



***The right to release a mortgage in English law
An analytical study compared to the Iraqi and Emirati laws.***

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Abstract ;

The right to release the mortgage is one of the equitable rights enjoyed by the current debtor towards the mortgagee creditor in English law, which was established for him by the rules of justice and fairness. It is required for the current debtor to pay the amount of the loan debt represented by the debt secured by the mortgage and to terminate the mortgage on the mortgaged property as it is the natural way to pay the debt secured by the mortgage.

As for the Iraqi Civil Law No. (40) of 1951 and the UAE Federal Civil Transactions Law No. (5) of 1985, they have identified two ways for the owner of the property to release the mortgage, the first is to fulfill the debt secured by the insurance mortgage, and the second is for the owner of the property to release the mortgaged property as an insurance mortgage or purify it. The research problem is reflected in the question of the permissibility of postponing the release of the mortgage for a reasonable period in the Iraqi and UAE laws, if it is in the interest of the current debtor. The most prominent results of the study are that English law allows the postponement of the current debtor's exercise of his right to release the mortgage, provided that this postponement is agreed upon by a contractual clause, which is not an arbitrary condition as long as the agreed period for the postponement is a reasonable period. The failure of the current debtor to exercise his right to release the mortgage also entails the mortgagee demanding the closure of the mortgage. The most important recommendations are the possibility of Iraqi and Emirati legislators benefiting from the provisions contained in the English law on the permissibility of postponing the release of the mortgage for a reasonable period, the mortgage contract shall include a condition that allows the mortgagor to agree with the mortgagee to postpone the period of release of the mortgage if this is in his interest and for a reasonable period.

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Introduction :

First : Introductory definition to the subject of research: The right to release the mortgage is one of the equitable rights enjoyed by the current debtor in the face of the mortgagee creditor in English law, which was decided for him under the rules of justice and fairness , and ‘ Release of the mortgage’ means that the current debtor pays the amount of the loan debt represented by the debt secured by the mortgage and terminates the mortgage on the mortgaged property, as it is the natural way to pay the debt secured by the mortgage .As for the position of the Iraqi Civil Code No. (40) of 1951 and the UAE Federal Civil Transactions Law No. (5) of 1985 on the release of mortgage ,Although they explicitly referred to the term mortgage release in some texts, they specified two ways for the property holder to release the mortgage and clear

and rid the property of mortgages, namely the payment of the debt secured by the insurance mortgage, and the substitution of the holder in place of the mortgagee creditor in his rights. And so the owner of the property releases the mortgaged property or purifies it to get rid of the right of resale enjoyed by the mortgagee creditor.

Second: Reasons for choosing the research topic: The reason for choosing the research topic is an attempt to benefit the Iraqi and UAE laws from the provisions related to mortgage release that are included in the English law.

Third : the importance of research, the importance of research is evident in the benefit of some practical aspects of judicial applications of the English judiciary, with regard to the release of mortgage and including it .

Fourth : Research issue : The research issue is reflected in the question of the permissibility of

postponing the release of the mortgage for a reasonable period in the Iraqi and UAE laws, if it is for the benefit of the current debtor and not for the purpose of giving the opportunity to the mortgagee creditor lender who concluded a loan secured by a mortgage, to continue to obtain the high interest rates agreed upon in the loan contract. Either by requesting the competent court, or by including in the mortgage contract a condition for the current debtor to postpone. And nullification of any exclusive condition requiring the current debtor to continue to perform his obligation after the release of the mortgage.

Fifth : Research Methodology: In order to reach the desired objectives of the research, the study adopted a comparative analytical legal research approach by conducting a legal analysis of the subject of the right to release a mortgage in English law, and comparing it with the position of Iraqi and English law.

Sixth : Research Plan: In the light of the foregoing, this study was distributed on two sections:

The first topic: the concept of the right to release the mortgage in the English and comparative laws.

The second topic: the legal effects of the right to release the mortgage in the English, Iraqi and UAE laws

First Research: The concept of the right to release a mortgage in English and comparative law

The release of the mortgage is the natural way to end the mortgage, and the recovery of the mortgaged money by the current debtor, which is a right of a double or dual nature in English law enjoyed by the current debtor, so it is based either on the basis of the mortgage contract and is a contractual right or on the basis of the rules of justice and equity, which impose the dictates

of the living conscience and the principles of natural justice on disputes¹, which is used to fill gaps in the General Provisions Law (Common Law) that's is customary and based on judicial precedents², that it becomes a fair equitable right . As for the comparative law ...

The comparison, which is represented in our study by the Iraqi and Emirati laws influenced by Islamic jurisprudence ³, which seeks to conclude mortgages free of usurious interest ⁴, is a right also guaranteed to the mortgage debtor. We will examine the concept of the right to redeem a mortgage in English and comparative law by studying its definition and characteristics:

The first requirement: Definition of the right to redeem the mortgage in English and comparative law.

The mortgage debtor enjoys the right to redeem the mortgage that was decided for him in accordance with the rules of justice and fairness. (Equity) ⁵. Redemption of the mortgage means that the mortgage debtor pays the amount of the loan debt and terminates the mortgage on the mortgaged property ⁶. In other words, he repays the debt secured by the mortgage after the expiry of the contractual rights. Another aspect of English jurisprudence ⁷defined it as the right of the borrower to remove the burden of the mortgage from the mortgaged property and make it free of mortgage. However, another aspect of English jurisprudence ⁸ defined it through the negative consequences that result from not exercising it, as a right. The Mortgage debtor, whose failure to exercise and fulfill the debt of the loan secured by the mortgage (Repayment of the Mortgage Loan) on the date specified in the mortgage bond (Deed Mortgage)⁹, results in his permanent loss of ownership of his mortgaged property to the mortgage creditor (permanent forfeiture of the entire mortgaged estate). to the mortgagee). It is also defined ¹⁰ as the right of

the mortgage debtor, the owner of the mortgaged property, to recover his property after paying the debt secured by the mortgage in full. And prevent the mortgage creditor from closing...

(Foreclosure)..and he defined¹¹ it as the right to release the mortgaged property or purify it from the mortgage after paying the amount of the secured debt or its installments. Part of the English jurisprudence ¹² believes that it is more accurate to say that the current debtor fulfills the debt (Discharging) than to say to release the mortgage (Redeeming) because the current debtor remains under contemporary English law retaining the right of absolute full ownership. (Fee Simple) And this right of equity shall remain in place and shall not lapse except in the event of the closure of the mortgage.¹³

It is customary for English courts to grant the debtor a period of six months to pay the secured debt, and if it ends without paying the secured debt, the mortgage is closed. The right to release¹⁴ the mortgage is one of the well-established and old rights enjoyed by the current debtor under English law, under which he can recover the mortgaged property after paying the secured debt¹⁵. As for the position of the Iraqi Civil Code, and the UAE Federal Civil Transactions Law. Although they explicitly referred to the term mortgage release in separate texts ¹⁶, they specified two ways for the property holder to release the mortgage and rid the property of mortgages, the first is to pay the debt secured by the insurance mortgage, and the holder replaces the mortgagee in his rights ¹⁷. And the second is that the holder of the property releases or clears the mortgaged property, to get rid of the right of tracking enjoyed by the mortgagee creditor, even if his rank is late, according to which...

The encumbered creditor will pursue the eye overloaded by the in-kind right of any hand

passed to it.¹⁸ . in order to prevent the encumbered creditor from being able to expropriate the encumbered property subject to insurance from the holder's hand, in accordance with paragraph 1 of the article) 1306 of the Iraqi Civil Code, which stipulated that (The mortgage may, at the time of debt, expropriate the encumbered property subject to insurance in the hands of the holder of this property upon warning of the payment of the debt, unless the debtor fulfilled the debt or released the property from the mortgage)) The United Arab Emirates Civil Transactions Act, No. 5 of 1985, in these two ways, provided for the possibility of fulfilling the debt guaranteed by the insurance mortgage in Article. (1432) which stipulated that the holder of the encumbered property subject to insurance shall perform the debt of the mortgage and expenses upon warning, on the basis of what it has performed on the debtor and shall also replace the creditor whose debt has satisfied its rights.)

The clearance of the encumbered property is subject to insurance in accordance with article 1433, which stipulates that the holder of the encumbered property is subject to security of the right to purify the property to which it is owed from every right in kind, which entails insurance for a registered debtor until the date of its sale or on the dates set by the Code of Procedure before the Civil Courts.¹⁹ Fulfillment is defined as the natural path of cessation and demise, which is the debtor's implementation of what they have committed themselves to. It has a legal meaning that is wider than its linguistic meaning, which is to pay a sum of money. The intention is to fulfill the in-kind implementation of obligation²⁰ that is optional. An opinion in jurisprudence²¹ defines the cleansing of the property as a license granted by the legislator to the encumbered property holder, which allows it to suspend tracking by the encumbered creditor

and avoid its execution on Property²² by offering it to the creditor.

Those whose rights to the property were restricted before registering its title deed, an amount equal to the real value of the mortgaged property. Another opinion in jurisprudence²³ defined the purification or release of the mortgaged property as the holder's offer to the mortgaged creditors to pay them an amount equal to the true value of the mortgaged property, as long as they will not obtain from the property more than its true value at public auction, so it is in their interest to accept the holder's offer and provide the necessary procedures. And expenses. It is permissible to clear the property mortgaged as a security mortgage to the owner of the property, even if he is one of the mortgaged creditors who buys the mortgaged property from the mortgager²⁴.

²⁵ Real estate release is also known as the holder of the mortgaged property getting rid of the right of traceability and its effects by presenting the release to the creditors whose rights are registered before registering his title deed and the value of the property. If acceptance is issued by them, the holder will pay them this value according to the order of their entitlement, and this will result in ridding the property of all mortgages, including mortgages whose owners have not received anything of the value of the property. As for the holder of the mortgaged property, a part of the jurisprudence²⁶ of the Iraqi Civil Law has defined him as every person who has legal possession of the property as the possessor of it, whether in good or bad faith, aAccidental possession is not the possession of the tenant. As defined by an aspect of jurisprudence²⁷(law).

Part of the jurisprudence of the UAE Federal Civil Transactions Law also defined it as (anyone to whom ownership of the mortgaged property was transferred after the mortgage, or

to whom any other right in rem over it was established for any reason without being responsible for the debt). Three conditions are required for the possessor of the property to be present: 1 - The transfer of ownership of the mortgaged property to the possessor, or that he acquires any other real right that can be mortgaged and sold at public auction. 2 - The holder shall not be personally liable for the debt documented by the mortgage, after which he is a joint or non-joint debtor or guarantor. Because this gives the mortgagee the right to enforce the mortgaged property in accordance with the general security right established for the creditor over all of his debtor's funds, and there is no need to resort to the right of appropriation. 3- The reason for transferring ownership of the mortgaged property to the holder, or any real right subject to the mortgage, does not result in the extinguishment of the mortgage, such as selling the mortgaged property at auction, which leads to the transfer of ownership of the property free from the mortgage to the auctioneer, in accordance with the second paragraph of Article (1306) of the law. The Iraqi civilian stated that (Any person to whom the ownership of this property or any other real right over it is subject to mortgage, without being personally liable for the debt entrusted to the mortgage, is deemed to be in possession of the mortgaged property, and Article (1431) of the UAE Federal Civil Transactions Law stipulates: He is considered to be in possession of the mortgaged property whoever is transferred to him after the mortgage, his ownership or other real right over it for any reason, without him personally being bound by the mortgage debt. Some jurisprudence adds²⁸ another condition, which is that the possessor must have registered his contract if the contract is one that should be registered. If he has not registered it, the mortgagee has the right to consider that the property still belongs to the mortgage debtor.

The second requirement: Characteristics of the right to redeem the mortgage in English and comparative law

The right to release the mortgage in English and comparative law is characterized by the following characteristics: First - Release of the mortgage is characterized as the natural or usual way to fulfill the debt secured by the mortgage and for the mortgage debtor to pay the amount of the loan debt documented by the mortgage and recover the mortgaged money.

Second - The equitable right to release the mortgage is one of the rights that can be revived (Revalidation of the Equity of Redemption) to ensure that the mortgage debtor regains his right²⁹ the English court decides to reconsider closing the mortgage³⁰ according to its discretionary authority. And in certain cases even after...

The rights of the mortgage debtor are transferred to the mortgage creditor, including the mortgage creditor obtaining illegal benefits from owning the mortgaged property and transferring it to him³¹ This is what the court decided in its ruling issued in the case 166 Campbell v Holyland 1877.7 Ch D), when it decided to reconsider the order to close the mortgage that it issued to the mortgage creditor to claim the illegal benefits (Undue profits) that he obtained. From closing the mortgage³²

Third: Redemption of the mortgage in English law is characterized by the possibility of postponing it, but this postponement during the validity period of the mortgage must be reasonable and not extend to unreasonable periods. However, as an exception to this, there are some types of mortgages whose redemption cannot be postponed for a long period, that is, they are not redeemable by paying the mortgage installments for a period of time long.

Fourth - Redemption of the mortgage in English law is also characterized by the fact that it applies to the mortgage of the tenant's right (Mortgage of Lease), but postponing the period of exercising the right to release the mortgage (Postponement for the Redemption) may be worthless from a practical perspective, if the lease is valid for a period Short-Term Lease, due to the short duration of the lease.

Fifth - Redemption of the mortgage is characterized in English law as one of the rights that faced many obstacles and restrictions (Clogs and Fetters on the Right of Redemption) that were imposed on it, but the English judiciary has always invalidated most of them out of its concern for the continuity of the mortgage debtor's enjoyment of this right Bio.

Sixth - The release of the mortgage is characterized in the Iraqi and Emirati laws in that it is carried out in two ways prescribed by the two laws for the possessor of the property to release the mortgage and rid the property of mortgages that are intended to foreclose or retain the mortgage³³, namely the fulfillment of the debt secured by the insurance mortgage, and the holder's replacement of the mortgage creditor in his rights³⁴. The second is for the property owner to clear or release the mortgaged property as a security mortgage, to get rid of the right of appropriation enjoyed by the mortgage creditor, whose right is limited to requesting that the property be sold at auction to recover the debt in the event of abstention from payment.

without the encumbered creditor having any direct authority over the encumbered property, to retain all elements of ownership by the debtor during the validity of the encumbrance³⁵.

Seventh, the fulfilment of the secured debt and the liberalization of the encumbered property under Iraqi and United Arab Emirates law are

routes of expiry of the insurance mortgage, and the fulfilment of which is a method of extending the mortgage in a subsidiary manner³⁶; Because the mortgage is a right belonging to the secured debt that expires³⁷ with the aim of implementing the personal right³⁸. The liberation of the encumbered property is an original termination method. Clearing the encumbered property in Iraqi and UAE law is a legal licence granted by law to the holder of the property to release it from mortgages registered in the Land Registration Department, before the date of registration of the transfer of ownership of the property, if the registered creditors are offered their rights over the property before registering the value of the encumbered property³⁹.

Research 2: Legal Implications of the Right to Disconnect in English, Iraqi, and UAE Laws
The right to decoupling in English law, as well as in Iraqi and UAE laws, has certain legal implications. We will examine these effects in the three laws as follows:

The first claim: the legal implications of the right to unencumbered mortgage in English law have some legal implications: most notably, the recovery of the encumbered money after the full amount of the debt secured by the mortgage has been fulfilled, the exercise of the right to unencumbered mortgage has at times been postponed and the debtor's current obligation has been null and void.

The mortgager can exercise his right to close the mortgage⁴⁰, and then the mortgage creditor can exercise his right to close the mortgage. We will examine these three legal implications as follows:

First Section: Recovering the mortgaged money after paying the full amount of the debt secured by the mortgage. The mortgage contract often stipulates that the debt secured

by the mortgage will be paid on a specific date known as the Contractual Repayment Date.

It is customary for this date to be set six months after the mortgage takes effect⁴¹. Neither the lender nor the borrower will be able to request payment of the debt before this date. The mortgage debtor must also pay interest and is obligated to pay all costs and expenses, especially those spent to maintain the mortgaged money⁴². The costs include the costs of repair and restoration of the mortgaged property (Repair Costs), as well as the costs of redemption costs. The judicial precedents of the English courts have allowed the mortgage debtor (mortgagor borrower) not only to recover the mortgaged money after releasing the mortgage, but to recover it in its original condition as well. This was the Court's jurisprudence in a case (253) *Bradley v Carritt* 1903 AC whose facts summarize⁴³ the fact that a shareholder in the tea production company (Tea Company-) has pledged its shares to the encumbered creditor to secure the loan's debt and has entered into a sub-agreement with the creditor. (Collateral Agreement) contains a Collateral Term which requires him to enjoy (i.e., the creditor subject to the right to sell tea products as a broker (broker) to the company, and stipulates that the current debtor borrower should do its utmost to ensure that the encumbered creditor performed its work as a broker to sell the tea produced by the company. The encumbered creditor also promised to pay him an amount of the Commission- a commission he could charge if the tea was otherwise sold not through the encumbered creditor as a commercial broker. After the debtor had fulfilled the debt secured by the mortgage and unencumbered, the company changed its commercial intermediary, the encumbered creditor instituted the action and requested the court to implement the substance of that sub-clause or collateral, and the current debtor argued that that clause was a restriction

or impediment imposed on the exercise of his right of equity in decoupling the encumbered money.

(Clog on the mortgagor's Equity of Redemption) In its ruling, the court ruled that it is not possible to implement the accessory clause after the mortgage is released (Redemption of the Mortgage). The House of Lords approved this ruling, and the majority ruled that the clause was invalid because it was a restriction imposed on the exercise of the equitable right to release the mortgage on the mortgaged property.

Section Two: Postponing the exercise of the right to redeem the mortgage

Postponement of While English law does not allow the mortgage debtor to be prevented from enjoying his right to redeem the mortgage, it does allow, on the other hand, to postpone the exercise of this right (Redemption). Perhaps the wisdom in postponing the exercise of the right to release the mortgage is to give an opportunity to the mortgage lender who has concluded a loan secured by a Secured Loan Transaction to continue obtaining the high interest rates agreed upon in the loan contract⁴⁴, during the validity period of the mortgage that is agreed upon in the loan contract. Known as an interest-bearing mortgage⁴⁵. Therefore, the mortgagor's insistence on immediate redemption of the mortgage may involve an aspect of unfairness. The English judiciary tended to approve relatively long periods to postpone the exercise of the right to release the mortgage, as in

Knights Bridge Estates Trust Ltd v Byrne 1939 Ch - the facts of which are⁴⁶ that the plaintiff company *Knightsbridge Estates Trust Ltd* provided a mortgage to the defendant insurance company, and the Mortgage Deed included a condition requiring that the installments of the loan secured by the mortgage be paid in eight

installments over forty years. The plaintiff company asked the court to order it to allow Early Redemption of the Mortgage as soon as possible Fulfilling the principal amount of the loan debt secured by the mortgage amounting to (310,000) thousand pounds, despite the presence of that condition in the mortgage contract; Because fulfilling that principal amount means reducing the total amount of interest owed to the defendant Byrne Insurance Company. The plaintiff company claimed in its lawsuit that postponing the exercise of the right to release the mortgage is an impediment imposed on exercising the equitable right to release the mortgage on the mortgaged money, and its goal in doing so was to achieve a reduction. The total amount of interest rate charged on the loan ⁴⁷. However, the defendant's insurance company paid

It is excluded from the scope of application of the equitable rule that prohibits the imposition of barriers and restrictions on the exercise of the right

Redemption Rule of Equity on Clogs and Fetters; This is because the loan that it provided to the plaintiff company is nothing but a secured and documented debt that was emptied in the Mortgage Debenture pursuant to Article (74) of the Companies Legislation of 1929 (1929 Companies Act), which corresponds to Article (739) of the Companies Legislation of 2006. The Court of First Instance ruled in its ruling that the forty-year postponement period is merely an obstacle or restriction imposed on the exercise of the equitable right to release the mortgage on the mortgaged property and that the plaintiff company has the right to request notification to cancel that postponement. The defendant insurance company appealed the initial ruling, and the Court of Appeal ruled in its ruling in favor of the insurance company and approved the period of postponement of exercising the right to redeem the mortgage,

amounting to forty years. Section Three: Invalidation of the condition that the mortgage debtor continues to fulfill his obligation after releasing the mortgage. Although the old and well-established rule of Mortgage Rules in English law encourage the mortgage creditor to request a postponement of the period for exercising the right to redeem the mortgage, on the other hand, the English courts have always invalidated The condition that the mortgage debtor continues to fulfill his obligation after the mortgage is released. This invalidity is based on another rule that stipulates that the mortgage debtor (mortgagor) cannot be forced to carry out his obligations after releasing the mortgage.⁴⁸ The court took this rule and invalidated the condition that ensured that the mortgage debtor would continue to implement the obligation imposed on him by the mortgage creditor even after the mortgage was released, in its ruling in the case *Noakes and Co Ltd v Rice*: HL 1902.AC 24, Which sums it up

Its facts⁴⁹ by concluding a mortgage contract for the tenant's right on the Public House pub. The contract included an obligation (covenant) imposed on the mortgage debtor by the interest of the mortgagee creditor, owner of the beverage factory. The essence of the obligation was represented by the pledge of the mortgage debtor (Mortgagor), the tenant of the bar and his successors after him, not to sell any drink served in the bar, except drinks supplied to him, exclusively, from the factory of the mortgage creditor, Mortgage, during the period of validity of the tenant's right, the Leasehold Term. Whether the mortgage installments have been fulfilled or not, that is, even after the mortgage has been released, the court ruled in its ruling that this obligation is not enforceable after the mortgage has been released. Lord Justice MacNaghten stated in the court's ruling that redemption is the natural and logical consequence of the mortgage itself. It is

consistent with the nature and essence of the mortgage and on this basis, it has been adopted by the rules of justice and fairness. And he said this

The judge said that the rules of justice and fairness did not and will not allow resorting to any means, whatever it may be, whether immediate or premeditated and prepared in advance, to obstruct or prevent the exercise of the right to release the mortgage. By a Mortgage, the full right is returned to the owner of the property to dispose of it, use it, and benefit from it in all aspects, without any restrictions or conditions, as if the property were not burdened by any mortgage or charge (burden)⁵⁰. Or security⁵¹, as Lord Justice Lindley stated, that the obligation included in the mortgage contract, Covenant Contained in this Mortgage, which the mortgage creditor insisted on implementing in the face of the mortgage debtor, i.e. obligating the latter to implement it, is a void and invalid obligation. Because the mortgagee's intention was to impose strict commercial restrictions on the bar. The second requirement is the legal implications of the right to redeem the mortgage in the two Iraqi laws and the Emirati. the right to release the mortgage in Iraqi and Emirati law has two main types of legal effects. The first type results from the fulfillment of the secured debt, and the second type results from the cleansing of the mortgaged property. We will examine these legal implications as follows:

The first section: The legal effects resulting from the fulfillment of the debt secured by the mortgage.

First - The real estate holder's performance of the debt is documented by the mortgage, interest, and expenses. Fulfilling the secured debt is one of the ways of extinguishing the insurance mortgage in a consequential manner, so the mortgage expires as a result of the

expiration of the obligation to fulfill the secured debt⁵². This is in accordance with the first paragraph of Article (1315) of the Iraqi Civil Code, which stipulates that the right of the insurance mortgage shall expire upon the expiry of the documented debt and shall be restored with it if the reason for the expiration of the debt is removed without prejudice to the rights that third parties in good faith may have acquired legally in the period between the expiry of Debts and its return and Article (1440) of the UAE Federal Civil Transactions Law, which stipulates

The security mortgage expires when the secured debt expires in its entirety. 2- If the reason for extinguishing the debt is removed, the mortgage will return as it was, without prejudice to the rights of third parties in good faith that they acquired between the expiry of the right and its return. This means that the dependency of the mortgage on the debt is absolute⁵³. Loyalty must be complete; Because the mortgage is indivisible, the mortgage remains complete as long as part of the debt remains⁵⁴. The property owner resorts to fulfilling the secured debt in order to get rid of the expropriation procedures, and he must also pay the interest on that debt, in accordance with Article (1305) of the Iraqi Civil Code, which stipulates that if the interest rate is mentioned in the contract, the insurance mortgage is guaranteed with the principal. The debt and its same rank include the interest of the year preceding the implementation request, and the interest that accrues from this date until the day of the auction fees). The possessor of the property is not obligated to pay off the debt once he has been warned. Rather, his obligation is relaxed until the auction is awarded⁵⁵, while he maintains his right to pay off the debt when the due date comes, and once he is warned by the mortgage creditor⁵⁶. According to the second paragraph of Article (1307) thereof, which stipulates that the possessor's right to

repay the debt remains valid until the day the auction is awarded, but he must also repay what he spent in the procedures from the time he was notified, provided that he returns all of that to the debtor and to the previous owner of the property. mortgaged). Likewise, Article (1432) of the UAE Civil Transactions Law has almost the same meaning. It is also in the interest of the property owner to settle the debt if he is a purchaser of the mortgaged property, and the secured debt is less than the purchase price owed by him, so his payment of the debt leads to the mortgaged property being freed from the mortgage and his liability for the price. The Iraqi and Emirati laws differ from the English law, which sets a six-month deadline for repaying the secured debt, which may not be repaid before that date. The second paragraph of Article (1315) of the Iraqi Civil Code and Article (1441) of the UAE Civil Transactions Law stipulated the permissibility of accelerated payment, and allowed the mortgage debtor to force the mortgage creditor to accept payment before its due date. If the mortgage creditor refuses, the mortgage debtor may deposit the debt and its attachments. In the competent department, which is the registration department, this leads to the release of the mortgage⁵⁷. The second paragraph above stipulates that the debtor may repay the debt before the due date and request the release of the mortgage. If the creditor does not accept, the debtor may deposit the debt with the competent department.

Its attachments, and any compensation that may have been stipulated when payment is expedited, and then the mortgage is redeemed at the time when Article (1441) stipulates that (1) the debtor has the right to pay the debt secured by the insurance mortgage and its attachments before the time for fulfillment comes. 2- If the creditor does not accept this payment, the debtor may deposit it with the

registration department, which, after verifying its value, settles what is owed by the debtor and delivers to him the payment instrument and termination of the mortgage, provided that the provisions of the special laws are taken into account.

Second: The holder's return to the mortgaged debtor and the previous owner. With regard to the holder's return to the mortgaged debtor, we must distinguish between two cases: the first is that the holder is a debtor for the price debt, and the second is that the holder is not a debtor due to ownership of the mortgaged property. In the first case, if the holder repays the mortgaged creditors, on the basis of his acquisition of ownership of the mortgaged property, he has no recourse against the mortgagor debtor because he personally repaid his debt along with the mortgagor's debt⁵⁸ (1). In the second case, if the possessor has paid the price, or the debts he has paid to the creditors exceed the value of the price, then in this case he has the right to claim the excess amount he paid over what he was originally obligated to pay. Recourse can be made either through a personal lawsuit or a lawsuit to replace the creditors. As for the personal lawsuit, the possessor files it either against the mortgage debtor, if he himself is the previous owner of the mortgaged property, claiming gain without cause. Or against the previous owner if ownership of the mortgaged property is transferred to him from the mortgage debtor under a claim of security. The possessor of the mortgaged debtor returns with a claim of gain without cause, which is an original claim and not a provisional one⁵⁹ (2) because the Iraqi and Emirati laws except for gain without cause as an independent source of obligation⁶⁰ (3), according to Article (243) of the Iraqi Civil Code, which stipulates that every person, even if he is not... A distinguished person who obtains a gain without a legitimate reason at the expense of another person is

obligated, within the limits of his earnings, to compensate anyone who suffers harm because of this gain, and this obligation remains in place even if his earnings are removed later). And Article (318) of the UAE Civil Transactions Law, which stipulates that no one is permitted to take another person's money without a legitimate reason. If he takes it, he must return it, and the first paragraph of Article (319) thereof, which specifies the content of the obligation.

Earned money will be returned if it is current, and its equivalent or value if it is not current ⁶¹, and it stipulates that (whoever earns money from someone else without disposing of the gain must return it if it is existing and its equivalent or value if it is not current, unless the law requires The fulfillment of the debt by the possessor of the mortgaged property leads to the extinguishment of the debt and thus achieves enrichment on the part of the debtor, because it is considered a benefit that can be estimated in money ⁶². This enrichment is matched by impoverishment on the part of the possessor who fulfilled the debt, without him being indebted to the debtor in the amount of that debt or taking back the debt. The previous owner of the mortgaged property claims a security claim, if the ownership of that property was transferred to him for a reason that required security from the transferor of ownership, such as a sales contract ⁶³, and then he was forced to pay debts that were registered on the property ⁶⁴. This is considered a partial entitlement, which does not deprive the buyer of All rights assigned to him over the sold property ⁶⁵, in accordance with Article (555) of the Iraqi Civil Code, which stipulates that (1) - If some of the sold property is due or is burdened with an obligation that the buyer is not aware of at the time of the contract, the buyer has the right to cancel the contract 2 - If the buyer chooses the remainder of the sold item, he has the right to demand compensation

for the damage he suffered due to entitlement, which corresponds to the third paragraph of Article (540) of the UAE Civil Transactions Law, which stipulates that if it appears after the sale that the sold item is owed by a third party, the buyer has the choice between waiting for the sale to be lifted. This right or to cancel the sale and reclaim the price from the seller. The possessor can also claim to replace the creditor who replaced him in his right, with its characteristics, accessories, guarantees, and defenses against it ⁶⁶. The possessor shall return to the debtor what he paid if the value of what he paid exceeds what is owed by him according to his title deed. The possessor replaces the creditors whose rights he has paid, especially the insurances provided by the debtor ⁶⁷. This is in accordance with Article (1432) of the UAE Civil Transactions Law.

Section Two: The legal implications of clearing the mortgaged property

Clearing or releasing the mortgaged property is a way to extinguish the mortgage in an original manner, that is, independently of the secured debt ⁶⁸, and it has two important effects in Iraqi and Emirati law, as follows:

First - The obligation of the possessor of the mortgaged property to maintain what he offered throughout the legal period: If the offer to release the mortgaged property is valid, the possessor is obligated to remain with his offer throughout the period during which the creditors may express their desire, which amounts to thirty days from the notification of the last announcement ⁶⁹. The source of his commitment is the individual will ⁷⁰. The obligation arises upon him as soon as he announces his desire to free the property from the secured debt ⁷¹. Every creditor who has a registered right over the property to be released, and every guarantor of this right, may reject the holder's offer of the value of the property, and this rejection must take the form

of a request to sell the property, which must be made within a period of thirty days from the notification of the last announcement. The sale request shall be made through an official announcement addressed to The holder and previous owner. If the previous owner is not the debtor, a notice must also be addressed to the debtor requesting the sale. The person requesting the sale deposits the amount sufficient to cover the expenses of the sale by auction with the court fund, in accordance with Article (1309), which stipulates that within thirty days from the notification of the last announcement, every mortgage creditor and every guarantor of the documented right may request the sale of the property to be released, and the request shall be made by an announcement directing To the possessor and to the previous owner. The applicant must deposit in the court fund an amount sufficient to cover the expenses of the sale by auction. He may not recover what was spent from this amount on expenses if the bid is not awarded to anyone. As for the UAE Civil Transactions Law, the aforementioned Article (1433), which gives the holder of the mortgaged property the right to purge the property that has been transferred to him of every right in rem resulting from it to secure a registered debt by paying the debt, the duration of the holder's stay in his offer has been determined by purging The property until the date of its sale or within the dates specified by the Code of Procedure before civil courts and special laws. Second - The personal commitment of the holder of the mortgaged property to the amount he offered to the creditors: If all the mortgaged creditors of the property accept a security or possession mortgage, those with rights registered on the property before registering the holder's deed, or even those with special real estate lien rights, the offer to release the mortgaged property as a security mortgage, which is represented by an announcement. It

includes all the data contained in the second paragraph of Article (1308) of the Iraqi Civil Code,

For the purpose of informing them accurately⁷². The holder is then personally bound by the amount he offered to them, and it is not permissible to withdraw it during the legal period of thirty days⁷³. This means that he is obligated to pay the amount not only with the guarantee of the mortgaged property, but also with the guarantee of all his other funds⁷⁴. This is in accordance with Article (1311) of the Iraqi Civil Code, which stipulates that if the property is not requested to be sold on the specified date and in the prescribed conditions, or the sale is requested, but a price higher than half a tenth of the amount offered by the possessor will not be offered in the auction, ownership of the property will be permanently established for this possessor. If he deposits the amount for which the property was valued in the court fund. The possessor pays the amount he offered to the creditors whose ranks allow them to fulfill their rights ahead of others⁷⁵. When the possessor pays all the debts that resulted in registered real rights, the property is cleared of these rights⁷⁶. The possessor shall return to the debtor what he paid if the value of what he paid exceeds what is owed by him according to his title deed. The possessor replaces the creditors whose rights he paid, especially the insurances provided by the debtor. If the possessor does not choose to fulfill the debt documented by the mortgage or resort to releasing the mortgaged property as a security mortgage, then he must bear the expropriation procedures against him as a possessor of the property⁷⁷. In this case, the procedures prescribed in forced sales must be followed⁷⁸.

Conclusion

After completing the study of the research topic in the body of this study, we devoted the conclusion to stating the most important results that we reached, as well as some recommendations that we deem necessary:

First - Results: The study reached the following results:

1. The right to release the mortgage is considered one of the basic equitable rights that the mortgage debtor has towards the mortgage creditor in English law, which was established for him in accordance with the rules of justice and fairness and under which the mortgage debtor is obligated to pay the amount of the loan debt represented by the debt secured by the mortgage and to terminate the mortgage on the mortgaged property because it is the road. The natural or usual means to satisfy the debt secured by the mortgage.

2. Redemption of the mortgage in English law is a right of a dual or dual nature. It is based either on the basis of a mortgage contract and is a contractual right, or on the basis of the rules of justice and fairness that impose the dictates of good conscience and the principles of natural justice on disputes.

3. The right to release the mortgage in English law also applies to the mortgage of the tenant's right, except that postponing the period of exercising the right to release the mortgage may be worthless in practice, if the lease is valid for a short period, due to the short duration of the lease.

4. It is customary in English law to set the contractual date for redemption of a mortgage at six months after the mortgage takes effect. Neither the lender nor the borrower will be able to request payment of the debt before this date. The judicial precedents of the English courts have allowed the mortgage debtor-borrower

not only to recover the mortgaged money after releasing the mortgage, but to recover it in its original condition.

5- English law allows postponing the mortgage debtor's exercise of his right to release the mortgage. This is to give an opportunity to the mortgage lender who has concluded a loan secured by a mortgage to continue obtaining the high interest rates agreed upon in the loan contract during the validity period of the mortgage. This postponement may be agreed upon through a contractual clause, which is not considered an arbitrary condition as long as the period agreed upon for postponement is a reasonable period.

6. The failure of the mortgage debtor to exercise his right to release the mortgage results in the mortgage creditor demanding the closure of the mortgage, which is intended to terminate the right of the mortgage debtor to release the mortgage by court order, and the mortgage creditor acquires ownership of the mortgaged property as consideration for full repayment of the secured debt, so he becomes the absolute owner of the mortgaged property after the expiration of the mortgage. All rights of the mortgage debtor over the mortgaged property.

7. The mortgage debtor exercising his right to release the mortgage results in the invalidation of the condition that the mortgage debtor continues to fulfill his obligation after releasing the mortgage, because releasing the mortgage is the natural and logical result of the mortgage itself, and is consistent with its nature and essence. On this basis, the rules of justice and fairness were adopted.

8. The Iraqi and Emirati laws specify two ways for the property holder to release the mortgage and rid the property of mortgages. The first is to fulfill the debt secured by the insurance mortgage, and the holder replaces the mortgage

creditor in his rights. The second is for the property holder to release the mortgaged property as a security mortgage or purify it to get rid of the right of appropriation that the creditor mortgagee enjoys even if his salary is late

Second: A Recommendations After completing the presentation of the results of the study, we propose the following recommendations:

1. We recommend that Iraqi and Emirati legislators take advantage of the provisions contained in English law regarding the permissibility of postponing the release of a mortgage for a reasonable period, if it is for the benefit of the mortgage debtor, and not for the purpose of giving the creditor the opportunity

The mortgagee lender who concluded a secured loan pledged to continue obtaining the high interest rates agreed upon in the loan contract. Accordingly, we propose the following text: (The mortgage debtor may request the court to postpone the period of repayment of the secured debt, if that is beneficial to him, provided that the release of the mortgage is postponed. For a reasonable period, as an exception to the provisions for expedited repayment of the secured debt. 2. The insurance mortgage contract may also include a condition that allows the mortgage debtor to agree with the mortgage creditor to postpone the period of releasing the mortgage if that is in his interest and for a reasonable period. Accordingly, we propose to Iraqi and Emirati legislators the following text: (The insurance mortgage contract may be accompanied by a condition that allows the mortgage debtor to agree with the mortgage creditor to postpone the release of the mortgage for a reasonable period, as an exception to the provisions for expedited

repayment of the secured debt if this is of benefit to the mortgager.

. We suggest that Iraqi and Emirati legislators benefit from the provisions contained in English law regarding invalidating the condition that the current debtor continues to implement his obligation after releasing the mortgage. Accordingly, we propose the following text: It is permissible for the insurance mortgage contract to be accompanied by a condition that is beneficial to one of the contracting parties, unless it is an exclusive condition that requires the mortgage debtor to continue implementing his obligation after the mortgage is released, in which case the condition is void and the contract is valid, unless the condition is the motivation for contracting, in which case the contract is also invalid.) .

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