stated in Article 32/2 of Decree 63/76 mentioned above.

Article 34 of the aforementioned Decree 63/76 required that every annotation procedure on the real estate card include the following data:

- Contract, judicial rulings or docs dates.
- The type of notarized agreements, conditions, or registrations.
- A notary public, administrative or judicial authority.
- The amount of the debt and the total guaranteed accessories.

Every notation must contain the notarization's date and references(Decree, 1976, 34).

This process is carried out in a clear and legible manner, using indelible black ink, with the necessity of using current abbreviations, stamps, and dated numbers, and lines are drawn with a ruler while avoiding inserting and scraping, as they affect the external appearance of the real estate card.

To distinguish between annotations and rights confined to real estate cards, the lawmaker mandated that each new step be marked in red ink, rendering the prior annotation method legally ineffective(Ramoul, 2001, p.85).

2. Annotation on the land register

The land register is delivered to the owners of properties with fixed rights when the general land survey procedure and the formation of the cadastre is completed. As a result of the development of each real estate card, this booklet is deemed an administrative document, with all data duplicated into it. It is classified as a real estate card and must follow the model prescribed by a Minister of Finance directive and presented to the property owner. It is considered a title deed, so no action can be recorded in the cadastre without it, and every notation in the in-kind real estate card must be transferred to the cadastre in order to determine the legal status of the property, and this is in the survey areas(Brassi & Messalmi, 2019, p.216).

If the owner of the land register acts in a way that transfers real estate property, his register is seized, marked with this action, and delivered to the new owner. If the real estate conservator prepares a new register, he destroys the previous one, pointing out this on his card(Khelfouni, 2017, p.200).

The manner of annotation was governed by Article 45 of Decree 63/76, which required that the annotation process must be clear and visible, and all annotated data on the cadastre to be on the associated ledger. All annotations on the real estate card must

be transferable. The real estate card must be presented in every deposit process, otherwise the procedure will be rejected, according to the lawmaker(Decree, 1976, 45).

Conclusion:

The deposit of official docs and contracts linked to real estate property takes place at the regionally competent real estate governorate, after they are edited by the individuals legally entitled to prepare them and within the legal deadlines provided for that, then the real estate conservator, who is the first point of contact in the real estate notarization process at the land registry level, will confirm that the necessary formal and substantive conditions are met for the deposit to be accepted and the notarization procedure to be completed. If he discovers during the examination of the given docs and contracts that they are incomplete or include mistakes, he rejects the deposit and hence the procedure.

Results:

-Determining how to deposit contracts and documents related to real estate property by their editor.

-The mechanisms used by the real estate conservator to monitor contracts and documents. related to real estate ownership, how to accept them, and implement the registration procedure.

- Understanding the legal reasons for rejecting the deposit and procedure, as well as how the real estate conservator does so.

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