



Real Estate Investigation as a Mechanism for Proving and Clearing Private Property Ownership in Algerian Legislation

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Abstract:

The land survey mechanism, established by Law No. 07-02 of February 27, 2007, is one of the most significant measures adopted by the Algerian legislature to expedite the process of proving and purifying private land ownership. This procedure was introduced to facilitate the land surveying process and to address the shortcomings and deficiencies that characterized the notoriety contract governed by Executive Decree No. 83-352 of May 21, 1983. Its primary objective is to improve the situation of citizens who, despite being legitimate owners, often lack legal titles formalizing their property rights.

Keywords: Real estate investigation, real estate investigation procedures, real estate investigation disputes.

Résumé:

Le mécanisme de l'enquête foncière, institué par la loi n° 07-02 du 27 février 2007, constitue l'une des mesures les plus importantes adoptées par le législateur algérien pour accélérer le processus de preuve et de purification de la propriété foncière privée. Cette procédure a été introduite afin de faciliter le processus de bornage foncier et de remédier aux lacunes et insuffisances qui caractérisaient le contrat de notoriété régi par le décret exécutif n° 83-352 du 21 mai 1983. Son objectif principal est de faciliter la situation des citoyens qui, bien qu'étant des propriétaires légitimes, ne disposent souvent pas de titres juridiques formalisant leur droit de propriété.



Introduction:

Proving and clearing real estate private ownership through lands general survey is a slower mechanism since it gives but long term results. That is why, waiting for the generalization of the general survey process on the basis of which the land registry is expanded, it was necessary for the Algerian legislator to provide supporting laws to this process because of the urgent need to real estate private property which plays a crucial role in the achievement of investment projects.

And in order to enable every land possessor lacking possession documents to get a property document having the same form of a registered act, the Algerian legislator has found the real estate investigation mechanism embodied by the law 07-02 dated on Nov 27, 2007⁽¹⁾ which application modality is determined by the executive decree 08-147 dated on May 19, 2008⁽²⁾, and considering that real estate investigation mechanism regarding the framework of the law 07-02 must respond to the criteria applied in lands survey, it is a preface to the survey process and therefore permits a considerable gain of time later when executing the the general lands' survey process.

So, what is the Algerian legislator philosophy of proving and clearing the real estate.

private property according to the real estate investigation law 07-02 ?

Regarding the importance of the topic, we suggest the problematic study according to the following elements :

1- The essence of real estate investigation within the framework of Law 07-02.

2- Real estate investigation procedures and the resulting disputes.

¹ - Law 07-02 dated on Feb 27, 2007 relevant to the inspection of the real estates ownership right and ownership titles delivery through real estate investigation .Official journal.number 15 issued on Feb 28, 2007.

² -. The executive decree 08-147 dated on May 19, 2008 relevant to real estates investigation processes and property deeds delivery..The official journal,number 26 issued on May 05, 2008



THE FIRST TOPIC

The essence of real estate investigation within the framework of Law 07-02.

The real estate investigation conducted within the framework of Law 07-02 is carried out independently and in parallel with the operations of preparing the general land survey and numbering in the land registry. However, it differs from the general land survey in that it does not encompass the entire municipality territory; rather, it is limited only to the owners who request the preparation and delivery of title deeds.

FIRST REQUIREMENT the concept of real estate investigation within the law 07-02 framework.

The real estate investigation has significant importance in determining private ownership and issuing title deeds. Through this request, we will define the real estate investigation within the framework of Law 07-02, the cases in which it is conducted, and its scope of application.

Firstly: Definition of real estate investigation.

It is one of real estate clearing mechanisms according to which every natural person or legal entity has the right, according to civil law, to own a land not already cleared by cadastral survey process and lacking a title deed, and every owner having a document issued before March 1, 1961 that no longer reflects the current condition of the property can introduce an investigation request addressed to the service of lands survey and lands registry of the territorial competent departmental authority⁽³⁾ for a site and legal inspection of the property subject of possession, by which the latter can introduce a document so called property title after meeting legal conditions and terms.⁽⁴⁾

³ - The executive decree 21/393 dated on Oct 18, 2021 which regulates the external services of the general directorate of the state's public assets and its competence. Official journal number 80 issued on Oct 20, 2021.

⁴ - Refer to articles 2 and 4 of the law 07-02. Previous ref.

**Secondly: Cases of real estate investigation according to law 07-02.**

According to the article 06 of this law ,it is possible to undergo an investigation in the two following cases:

1- Individual request of a real estate investigation :

In this case, the investigation is undergone on the basis of a request introduced by any person possessing a land according to the article 827 causes of civil law or by any person having a title issued before March 1,1961 not reflecting the current condition of the real estate/ land.⁽⁵⁾

2- Group request of real estate investigation:

In this case,the investigation is undergone in order to realise construction programs or to set up rural and urban lands.The investigation is undergone on the basis of a decision issued by the prefect/wali or the mayor/APC President after consulting some administrative services such as that of lands survey and lands registre and in particular cases,that of contruction authority and farming lands services.⁽⁶⁾

Thirdly:Law 07-02 application scope.

The Algerian legislator has adopted law 07-02 to handle the urgent needs concerning property titles deed delivery,according to the article o2 of this law which stipulates :

1- concerning the real estate, whatever its legal conditionis,which has not been included yet by the general lands survey processes mentioned in the order 75/74 dated on Nov 12,1975 including the general lands survey setting up and establishing the real estate registry⁽⁷⁾,considering the lands survey process as a mechanism permitting global lands clearing.

2- real estates which owners don not hold titles property or that with titles issued before March 1,1961 which no´onger reflect the current condition of the property.Among such titles we mention:

A/ Titles issued and delivered on the basis of global investigation Procedures according to Warnier law issued on Jul 26, 1873.

⁵ - Refer to article 5 of the law 07-02. Previous ref.

⁶ - Refer to articles 07 and 08 of the law 07-02. Previous ref.

⁷ - Order 75-74 issued on Nov 12,1975 relevant to preparing general ands survey and real estates record establishment(modified and completed). Official journal.number 92 issued on Nov 18, 1985.



B/ Titles issued and delivered on the basis of partial and global investigations according to law of Feb 16, 1897 and law of Aug 04, 1926.

C/ Titles issued on the basis of public auctions or sales and donations of real estate or real estate right established in a due official form by a notary office(authentic act) at that period and some of them were registered at a mortgage office to be invoked against others.

D/ Sharî'a judges' acts including real estate transactions between Algerians.⁽⁸⁾

E/ Judicial rulings establishing , transferring, declaring , confirming or modifying real estate property or rights issued from judicial body considered *res judicata*.

3- The real estate must be a private property according to law 07-02 article 03 stating that this law clauses are not application on national real estate properties , even the so called *aarch* and *waqf* properties.

Referring to article 23 of law 90/25 issued on Nov 18, 1990 including real estate orientation, modified and completed by order 95/26 issued on Sep 25, 1995⁽⁹⁾, we find that it has classified real estate properties into three categories⁽¹⁰⁾. therefore, lands and private real estate rights in rem are exclusively concerned by the application of this law.⁽¹¹⁾

So, according to article 03 of law 07-02, the following real estate properties are excluded from the application scope of this law:

a/ National properties: Pursuant the two articles provisions in 1996 constitution and the article 20 in 2020 constitution, the national properties comprise all of the properties and movable and immovable rights possessed by the state, the prefecture/ wilaya and the municipality.

⁸ - Decision of the supreme court number 264828 dated on Feb 25, 2004 stating that :

"Acts edited by the judges of *chari'a* courts before the independence are valid titles" .

The judicial magazine, number 1 .2004P.235.

⁹ - Refer to article 23 of the law 90-25 issued on Nov 18, 1990 relevant to real estates orientation, modified and completed by the order 95-25 issued on Sep 25, 1995. Official journal, number 49 issued on Nov 18, 1990.

¹⁰ -The different types of real estates properties are classified as follows (state's properties, private properties and *waqf*).

¹¹ -Mahmoudi Abdelaziz, clearing mechanisms of the private real estates property. not edited. Baghdad editions, 2009 P.305.



b/ Previous Aarch lands: These are collective ownership lands granted by the Turkish Deys to the tribes and Aarch which were loyal to them for joint use⁽¹²⁾

through permanent exploitation. These lands included cheliff plains, Sidi Belabbes, Oran, Béni Slimane, Sybous and Titteri.⁽¹³⁾

c/ Waqf lands: These are real estate properties which their owners reserved, of their own free will, the usufruct exclusively for a charity association, a public utility association, a mosque or a coranic school whether the enjoyment were immediate or after the testator death or the medians appointed by him.⁽¹⁴⁾

The law 91-10 modified and completed,⁽¹⁵⁾ issued on Apr 21, 1991 related to waqf, including general rules regulating waqf properties, states in the article 5 that waqf can never be owned by prescription.⁽¹⁶⁾

SECOND REQUIREMENT

The aims of property inspection through real estate investigation

As stipulated in Law 07-02, it is based on several aspects aimed at organizing and purifying real estate ownership, ensuring its stability, and thus contributing to economic and social development. These objectives can be summarized in the following points:

1- Addressing the negatives resulting from the use of notarial acts.

That is through the remedy of superficiality and precipitating in notarial acts preparing.

The law 07-02 guarantees real estate inspection in a more precised and more organised way and protects real estate properties against offences, especially national properties and waqf, through field investigations led by a real estate investigator under the auspices of the director of lands survey and lands registry of the prefecture.

¹²-Omar Hamadi Bacha and Leila Zerrouki, real estates conflicts, 1st edition, Houma House, 2006. P.187.

¹³-Through the article 13 of the order 95-26, dated on Sep25, 1995 modifying the law of real estates orientation 90-25 issued on Nov 18, 1990, the Algerian legislator settled the question of Aarch properties by annexing it to the state private real estates properties.

¹⁴- Refer to the article 31 of the law 90-25. Previous ref.

¹⁵- Law 91-10 issued on Apr 27, 1991 relevant to waqfs and comprising general rules regulating the waqfs properties. modified and completed. Official journal, number 21, 1991.

¹⁶- The decision of the civil chamber of the supreme court, number 157310 dated on Jul 16, 1997 stated what follows: " It is decided that the property in rem part of Hbous must not be sujet of any disposal of conveyance, whether by sale or donation.." the judicial magazine, 1st number 1997. P34.



2- Real estate promotion encouraging: that is through establishing real estate property portfolio and developing it in time and place by finding (real estates oriented to investments and promotion as well as real estates for housing and industry...)

3- Encouraging mortgage loan as a means of development: Determining real estates' recipients and their legal status give banks support and confidence to make transactions through which they encourage successful investments in various fields.

4- the contribution in the general lands survey: the law 07-02 is a real estate clearing mechanism that works in parallel the lands general survey. Therefore it shortens time necessary to achieve the general survey process. Moreover, this law obeys to the criteria used in lands survey processes.⁽¹⁷⁾

5- regularization of the real estate situation for the persons holding title deeds issued before March 1, 1961: that is stated in article 2 alinea 2 of the law 07-02 which comprises all of the real estates which owners don't possess title deeds or the ones which title deeds were issued before March 1, 1961 and which title deeds no longer reflect the current condition even if there are notarial title deeds but the contracting heirs are still in common status or undergo actual division which is not legally documented.⁽¹⁸⁾

THE SECOND TOPIC

Real estate investigation procedures and the resulting dispute

The procedures of property investigation are considered essential legal tools aimed at regulating private real estate ownership and ensuring its stability. These procedures involve verifying the authenticity of documents and records related to the property, conducting on-site inspections of the property under investigation, hearing the concerned parties, and gathering the necessary evidence to establish ownership.

However, these procedures may lead to disputes between the parties, particularly in cases involving overlapping rights, document forgery, or false

¹⁷- The instruction 003 dated on Sep 27, 2008 relevant to the real estates investigation process, issued by the general directorate of the state's properties.

¹⁸- The same ref.



claims of ownership. Therefore, we will explain how the Algerian legislator has addressed these issues.

FIRST REQUIREMENT

Procedures of real estate investigation

Real estate investigation procedures are carried out within the framework of Law 07-02 under the supervision of land surveying and real estate registration authorities at the regional level, and they go through the following stages.

Firstly: Opening a real estate investigation.

Considering the investigation law states two investigation cases, the Procedures of investigation are as follows :

1- real estate investigation individually requested: Any person has the right to individually request a real estate investigation according to Procedures determined by the real estate investigation law.

a/ Real estate investigation request filing:

The request is filed at lands survey and real estates directorate by the person requesting the investigation or the proxy (the request is a form given by the competent administration) including information about the person requesting the investigation and information about the designation of the real estate in terms of boundaries, location, surface and survey section accompanied with a file comprising topographical plan set by a real estate expert who determines the real estate subject of investigation at the expense of the person requesting the investigation. Moreover, the condition of the real estate subject of investigation must be determined according to the survey section to be requested at real estate survey by an expert geometer.⁽¹⁹⁾ The plan is annexed to a descriptive form in which are determined the real estate, the owners, the neighbouring holders, the surface and the real estate nature (agricultural or for construction), the survey section and the evaluation.⁽²⁰⁾

An acknowledgment is given to the person requesting the investigation or to the proxy and a file is opened for everyone requesting investigation and registered in a

¹⁹- Memorandum 6419 dated on Sep 05, 2008 relevant to sections of lands survey, issued by the general directorate of the state's properties.

²⁰- Refer to the articles 3 and 4 of the decree 08-147, previous ref.



special register sealed by the director of lands survey and real estate registry according to a chronological order opened at the directorate of lands survey and real estate registry of the prefecture/wilaya.⁽²¹⁾

b/ The study of real estate investigation request :

The director of lands survey and real estate registry studies the request to confirm the status of the person requesting the investigation whether he is a possessor, or an individual owner or co-owner and whether the requesting person is a possessor or a proxy, as well as he confirms the request doesn't concern a real estate subject of a survey process.

After the initial study of the request, the director of lands survey and real estates registry can issue a refusal to be reported to the person concerned if he finds that the request doesn't fulfil the legal conditions stated within the law 07-02 and its executive decree.⁽²²⁾

c/ The decision of opening the investigation:

After accepting the request, the director of lands survey and real estates registry, within a month period, open the real estates investigation by establishing a decision of opening an investigation Pursuant the clauses of article 07 of the executive decree 08-147.⁽²³⁾

The directorate of lands survey and real estates registry sends the decision to the municipality president in order to advertise it in the town hall in which the real estate is located during 15 days before the real estates investigator visit to the real estate subject of investigation, according to article 08 of the executive decree 08/147.

2- Real estate investigation introduced by a group of persons :

In this case, the process of real estates investigation is undergone according to determined procedures.

a/ the decision of opening a real estates investigation :

In this case, the investigation is opened with a decision taken by the prefect/ wali that determine the zone or the zones concerned with the investigation, as well as

²¹- The instruction 003.previous ref.

²²-The instruction 003.same ref.

²³- Refer to the article 07 of the decree 08_147. Previous ref.



the period of 15 days during which the requests are submitted at the directorate of lands survey and real estates registry . The decision is registered in a special record and published in the administrative contracts record of the prefecture .the director of the above organism should also publish the decision on a large scale during one month before receiving files, at the real estates registry and the state properties inspections and send copies to the executive directors ;

Taxes, waqf, urbanisation, construction and agricultural services.⁽²⁴⁾

b/ Appointment of the real estates investigator :

The director of lands survey and real estates registry appoints a real estates investigator after receiving the investigation file pursuant the article 09 of the decree 08-147.⁽²⁵⁾

Secondly:Procedures related to the real estates process (individual and collective).

1- Preparatory procedures:

As soon as informed of his appointment decision, the real estates investigator gather the necessar document and plans facilitating the investigation process and clarifying rights and onus burdening the real estate if exist. documents include municipality plan and limitation landmarks report according to the law 84-09 issued on Feb 24, 1984 related to territorial organization of municipalities,as well as the plan of the senate established during the colorisation ,the acts of property expropriation of the municipality,decisions of property transfer, plans of survey sections of the municipality found at the lands survey services of the prefecture⁽²⁶⁾, plans of forest types, urban plan (PDAU) of the municipality, plans of landmarks specific to agricultural revolution, plans and certified reports of lands which were subject of integration into the agricultural revolution national fund in addition to the plans of agricultural exploitations established by the application of the law 87-19 issued on Dec 08, 1987 comprising the modality of exploiting lands included in the national properties and Determining the producers' rights and duties.

2- Field Procedures of real estates investigation :

²⁴- Refer to the articles 05 and 06 of the decree 08-147. The same fef.

²⁵-Refer to the articles 07 and 09 of the decree 08-147.

²⁶- The memorandum 6419.the same ref.



The field Procedures of investigation start when the investigator moves to the real estate subject of investigation and on the basis of the plan joined to the request and identity check of the persons witnessing the investigation process, by confirming their capacity; whether the person is the requesting person himself, a neighboring owner or an owner of a right in rem. (He may be also an easement holder, especially roads and rivers easements and the whole real estates properties belonging to the state according to the articles 66 and 67 of the law 90-30 related to national properties issued on Dec 1, 1990 modified and completed. ⁽²⁷⁾

According to article 10 of the law 07-02 the investigator receives the declarations of the requesting person through which he exposes facts and circumstances permitting him to possess the real estate within a document named the real estates investigation police joined to the neighboring owners document without their declarations.

The presence of the real estates investigator may coincide with the absence of the neighboring owners during the investigation process, which may lead to suspend the process, as stated in the article 11 of the executive decree 08-147 without preventing from the process from continuation. thus the director of lands survey and real estates registry has to schedule at least a second field visit of the investigator, after which he continues the Procedures of investigation ⁽²⁸⁾.

a/ The recognition of the real estate:

The investigator starts the inspection of the real estate and determining its technical characteristics as well as its accurate identification on the basis of the plan established by a certified real estates expert joined to the request, so that he confirm the real estate location and its borders, its type and its surface. He also check the real estate inclusions it were a building.

As the application scope of the real estates investigation law 07-02 is not limited to unbuilt lands but concerns built ones, as well as the possession meant by the same law is related to built and unbuilt lands, and as buildings achieved without

²⁷ - Refer to the articles 66 and 67 of the law 90-30 relevant to the national properties issued on Dec 1, 1990 modified by the law 08-14 issued on Jul 20, 2008. Official journal, number 52, issued on Dec 20 1990.

²⁸ - Memorandum 10834, issued on Nov 02, 2011 related to the answer of the state's properties directorate to the prefecture and the presence of the neighbouring owners or possessors, issued by the general directorate of the national properties.



permission are regulated by the order 85/01 issued on Aug 13, 1985 (canceled) defines the transitional rules of lands occupation in order to preserve and protect them through regulating them according to administrative measures managed by the municipality services after buildings statistics process, and as the real estates investigation law is not established to regularize illegal buildings, therefore ,it is necessary to check whether the building completion was after or before establishing the order 85/01 issued on Aug 13, 1985.consequently, the real estates investigator has to ask the requesting person to provide a legal justification of the building in either of the two following ways:⁽²⁹⁾

- The building realised before Aug 13,1985 is justified with a certificate delivered by the mayor who attests that the building was realised before Aug 13, 1985.

- The building realised after Aug 13, 1985 is justified by a building permit.

If the requesting person of the investigation does not legally justify the building, it is excluded from real estates registration.

b/ Possession facts inspection:

The real estates investigator gathers information related to the possession facts and sets the relationship between the requesting person and the real estate .He also gathers all of the indicators leading to acquire a real estate through prescription according to civil law ,whether the possession is with or without a title.

First.possession without a title: The investigator relies on all of indicators that could inform about the requirements stated within civil law and whether they are available within the request .If it is proved for the investigator that the requesting person exercises a possession which enables him to acquire the property right through acquisitive prescription according to civil law, he has to acknowledge the real estate property or real estate right in rem for the requesting person,as stated in article 14 of the law 07-02. The possession meant here is that mentioned in articles 808 to 827 of civil law stating the possession should be public ,unbroken,quite and free of coercion defaults .It should also respond to articles 827, 828 and 829 of

²⁹ -Memorandum 02696 issued on March 13, 2011 relevant to the condition of buildings constructed without permit on lands which are subject of real estates investigation, issued by the general directorate of national properties.



civil law stating the legal terms. Therefore, in order for the possession to produce its juristic effects, the real estates investigator has to verify: ⁽³⁰⁾

- **The possession must be legal and accurate:** That is through the availability of material and moral elements for the possession. The material element consists of the possessor actual control through actual possessor works such as (planting, plowing, sowing and housing...). The moral element is the intention of the possessor to utilize the real estate for ownership.
- **Full possession for acquiring these rights:** In this case, the investigator should consider the three following different cases:

The first case concerns the long term acquisitive prescription ; this requires the availability of the possession elements and the 15 years legal time of prescription without interruption.

The second case concerns the short term acquisitive prescription; In this case, in addition to the possession elements, good faith and possession title are required as well as 10 years uninterrupted possession.

The third case concerns the acquisitive prescription of inheritance rights; If the real estate subject of possession is a part of inheritance real estates ,the time of acquisitive prescription is thirty three years as stated within the article 829 of civil law. ⁽³¹⁾

- **The possession must be quite:** This means that it should not be tinged with claims or with any violation means such as coercion. Since social security and peace are among the considerations to be respected here, otherwise it should not be worth protecting. ⁽³²⁾

- **Possession should be public:** This means that the possessor has all erga omnes obligations and exercises it openly. So, the investigator should prove that the possessor exercises his physical and factual authority on the real estate as being a right holder.

³⁰ - Refer to the articles from 808 to 834 of the order 75- 58 dated on Sep 26, 1975 including civil law, modified and completed. Official journal, number 58, 1975.

³¹ - Abdelhafidh Ben Abid. Proving the real estates property and real estates rights in rem within the Algerian legislation. 5th edition, Houma house, Algiers 2006, p 100.

³² - Nabil Ibrahim Saad, personal and real insurance, not edited. Munchaat almaarif. Alexandria, Egypt .p 568.



- **Possession should be uninterrupted:** This means that the possessor should benefit regularly and uninterruptedly from as if he were the careful head of the household owner. Therefore the investigator should confirm the uninterrupted occupation on the basis of the frequent uninterrupted works on the real estate according to the type of right pretended by the possessor. ⁽³³⁾

- **Possession should be clear:** The investigator should know whether the person is the possessor himself or he possesses for others (tenant or guard) or both or as a partner in a joint property.

To confirm the possession conditions, the investigator seeks the neighboring owners' help and that of persons witnessing the investigation process and through investigations undergone at the real estates registry to confirm that the requesting person is not trying to evade taxes. The investigator also works with the state properties service, the municipality, the real estates agency and the different offices to confirm whether the latter have no rights on the real estate subject of investigation.

Secondly. Possession with legal title:

1. Property titles issued before March 1, 1961 : That means titles responding to all of the conditions and elements necessary to establish property rights issued within the French legislation which no longer reflects the real estate condition because it was not subject to compulsory registration measures, such as (administrative contracts issued by prefects, mayors, ancient notariés and confidential clerks) and acts issued by judges and shari'a judges. These are contracts with fixed date and are res judicata. So the investigator should ascertain the following :

a/ Whether the title is in the name of the real owner or in the name of another person, since the investigation is requested by the title holder.

b/ Whether the title does not reflect the present condition of the real estate as to be subject of rights in rem not mentioned in the title like (easements).

³³ - Ibidem. P101.



c/ When there is a title but nothing indicates that it concerns the real estate regarding its surface and boundaries, the investigator should undergo a complementary investigation.

2. The possession title registered at the real estates registry :

According to the article 14/2 of the executive decree 91/ 254 issued in July 27, 1991 defining the modalities of preparing and delivery of possession titles stated within the article 39 of the law 90-25 related to real estates orientation, the possessor can bring up the possession time indicated in the title to invoke the inquisitive prescription. Therefore the requests introduced by persons to obtain property titles according to the law 07-02 , joined to possession certificates registered at the real estates registry, are considered legally established. So, the investigator has to verify the legal possession time pursuant the article 14 of the law 07-02 ; the time of lawful possession does not begin from the date of the possession certificate preparing but from the date of the ascertainment of actual possession claimed by the concerned person. In such a situation, there are two different cases:⁽³⁴⁾

a/ If the period of the possession title registration is more than 15 years when introducing the request, the investigation is exclusively undergone on the absence of any objection or note protest. (referring to the real estate form at the real estates registry to ascertain the absence of any judicial dispute).

b/ If the period of the possession title registration is less than 15 years when introducing the request, the possession period is countable before the registration and to which is added the period after the registration. If the addition of the two periods is more than 15 years, the request will be accepted. Otherwise, it will be rejected.

3- Legal procedures:

After finishing the field investigation process and gathering the necessary information, the investigator starts the study and analysis of these information to ascertain first that the real estate is belong neither a part of the state property nor a waqf. Then he ascertain the relationship between the requesting person and the real

³⁴- Memorandum 03278 dated on Apr 15, 2010 relevant to handling of the possessors requests having possession certificates, issued by the general directorate of the state's properties.



estate subject of investigation through the evaluation of possession conditions on the basis of the information he holds.

a/ Results recording:

After the study and within 15 days following his field visit, the investigator drafts a provisory minutes in which he records all the information he collected during the field an adminitrative investigation and it should be subject of wide publicity during 30 days to get the public informed of it as states the article 10/03 of the law 07-02 and the article 12 of the decree 08-147 to empower others introducing objections to the requested property title delivery during a period of 30 days countable 08 days from the publication start date of the provisory minutes.

If the investigator didn't receive any objection during the period mentioned above, he should draft a final minutes according to the article 13 of the decree 08-147, in which he records the results of real estates investigation and proves the requesting person eligibility to own the real estate requested. On the basis of this minutes, the real estates expert , at the attendance of the investigator and the requesting person, sets the real estate boundaries .After that, the popographer indicates the boundaries landmarks and the number of the real estate .then he submits the report to the investigator to complete the investigation procedures.

b/ The investigation tsults embodiment:

After finishing the real estates investigation process as previously discussed , the file is delivered to the director of lands survey and real estates registry of the prefecture who, on his part , should accomplish the following:

First_ preparing a decision comprising the real estate numbering.

On the basis of the declarations, the certificates, the delivered documents and the investigations performed by the investigator when inspecting the possession of the requesting person , which allows the recognition of the ownership on the basis of the acquisitive prescription, the final minutes mentioned previously is prepared and on the basis of which, the director of lands survey and real estates registry approved the eligibility of the requesting person to own the the real estate subject of investigation on which is based the real estate numbering process. ⁽³⁵⁾

³⁵ -Refer to the article 21 of the decree 08-147. Previous ref.



Secnd_ Preparing a decision comprising the rejection of the real estate numbering:

If the real estates investigation didn't lead to a positive result, the director of lands survey and real estates registry issues a causal decision of numbering rejection to be notified to the person concerned within 6 months period countable from the date of submitting the investigation request and that may be subject of judicial appeal at the judicial authorities.⁽³⁶⁾

Third_ Publicity of the numbering decision and the ownership title delivery:

The real estates conservator, pursuant the numbering decision, proceeds to the publicity of the rights resulting from the real estates investigation and approves the provisory real estates form stated in the article 27 of the order 75/74, and on the basis of this publicity, the real estates conservator prepares an ownership title according to the article 16 of the law 07-02 and send it to the director of lands survey and real estates registry to deliver it to the investigation requesting person.

Thus, if the property is a collective ownership, a property title is delivered to any of the co_owners against a handwritten declaration to be written by the other co-owners at the directorate of lands survey and real estates registry or against a power of attorney according to the article 22 of the executive decree 08-147.

On the basis of this advertising and if it were a matter of a real estate subject of an obsolete property title advertised before March 1, 1961, the appropriate procedure must be canceled from the real estates registry where the procedure was executed then.⁽³⁷⁾

SECOND REQUIREMENT

The conflicts resulting from the real estates investigation law:

Some objections and judicial conflicts may result from the real estates process between the person requesting the investigation and any other real estate rights in rem related to the real estate subject of investigation. Therefore the Algerian legislator has ruled such objections and conflicts within the law 07-02 and the executive decree 08-147.

³⁶ - Refer to the article 17 of the law 07-02. Previous ref.

³⁷ - Instruction 003. previous ref.



Firstly: Disputes the directorate of lands survey and real estates registry:

When objections are expressed in the directorate of lands survey and real estates registry then recorded in the objections record, whether the objections were individual or collective, the investigator can - if necessary, and before proceeding to conciliation or non-conciliation process- visit the real estate again to study the objections and protestations invoked by the neighboring owners and possessors or any other pretending a right in rem on the concerned real estate .Then, the investigator holds a reconciliation or non-reconciliation session between the person pretending the possession and the objector within 08 days countable from the date of submitting the objection then he drafts the following:

- a/ A reconciliation minutes if there is an agreement between the parties. ⁽³⁸⁾
- b/ An unfruitful session minutes if the objector is twice absent successfully.
- c/ A non-reconciliation minutes in case of agreement failure between the parties or the person against whom the objection is submitted. ⁽³⁹⁾

- **concerning the reconciliation minutes:** The investigator drafts it if the parties come to an agreement about the requesting person eligibility to the real estate subject of investigation and in which he records the results reached during the reconciliation session. Then he pursues the investigation procedures in the way previously mentioned.

- **concerning the minutes of unfruitful reconciliation session:** The investigator holds the first reconciliation session within the eight days following the date of the objection submitting. But if the objector is absent, the investigator should reassign a second reconciliation session provided that it will be held within thirty days after the first session and after sending convenings to all of the parties. If the objector is absent in the second reconciliation session, the investigator drafts a minutes of unfruitful reconciliation session and he considers the objection null and void . He also gets the objector notified. ⁽⁴⁰⁾

³⁸ - Refer to the article 15 of the decree 08-147. Previous ref.

³⁹ -Refer to the article 16 of the decree 08-147. Ibidem

⁴⁰ -Memorandum 07285, issued on Jul 15, 2014, relevant to the modality of handling the case of the objector and the respondent absence during the reconciliation session, issued by the general directorate of national properties.



- **concerning the non-reconciliation minutes:** The investigator drafts it when the respondent is absent and the objector is present at the second reconciliation session⁽⁴¹⁾ as well as when the reconciliation session is unfruitful in spite of the presence of all the parties, he delivers the the minutes of the non-reconciliation to the objector, indicating that the Procedures of the real estates investigation is suspended and the objector has the right to file a lawsuit to the judicial authorities within a two months period countable from the date of the minutes draft according to the article 12/3 of the law 07_02. The lawsuit declaration is submitted to the Procedures of the real estates registry pursuant the article 17/1 of the decree 08-147 within eight days at most that follow the the two months period of the lawsuit filing.

If the lawsuit is filed and registered within the period stated in the article 17 mentioned above, the director of lands survey and real estates registry notifies the person requesting the investigation of the suspension of the investigation process,as well as he also informs the prefect and the mayor if the investigation was undergone in the course of a collective process till the case is settled by a final judgment.

If the file of lawsuit is not sbmitted to registration according to the article 17, the director of lands survey and real estates registry notifies the person concerned and the investigation continues without consideration to the objections and protestations. After finishing the investigation, according to the article 13 of the law 07-02, the investigator drafts a final minutes in which he records the final results if the real estates investigation and proves the requesting person eligibility to ownership.

After recieving the final real estates investigation file from the investigator and on the basis of the final minutes, the director of lands survey and real estates registry prepares the real estate numbering of the property subject of investigation in the name of the petitioner ,on the basis of which the ownership right is established. Then he sends it to the local competent lands conservation registrar to registered it and draft the ownership title according to the legal procedures previously explained.

⁴¹ - Ibidem.



Secondly: Judicial conflicts resulting from establishing numbering decisions and ownership titles delivery.

All of the conflicts that accompany these procedures refer to either the competence of the real estates, or administrative or criminal judiciary, considering this procedure as a mechanism of proving and clearing of the private real estate ownership which can be one of the juristic solutions contributing in the reduction of the real estates deals anarchy.

1- Conflicts related to the administrative judiciary competence.

If the real estates investigation procedures doesn't lead to a positive result, the director of lands survey and real estates registry issues a reasoned refusal decision according to the article 17/1 to be notified to the interested party and to both the prefect and the mayor if the investigation concerned a collective process .

If this administrative decision is contested, The lawsuit is filed at the administrative judiciary.the appeal of the decision is submitted according to the article 17/2 of the law 07-02 as well as the articles 800 and 801 of the civil and administrative procedures law.⁽⁴²⁾

The petition of the lawsuit is registered at the competent lands conservation,since it concerns a real estate or a property right in rem pursuant the article 17 of the administrative and civil procedures law.

2- Conflicts relevant to real estates judiciary.

We have explained that the real estates investigation is one the mechanisms for acquiring real estates ownership through the acquisitive prescription according to the provisions of civil law,particularly the article 827 which requires tha possession must be public,quite and unbroken.Therefore,if the possession includes a defect such as coercion or concealment ,the stakeholder can file a lawsuit at the ordinary judiciary by which he proves that the requesting person of the investigation exercises a possession of other people's property,being based on all of the possible proving means to refute the investigation requesting person claim.This is in case of jurisdiction materiae whether the lawsuit is related to ownership or to possession as stated in the articles 511 and 512 of civil and administrative procedures law.



In case of territorial competence, the lawsuit is filed at the court of territory where the real estate is located according to the general rules and pursuant the articles 40 and 518 of civil and administrative procedures law.

3- Conflicts relevant to criminal judiciary competence.

In case of real estate numbering undergone on the basis of false declarations or falsified documents, the director of lands survey and real estates registry files a lawsuit to claim its abrogation and files a complaint to the public prosecutor to institute a public lawsuit according to the article 18 of the law 07-02.

Conclusion:

The necessity of proving and clearing private real estates ownership and finding parallel solutions for the delay of the general lands survey process, incited the legislator to cancel the notarial deed provisions and replace them with the real estates investigation procedures stated in the law 07-02 and the executive decree 08- 147 issued on May 19, 2008, in order to facilitate financing the investment projects through mortgage loans.

The real estates investigation is a mechanism of a great importance for the settlement of the private real estate ownership. therefore the Algerian legislator, through legal and regulating provisions handling it, has corrected all of the shortcomings comprised in the law of the notarial deed by explicitly determining the application scope of this law and charging the director of lands survey and real estates registry to control the investigation process and deliver the property deed instead of the territorial competent notary.

référénts:

-First: legal texts

- 1- the order 75- 58 dated on Sep 26, 1975 including civil law, modified and completed. Official journal, number 58, 1975.
- 2- Order 75-74 issued on Nov 12, 1975 relevant to preparing general lands survey and real estates record establishment(modified and completed). Official journal. number 92 issued on Nov 18, 1985.
- 3- the law 90-25 issued on Nov 18, 1990 relevant to real estates orientation, modified and completed by the order 95-25 issued on Sep 25, 1995. Official journal, number 49 issued on Nov 18, 1990.



4- the law 90-30 relevant to the national properties issued on Dec 1, 1990 modified by the law 08-14 issued on Jul 20,2008.Official journal, number 52, issued on Dec 20 1990.

5- Law 91-10 issued on Ap 27, 1991 relevant to waqfs and comprising general rules regulating the waqfs properties.modified and completed. Official journal, number21, 1991.

6- the order 95-26, dated on Sep25, 1995 modifying the law of real estates orientation 90-25 issued on Nov 18, 1990.

7- Law 07-02 dated on Feb 27, 2007 relevant to tne inspection of the real estates ownership right and ownership titles delivery through real estate investigation .Official journal.number 15 issued on Feb 28, 2007.

8-. The executive decree 08-147 dated on May19,2008 relevant to real estates investigation processes and property deeds delivery..The official journal,number 26 issued on May 05, 2008.

9- The executive decree 21/393 dated on Oct 18, 2021 which regulates the external servives of the the general directorate of the state's public assets and its competence. Official journal number 80 issued on Oct 20, 2021.

10- The deision of the civil chamber of the supreme court, number 157310 dated on Jul 16, 1997 the judicial magazine, 1st number 1997.

11- Decision of the supreme court number 264828 dated on Feb25, 2004 The judicial magazine, number1 .2004.

12- The instruction 003 dated on Sep 27, 2008 relevant to the real estates investigation process,issued by the general directorate of the state's properties.

13- Memorandum 6419 dated on Sep 05, 2008 relevant to sections of lands survey, issued by the general directorate of the state's properties.

14- Memorandum 03278 dated on Apr 15, 2010 relevant to handling of the possessors requests having possession certificates, issued by the general directorate of the state's properties.

15- Memorandum 10834,issued on Nov 02, 2011 related to the answer of the state's properties directorate to the prefecture and the presence of the neighbouring owners or possessors, issued by the general directorate of the national properties.

16- Memorandum 02696 issued on March 13, 2011 relevant to the condition of buildings constructed without permit on lands which are subject of real estates investigation, issued by the general directorate of national properties.



17-Memorandum 07285, issued on Jul 15, 2014, relevant to the modality of handling the case of the objector and the respondent absence during the reconciliation session, issued by the general directorate of national properties.

-Second: books

1-Mahmoudi Abdelaziz, clearing mechanisms of the private real estates property. not edited. Baghdad editions, 2009 .

2- Omar Hamadi Bacha and Leila Zerrouki, real estates conflicts, 1st edition, Houma House, 2006.

3- Abdelhafidh Ben Abid. Proving the real estates property and real estates rights in rem within the Algerian legislation. 5th edition, Houma house, Algiers 2006.

4- Nabil Ibrahim Saad, personal and real insurance, not edited. Munchaat almaarif. Alexandria, Egypt.