

# Ownership deed and causes of its invalidation in the statutory provisions and judicial procedures of Iran

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## ABSTRACT

The society's expediencies lie in the preservation of the public order and the formal deeds and ownership are amongst the most distinct examples of the public order the negligence of which results in the instability in the transactions' order. However, this credibility does not remain absolute and these documents are rescinded by the legislator for a reason or another and, after verification of the invalidation by the corresponding author, including the court, an order is issued for the invalidation or registration reformation of the deed by the notary public offices. Amongst the reasons that cause the invalidation of the ownership deeds is their contradiction to and disruption of the others' rights as well as the commission of article 12 on the urban land and the expediencies of the registration supervision committee and the present article deals with the most important of them.

**Keywords:** ownership deed, contradictory ownership deed, deed invalidation, kinds of property deed.

## Introduction

Ownership deed invalidation is amongst the common cases in the registration laws. In fact, the principle is essentially the originality of the ownership deed but there are reasons for which this credibility is flawed following which the ownership deed is invalidated.

In order to explicate and elaborate the issue, some questions are raised, including the followings: are the causes and formalities of the ownership deeds' invalidation by the rule of law or court? How are the ownership deeds invalidated and rescinded? What are the cases included by the ownership deeds' revocation?

Amongst the cases wherein the ownership deed's credibility is flawed, the property registration without the observance of the legal regulations, issuance of the contradictory ownership deeds, issuance of the mistaken ownership deeds, registration of the

lands owned by nobody, public properties and endowments under one's name by the profit-seeking individuals and the deed invalidation based on a necessity or another can be pointed out. Efforts have been made in the current article to investigate the most important of these cases and the issue will be explained relying on the practical aspect in the judicial procedures.

## Ownership Deed

### • Ownership Deed Conceptualized:

"Sanad" [deed] is an Arabic term derived of the root of a past tense of a verb referring in law jargon to "any written document justifying an issue and/or enabling defense of a subject"<sup>[1]</sup>.

Deed has been commonly defined as "a written document enabling the defense or justification of a claim for the arrival at the reality"<sup>[2]</sup>.

It has to be stated in practical terms that the ownership document is a covered notebook of the formal and valuable documents the contents of each page of which are in match with the insertions of one of the columns in the journals of the notary public offices indicating the transferring and conveyance of the deeds.

### • Kinds of Ownership Deed

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Ownership documents are of different kinds each of which enjoying certain legal issues. The forthcoming sections deal with these documents and briefly explain each of them.

### ✓ **Exclusive Possession Deed**

This type of document is amongst the most credible of the property deeds and indicates an individual's absolute possession of a property from six sides, i.e. north, south, east, west, top and down.

### ✓ **Parceled Ownership Deed**

Parceled or separated deed is one of the most complicated ones and it allows the partners of a shared property to separate their shares from the others and make constructions therein singularly in a case-specific manner.

### ✓ **Endowed Property Deed**

It is a document the owner of which has endowed the property and the Endowment Organization transfers them to the others in a 99-year conveyance to the needy individuals and takes rentals in return. The reason is that the selling and purchase of the endowed properties without the coordination with and permission of the endowment office is prohibited hence deemed as a violation.

### ✓ **Contradictory Ownership Deed**

If two formal deeds are issued with different names and dates for a given property with specifically defined limits, they are called contradictory ownership deeds.

According to the note to the article 5 of the legal bill about the registration mistakes and contradictory ownership deeds, the courts are to seminally make the required investigations and issue an order for the invalidation of a document having been wrongly obtained for the possession of the property.

### ✓ **Conciliar Ownership Deed**

It is an ordinary document sealed by a local council.

### ✓ **Mortgaged Ownership Deed**

This type of document is originally specific to the buyers of a house who intend to use and enjoy the bank loans. In this state, the deed is mortgaged to a bank for a period of time that the loan is to be paid back and this issue is also mentioned in the deed itself that the deed is in the mortgage of the bank till a given time and,

then, the deed will be handed back to the buyer after the repayment of the loan.

### ✓ **Inherited Ownership Deed**

After the death of an owner, the inheritors can demand the issuance of a deed by submitting the related documents to the corresponding instruments and landed properties' registration office to the amount of their own shares. Of course, this is done after the presentation of the required documents such as the application for the issuance of the ownership deed, judicial writ of succession, tax form no.19 and the original ownership document of the legator.

## **Causes and Cases of the Ownership Document's Invalidation**

The ownership deed is invalidated in two form, namely with and without the verdict of a qualified court.

### • **Ownership Deed Invalidation Without a Court's Verdict:**

Since every ownership deed is essentially formal, it has to be invalidated as ruled by the article 12's commission by the decisive verdict of a court or judicial authorities like the other formal documents. However, in some of the cases that will be dealt with in the upcoming parts, the ownership deeds can be invalidated without it being sentenced by a court.

### ✓ **Invalidation of the Ownership Deed by the Rule of Law**

In some of the cases, Iran's instruments and landed properties' registration authority is obliged to take measures in line with the invalidation of a deed and register new ownership by the request of the legal authorities and this is usually done without a court's issuance of an order for doing so in such a way that, in some of the cases like the land reforms and the land divisions between the farmers, if the public expediencies makes it necessary such as in regard of the forests, natural resources and pastures' protection<sup>1</sup> and in case of the canonical expediencies, including the preservation of the endowed lands and acting in adherence to the intentions of the endower<sup>2</sup>, the invalidation of the ownership deed is carried out without the sentence by a court and based on the regulations on the nationalization of the forests and pastures and the law on the invalidation of the deeds indicating the sales of the unowned properties, water and endowed lands as well as the law on the annulment of the urban land ownership and the

<sup>1</sup> If the objections of the interested party is accepted and led to the issuance of a legal writ indicating the verification of the final and decisive ownership in line with the determination of the status of the disputed land subjects of article 56 of the forests and pastures' law, passed in 1988, the government is obliged to deliver the exact specified land, if possible, otherwise and in case of the owner's satisfaction, another piece of land or its experts' determined equivalent price should be paid in exchange.

<sup>2</sup> According to the single-article law on the invalidation of the documents of the sales of unowned lands, water and endowed lands, passed in 1984, along with the later appends thereof as well as the law on the invalidation of the documents of the unowned lands, water and endowed lands' sales, passed in 1992, all the endowed properties that have been sold without canonical permit or possessed in a way or another since this law's enactment date shall return to their prior endowment status and the issued ownership deeds are invalidated and rendered devoid of credibility.

law of the urban land and also the other regulations related to the unowned lands and invalidation of their documents and deeds.

### ✓ **Invalidation of the Contradictory Deeds by the Notary Office**

When the owner of the contradictory ownership deed takes no measures within the legal two-month respite since the legal announcement by the notary office for referring to the court and presenting it with a lawsuit and the opposite party receives a writ from a court indicating the non-presentation of the related documents after the termination of the foresaid respite and delivers it to the notary office, the latter takes actions in line with the invalidation of the contradictory ownership deed in person and without any need for the issuance of an order from the court.

### ✓ **Invalidation of the Deed by the Supervision Committee**

According to article 25 of the registration law, if a mistake occurs in the ownership document and other deeds as a result of the writer's carelessness and default and if the entity registered in the notary public office's journals is found contradictory and at odd with the court's final sentence, and if mistakes occur in the course of the preliminary operations and entered into the journal of the properties' ownership and if mistakes are made in the separation operations and inserted into the journals of the properties held in the notary public offices or the instruments and landed properties' registration offices, the correction or invalidation of the ownership deed is within the jurisdiction of the supervision committee for all of the abovementioned cases.

### • **Invalidation of the Ownership with the Verdict of a Qualified Court**

In cases that a property is found registered against the rules and regulations and an ownership deed is mistakenly issued for it that causes the wastage of the individuals' rights, the plaintiff can file a lawsuit for the invalidation of the formal ownership deed through referring to the offices for the electronic judicial services to invalidate the ownership deed with the sentence of a court in line with the preservation of rights and protection of the individuals' fixed and sure rights and prevention of the circulation of the contradictory ownership deeds.

### ✓ **Invalidation of the Ownership Deeds for Properties Registered Against the Legal Principles**

If a property is found registered against the article 22 of the registration law and the required legal registration principles are found not being observed therein, every interested party can refer to a qualified legal court through filing a lawsuit and demand the ownership deed and registration's invalidation. Of course, it has to be noted that the article 22 of the registration law includes the properties registered in adherence to the law in the notary

public offices and their deeds have been accurately conveyed in terms of the legal provisions<sup>[3]</sup>.

### ✓ **Invalidation of the Contradictory Ownership Deeds**

As for the issuance of the contradictory ownership deeds, the owner should file a lawsuit in a general and qualified court and demand the invalidation of the deed which is against the law within a two-month respite since the announcement by the registration office's declaration.

Of course, it is noteworthy that the contradiction in the ownership deeds is either general (contradiction in the whole or the exactly specified property) or partial (contradiction in the limits or the attached rights)<sup>[4]</sup>.

### ✓ **Invalidation of the Ownership Deeds based on the Documents Indicating its Disruption of the Others' Rights**

In case that the ownership deed is obtained as a result of mistake in the preliminary and registration operations and the supervision committee finds it as a disruptor of the others' rights, it warns the interested party that s/he can refer to the qualified court and present it with its warning letter so as to persuade the court to hear the claim and issue a sentence for its correction.

Moreover, the claims can be laid on the foundation of the forged nature of the documents and deeds the forgery of which has been proved in the courts such as based on the precedence or antecedence of the dates on the transaction documents according to article 147 of the amended registration law, especially in regard of the documents and deeds issued on 21<sup>st</sup> of March, 1991, and, in case of the justification of the document or deeds' forged nature, the forging party would have no right since s/he has acquired the ownership by a criminal action against the law (forgery and use of the forged deed) hence the criminal action can be criminally and punitively sued and measures can be taken for the invalidation of the deed considering the effect of the criminal action on the legal affairs<sup>[5]</sup>.

### ✓ **Invalidation of the Ownership Deeds in Line with the Enforcement of Article 12 of the Urban Land Law**

If the individuals' ownership right is wasted as a result of a sentence issued by the commission of article 12's urban land subjects law, passed in 1987, the legislator has given them the right to object to the sentence by the commission of the article 12's urban land subjects' law within the legal respites and acquire decisive sentences from the courts to revoke or invalidate the commission's sentence and take measures in line with filing a lawsuit in the qualified courts for the invalidation of the ownership deed issued to the name of the government.

Of course, as cited in the monthly journal of Judgment, most of the judges believe that the mere sentence by a court indicating

the invalidation of the sentence issued by the commission of article 12's urban land subjects law does not designate the ownership approval of the defendant rather there is a need for filing a second lawsuit for the invalidation of the deed issued to the name of the government.

## Conclusion and Suggestion

In conclusion and for presenting suggestions according to the abovementioned topics, it has to be stated that the thing that should be taken into account in the first place in regard of the claims for the invalidation of the ownership documents is the pillars of filing lawsuits for invalidation of the documents the most important of which is the existence of document and discovery of the causes of the documents and deeds' invalidation whether stemmed from the source of the deeds' issuance or in terms of benefiting from the deeds' subject or even concerning the non-observance of the formalities of the deeds' arrangement and issuance; in the second place and after the discovery of the causes, the observance of the formalities for the filing of a deed invalidation lawsuit in the judicial and quasi-judicial authorities according to the specifically related legal principles should be sought.

In simple terms, it can be perceived from the sum of the aforementioned explanations in the article's text that the non-actualization of the conditions of sale and purchase contract based on article 190 of the civil law is amongst the most common reasons for the non-credibility of the properties' deeds hence their invalidation such as the seller's non-possession of the property, forging of the ownership deed, one transacting party's lack of legal capacity and absence of the buyer or the seller's signature in the deeds that causes flaws to the originality of them and revocation or dissolution of the property transaction as another cause of the deed invalidation. Furthermore, if a deed is found having been issued in the course of an executive operation which is per se found accomplished imperfectly, the issued document would be also invalid.

If the sentence issued by the committee on the subjects of article 147 in the registration law is invalidated, the deed conveyed under its rule would be also invalidated. There are other reasons that cause the invalidation of the properties' deeds such as mismatch of the deed with the registration regulations, issuance of the contradictory ownership deeds, existence of mistake in the ownership deed, registration of the endowed properties and registration of the lands belonging to the deceased persons by the profit-seeking individuals.

Of course, it has to be noted that the demander of the property deed's invalidation should pay attention to some conditions including the followings:

1. The claimant should announce all the perfect specifications of the deed, including the ownership deed or so forth in his or her plea in an exact manner; this includes the personal information of the current owner of the formal deed and that of the new owner, property's specifications as stated in the

ownership deed, number of the registered file, method of the prior ownership deed's invalidation and the number and date of the invalidation's document.

2. If the formal deed is found having also previously been invalidated, it has to be annexed to the registered file. The claimant's plea, as well, should be sent following the accomplishment of the formalities in the form of a circular to the notary public offices so that the initial deed's invalidation takes place.
3. In the circular of the formal deed's invalidation, the complete specifications of the property, the owner, the date of the document indicating the deed's invalidation, the deed number, the signature of the corresponding official and so forth should be written.
4. The plaintiff should pay the sums specified by the court and one of these sums is paying for the price of the property's formal deed notebook.
5. The claimant should present the court with the certified duplicate of his or her all identification documents for verification of his or her identity and, since the verification of the identity of the applicant of the ownership deed invalidation is one of the primary stages for the deed invalidation, the investigation and matching of these documents is carried out by the corresponding expert.

After all these stages were taken, the court keeps the property's deed invalidation file in its archive and hands a receipt to the applicant.

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