

The Partners in the Property Acted by Removing the Common in the Jordanian Real Estate Property Law

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Abstract

In the Hashemite Kingdom of Jordan, real estate liquidation proceedings were carried out by the Land Survey Department through a committee called the Real Property Liquidation Committee, Which at that time had the specific jurisdiction of the judges of the new law court, Law No. 13 of 2019" on real estate " grants rights to partners.

Keywords: Real Estate Ownership, Removal of the Common, The Disposal of the Property, The Property Owned on the Common.

تصرف الشركاء في العقار بإزالة الشيوع في قانون الأملاك العقاري الأردني

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الملخص:

وفي المملكة الأردنية الهاشمية، تمت عملية تصفية المجتمع العقاري من قبل هيئة مساحة الأراضي ولجنة تسمى لجنة التصفية التقديرية للعقارات، والتي كان لها آنذاك الاختصاص النوعي للقضاء محكمة القانون الجديد قانون رقم ١٣ لسنة ٢٠١٩ "في شأن العقارات" يمنح الحقوق للشركاء.
الكلمات المفتاحية: ملكية العقارات، وإزالة المشتركة، والتصرف في الممتلكات، والممتلكات المملوكة على العامة.

Introduction

Every country, Jordan is no exception, must have a strong real estate market to support economic growth. However, the Jordanian real estate law governing these partnerships, like any other legal system, has undergone many revisions, bringing ambiguities and complexities that affect the behavior of partners in real estate transactions. Understanding the impact of legal changes on real estate partnerships can help you build a stronger legal system.

The importance of studying:

Investigating how real estate partners react when their common interests under Jordanian real estate law are violated is important for several reasons. First, it provides insight into the dynamics of joint ownership and asset management in Jordan and highlights both possibilities. The findings can be directly applied to policy makers and legal professionals in Jordan to help develop beneficial real estate laws and regulations that meet the needs and interests of co-owners.

The problem of the study:

After eliminating the concept of "common property", it is to study the actions of the partners in real estate transactions according to the law of Jordan. Others analyze their own rights, rights and responsibilities, which affect the relationship, options and general behavior of the Jordan owner and, in general, affect the effects of the real estate sector, transparency and stability. The impact and possible obstacles are due to the general public sector.

The Study methodology

The study draws on experience from other laws and relies on a descriptive comparative analysis approach to reveal the legal constraints arising from the actions of partners who control more than three-quarters of the total ownership package in real estate.

The Search Plan:

The First Topic: Procedures for Canceling the Right of Joint Ownership of Real Estate:

- first requirement: committees to remove communism and their formation
- Second requirement: Submit an application to the Director of Land Registry and pay the fees
- Third requirement: Appearance before a committee
- Fourth requirement: Procedures followed before the Committee for the Elimination of Communism
- Fifth requirement: Exceptions to the partner's right to request division

The Second Topic: Guarantees before the Committee for the Elimination of Communism

- first requirement: communism
- second requirement: The membership of the Committee for the Elimination of Communism is not valid
- third requirement: the response of the members of the Committee for the Elimination of Communism
- Fourth requirement: The principle of confrontation between opponents
- fifth requirement: two-level litigation

Third Topic: Judicial oversight of the decisions of the Decommunization Committee

- first requirement: Appealing the decisions issued by the decommunism committees
- second requirement: the mechanism for submitting an appeal
- third requirement: a claim for compensation for forced enforcement

The First Topic

Procedures for Canceling the Right of Joint Ownership of Real Estate

A proceeding to remove the joint location of real estate is a legal proceeding between different people who own part of the same property. This involves dividing the community property and releasing it into various individual properties according to each person's share. Therefore, each owner is free to use his property without restriction. If all partners agree to divide the property and share ownership, the process is agreed upon and is conducted according to the agreement on division, division and jurisdiction. However, if there is a dispute between the members and the member is a minor or absent, a lawsuit must be filed to complete the resolution of the dispute, such as determining the value of the property and dividing it according to each member's share. For the legal team. Community property disposal is a legal and equitable solution that improves property use, relieves financial pressures on property owners, and facilitates property management. Jordan Real Estate Law no. 1 of 2018 Law no. 1 of 2018 Law no. 13 of 2019 regarding the termination of common rights between partners. The law aims at faster and more efficient resolution of common financial disputes between partners. An expert committee has been set up to eradicate rumors and establish the necessary procedures and measures to protect rumors in accordance with the law. In addition, the decision of the Foreign Affairs Dialogue Commission was reviewed in court and challenged in the trial court. The law represents a strong modernization of Jordanian law to manage disputes between partners and ensure lasting and effective solutions. This confirms the desire of the Jordanian government to organize domestic affairs and simplify complex legislative procedures.¹

***Among the procedures for a lawsuit to remove communism:**

- The court appoints an expert for the valuation of the community property and the division of its shares
- Inspection of public places. Either land or real estate
- Fundraising with minimal procedures
- If division is not possible, the judge will follow the appeal process and then vote
- Judges and experts take into account the fact that the rules of alienation of common property, especially real estate, and the authority to dispose of common property should be consistent with the construction management system.

First Requirement

Committees to Remove Communism and Their Formation

The 13th act of "real estate" 2019 "The funds allocated on 13 2019 were divided in the approval of all partners or approved by the specific construction committee²

- In particular, the committee was established by the Real Estate Registration Department of Hashite Kingdom, which was appointed legislative department appointed by two members (lawyers and prosecutors)
- The real estate law will provide the Commission a request for common real estate supply if all partners are not agreed in accordance with Article 96 "Real estate legislation". There is a record.

Second Requirement

Submit an Application to the Director of Land Registry and Pay the Fees

Three quarters of the real estate pack has the right to request a modification of the community of registration officers if another partner knows the request. Real estate should benefit within 30 days from the date of submission of the court within 30 days. If the rest of the partners are notified, the rest of the partners will

continue to agree with the registration agency if they agree. If the notification is not responded within 15 days from the date of notification, the requirements must be met at the request to consider the application form to take into account the application of the group's liquidation with the text of the article. Article 103-33 of the group.

• **The conditions that must be taken into account by the application commission for the exclusion of common objects from the Real Estate Law are the following:**

1. It is impossible for all members to agree on the distribution of union assets. If there is a legitimate reason for dividing the property to terminate the joint use case, the interest agreement must be fulfilled and the claim is based on existing or express personal rights

2. The application submitted at the time of registration must be accompanied by the required fee

3. In accordance with Article 2014/E of the "Real Estate Law", one of the partners must submit a free application in person or through a lawyer. The Allocation Committee will decide whether to proceed after consulting the Registered Manager.

4. After the expiration of the co-ownership period, the remaining partners can use the mobile phones, e-mails and electronic accounts of the requested participants and their authorized representatives, this notification in accordance with the provisions of Law no. 146 of 2019. And paragraph (4) of these rules.³

**Third Requirement
Appearance before a Committee**

The Municipal Council takes into account all parties and requires the date of participation, and the hearing starts with requests for requests. The party before the research process begins. The application form is officially obtained, but there is no request, and the committee must register in his own report and

decide to eliminate the request. If some parties do not participate, the Commission has the right to participate in the participation of the Communication Committee in accordance with Article 9 of the Charter.⁴

***There are two types of applications for liquidation of community property by decree.**

1. It is understood that if the applicant owns more than three-fourths of the shares, the remaining shares cannot be divided individually or jointly.
2. If an application is submitted by an owner holding less than three-quarters of the shares, the application will be forwarded to the remaining members. If you agree to the request, the decision will be implemented so that you either refuse or refuse to express your opinion. In this case, the request is sent to the non-communist committee responsible for the sale of the property.

Fourth Requirement

Procedures Followed Before The Committee For The Elimination Of Communism:

The property must be divided so that the members can dispose of it through the property, and after the verification of the information and records of the property, the ownership process between the property and the association begins immediately.

- If some parts of the property are not distributed to the partners, if they are not distributed and distributed together with other social parts.
- In the process of distribution of shares, the share is divided due to the separate loss of profit and the transfer of ownership rights jointly with the partners. If all shares are indivisible, the common property shall be divided in accordance with the provisions of this article. 97-A of this law⁵

Fifth Requirement

Exceptions to the Partner's Right to Request Division

At the first reading of the Real Estate Law (100/B) we see that the right of the partners to request separation is limited because it states that all partners must stay if they agree within a certain period of time. It is usually only valid for five years at this stage and the renewal period does not expire, provided that the predetermined period of five years is not exceeded.

The Second Topic

Guarantees before the Committee for the Elimination of Communism

Addressing hidden vulnerabilities can be complex and situational. Local laws and regulations may vary in how these situations are handled. Landlords, housing associations and local authorities should be aware of the potential for indirect enforcement and take steps to prevent misunderstandings, disputes or unexpected changes in ownership over time.⁶

• The Committee for the Elimination of Communism has several guarantees:

1. Changing the pattern of use: If the owner or user of a public property gradually changes the pattern of use, this may, in fact, violate public property rights. For example, a shared garden may be used regularly by some owners but not by others. Community space can shrink over time.
2. Closure or Exclusion: Implied exclusion of common property rights when some owners begin to close off common areas or use common areas for their exclusive benefit, effectively preventing others from entering or using those areas. Over time, these areas may appear as the private property of the person managing them.
3. Non-recognition: If the owner or related party no longer recognizes the area as public property, this may result in the loss of public property status. This lack of awareness may be due to ownership changes, lack of communication, or community development dynamics.
4. Legal principles of opt-out: Some legal systems may use the concept of "opt-out". If communal property is left unused or neglected for a long time without opposition, ownership or ownership may change, and this legal principle may lead to anti-communism.

First Requirement Communism

- Right of defense: Respect the right of defense is important because it is one of the fundamental principles governing civil, criminal, administrative and disciplinary procedures and a key guarantee of access to justice to ensure everyone's freedom to defend their rights. You have the right to obtain the assistance of a lawyer to prove your case or refute the other party's allegations in a court of law or other similar body and to subpoena evidence, investigations and all documents.⁷

Second Requirement

The Membership of the Committee for the Elimination of Communism Is Not Valid

The Jordanian legislature addressed grounds for disqualification of the Community Removal Committee by drafting Article 19, which limits the powers of committee members if the investigation is obstructed. And relatives up to level 4. This wisdom is clear and means that no committee chairman, member, secretary or expert he appoints should be influenced by his wife's personal interests when considering a claim against him. Nomination of relatives by blood or marriage within the fourth degree of consanguinity.⁸

Third Requirement

The Response of the Members of the Committee for the Elimination of Communism

It should be noted that the text of Charter no. 145 (18) of 2019 on the dissolution of local public administration real estate committees grants all parties demanding the abolition of communism the right to request a response to the President's request. For commission. If the request is made to a director, committee or one of its members, it must include reasonable

grounds for the response. The supervisory authority is convinced of the importance and validity of the reasons.⁹

Fourth Requirement

The Principle of Confrontation between Opponents

The Litigation Commission aims to apply the law as it is in the legal system, taking into account the basic guarantees of judicial proceedings, the most important of which is the principle of adversarial hostility, which determines the existence of all proceedings. The trial is conducted with the participation of both parties, with each party having the opportunity to present its own defense and documents and to discuss the other party's defense and documents. Opposing parties cannot reach an agreement that violates the principles of confrontation and compliance with the law. National defense is a matter of public policy.

Fifth Requirement

Two-Level Litigation

This principle is important through the content of the "Real Estate Code", especially through the content of the article (114/A) which refers to the "Decision of the Social Compensation Committee on Cancellation Requests". The association may file an objection within 30 days from the date of receipt of the notice, if possible within 30 days from the date of receipt of the notice. As an attachment. Article 2 of the same law defines the court as "the court of first instance where a person is found guilty in relation to immovable property"¹⁰

Third Topic

Judicial Oversight of the Decisions of the Decommunization Committee

Many legal systems, particularly administrative or regulatory agencies, have mechanisms to ensure that the decisions of these committees are subject to judicial review. An overview of how this process works:

*Administrative decision-making: Committees, such as the Decommissioning Committee, often have decision-making authority in their specific areas of responsibility. These decisions may relate to closures, environmental regulations or similar issues.

*Review and Appeal: Any person or entity affected by a board decision has the right to review or appeal that decision. This involves submitting a decision to a court to determine whether the Commission's decision was legal, reasonable and fair.

*Litigation: The injured person initiates legal action by filing a complaint or petition with the competent court. The court then evaluates the board's decision and the parties' requests.

*Forensic investigation: During the investigation, the court checks whether the decisions of the competent authorities comply with existing laws, regulations and administrative procedures. The court evaluates the reasonableness and legality of the decision based on the evidence.

*Remedy: If the court finds that the committee's decision is defective or illegal, it can set aside or set aside the decision. Depending on your legal system, a panel may order a review of the case or take other appropriate action.

* Finality of Court Decision: Once the court issues a review decision, it is generally final and the board's decision can be overturned or upheld depending on the court's decision.

First Requirement

Appealing the Decisions Issued By the Decommunism Committees

The Jordanian legislature established a new mechanism for challenging the decisions of the Expulsion Commission to the Court of First Instance. People may have important questions. That is, did the legislature intend the trial courts to have jurisdiction over their own cases, or did they intend the trial courts to have appellate jurisdiction? Here, since the legislature never said that jurisdiction rests with the trial court, which is the appellate court, jurisdiction rests with the trial court, which is the entity that can hear the appeal. Regarding the decision of the Non-Communist Committee.¹¹

Second Requirement

The Mechanism for Submitting an Appeal

First, it is important to distinguish between objections raised during the Commission's indirect assessment process and appeals against Commission decisions. Article 10 of the Community Removal Committee states: “(Any party may object in writing to any document or statement contained in the application and any documents necessary to oppose it, and the Commission may request an explanation from any party) regarding their application.”¹²

The Third Requirement

A Claim for Compensation for Forced Enforcement

In practice, a temporary restraining order is a form of civil liability, and the amount of damages is usually expressed in dollars. Interestingly, Jordan's House of Representatives has requested that a lawsuit be filed in a competent court to seek compensation for the partners' actions. The value of the property if the application for sale and partition is legally approved. If you look at the text of the law, you will see that the legislator chose

two examples for this. Article 96/A of the "Real Estate Law" of the National Assembly provides that "if all members do not agree to the sale of the common property, they may dispose of it by submitting an application for the transfer of real estate to the Registrar". Fair representation of real estate. "The Abolition Committee." "Property may be suspended."¹³

***Some of the jurisprudence of the Jordanian Hashemite Court of Cassation regarding eliminating commonality in real estate property law:**

- The decision of the Court of Cassation of Jordan of June 10, 2021 no. (4326/2021). The decision refers to the list of applications submitted by the applicant (46/2021) and states that the form has been reopened. We oppose the recent decision of the Decommunist Land Registry Committee. Request no. Tafila (September 2020) from February 22, 2021 is Sinfa no. 160, 15 to acquire land measuring (5630) square meters in the village of Alma basin. It corresponds to the reasons listed in the list of objections under Article 114 of the Real Estate Law. At the same time, in accordance with article 4/B letter b) from Law no. 17 of 2001 "On the Establishment of State Courts" and its amendments, trial courts and appellate courts are: Is under jurisdiction. It is limited to not conferring jurisdiction. However, even if jurisdiction is granted, there is someone who can handle all human rights and criminal cases on your behalf. Decisions of the executive head can be appealed to the court under the Administrative Code, while there are decisions from other laws that must be appealed to the substantive court.

- From Article (114) of the Real Property Law before the court, what is meant by the phrase "the court" mentioned in Article (104) of the Real Property Law that is competent to hear the appeal and in terms of Article (2) of the Law is the same court of

first instance in which the plot of land that is the subject of the appeal is located within the area of its spatial jurisdiction and in its capacity Primitive and by applying the above to the similar area, and since plot No. (160) Basin (15) is part of the lands of the village of Sanfha Al-Tafila, the subject of an appeal, it falls within the spatial jurisdiction of the Tafila Court of First Instance, so it is the court competent to consider the appeal against the final decision issued by the Community Management Committee and not a court. The beginning of Tafila as an appeal.

Conclusion

At the end of this article, I would like to mention the Jordan Real Estate Law no. 1 of 2008. Law no. 13 of 2019 is an important development in the field of community extraction, but the Jordanian parliament hopes to add a deadline to the commission for the preparation of the text to ensure that the previous commission submission deadlines are not missed. When you decide to file for annulment or partition, you must ensure that it is consistent with the intent of the law to prevent renewal.

Results:

Some of the findings in this article include:

- 1- The Legislature's position on the distribution of public property is consistent with the Legislature's policy that the majority can control all property and that property cannot be divided individually or collectively.
- 2- It inherited a number of Western and irrational legal distortions, such as the requirement that the legislature unanimously dispose of the entire property, taking into account in part the rules governing the sale of associates who hold three-quarters of the rights. In other words, it's an interest in the real estate you own.
- 3- The Legislature overstepped the bounds of legal doctrine by expanding the scope of contracts entered into by members holding three-fourths of the shares and allowing the enforcement of such contracts by a small number of nonparticipants.

Recommendation:

Based on this article, here are some suggestions:

- 1- Understanding Jordanian real estate law is essential for real estate partners to act in accordance with their rights and obligations.
- 2- Prepare a written partnership agreement: It is a good idea to prepare a complete written partnership agreement that outlines the rights and responsibilities of each partner in the property, as well as possible terms of dissolution.
- 3- Collaboration and Transparency: Partners must work together, stay in touch and be transparent when making real estate and financial decisions.
- 4- Obtain legal advice: To ensure compliance with local laws, Partners are advised to seek legal advice from a legal expert specializing in Jordanian real estate law before engaging in any dealings with government authorities.
- 5- Amicable Resolution: If your partners disagree, try to reach an amicable resolution before filing a lawsuit to protect your relationship and save legal costs.

Footnotes

¹ Muhammad Abdullah, Explanation of the Code of Civil Procedure, 1997, Department of Publications and Publishing, Amman, p. 31.

² Ajjad Thamer Nayef, The Legal Basis for Experts to Annul the Civil Case Petition, an analytical, applied, original, comparative study, 1st edition, 2018, Al-Arabi Center for Publishing and Distribution, Cairo, p. 37

³ Real Property Law, No. (13) of 2019, published in the Official Gazette, No. (5573), dated 5/16/2019

⁴ Muhammad Bashir Muhammad, and Mr. Hassan Ahmed Al-Thaniyat, Legal Regulation for the Elimination of Commons in Real Estate According to the Jordanian Real Estate Property Law, PhD thesis, Mu'tah University 2021, p. 89, p. 90

⁵ Ghazwan Mahmoud, Managing Common Immovable Property, Zahran Publishing and Distribution House, 2017, pp. 46-48

⁶ Ahmed Fathi 1988, The Mediator in Criminal Procedures, 2nd edition, Dar Al-Nahda Al-Arabiya, Cairo, p. 516.

⁷ Salah al-Din, 2002, Al-Wafi in explaining the Code of Civil Procedure, 2nd edition, Dar Al-Minhaj, Amman, p. 137

⁸ Saeed Mubarak, Summary of the Provisions of the Jordanian Civil Law, Real Rights, without publishing house, 1st edition, 1996.

⁹ Jordanian Civil Law, No. (439) of 1976, published in the Official Gazette, Issue (2645), dated 8/1/1976, with its explanatory notes, prepared by the Technical Office of the Bar Association (Amman), 2000.

¹⁰ Osama Jaber Muhammad and Ibrahim Saleh Abdel Sarayrah, Legal Regulation to Eliminate Communism in Jordanian Real Estate Property Law, doctoral dissertation, University of Islamic Sciences, Amman 2022, p. 56

¹¹ Ramadan Abu Saud, Al-Wajeez fi al-in-i'l-i'l, rulings on original property rights and their sources, University Press House, Alexandria, without edition number, 1997..

¹² Zuhdi Yakan, a detailed explanation of the law of real property and immovable real rights, Part 1, Baduz Publishing House, 3rd edition

¹³ ¹³ Ibrahim Al-Desouki, Original Real Rights, Part 1, Provisions of Property Rights, Kuwait University Publications, 10th edition, 1990.

Reference

- I. Ahmed Fathi 1988, The Mediator in Criminal Procedures, 2nd edition, Dar Al-Nahda Al-Arabiya, Cairo, p. 516.
- II. Ajjad Thamer Nayef, The Legal Basis for Experts to Annul the Civil Case Petition, an analytical, applied, original, comparative study, 1st edition, 2018, Al-Arabi Center for Publishing and Distribution, Cairo, p. 37
- III. Ghazwan Mahmoud, Managing Common Immovable Property, Zahran Publishing and Distribution House, 2017, pp. 46-48.
- IV. Ibrahim Al-Desouki, Original Real Rights, Part 1, Provisions of Property Rights, Kuwait University Publications, 10th edition, 1990.
- V. Jordanian Civil Law, No. (439) of 1976, published in the Official Gazette, Issue (2645), dated 8/1/1976, with its explanatory notes, prepared by the Technical Office of the Bar Association (Amman), 2000.
- VI. Muhammad Abdullah, Explanation of the Code of Civil Procedure, 1997, Department of Publications and Publishing, Amman, p. 31.
- VII. Muhammad Bashir Muhammad, and Mr. Hassan Ahmed Al-Thaniyat, Legal Regulation for the Elimination of Commons in Real Estate According to the Jordanian Real Estate Property Law, PhD thesis, Mu'tah University 2021, p. 89, p. 90
- VIII. Osama Jaber Muhammad and Ibrahim Saleh Abdel Sarayrah, Legal Regulation to Eliminate Communism in Jordanian Real Estate Property Law, doctoral dissertation, University of Islamic Sciences, Amman 2022, p. 56
- IX. Ramadan Abu Saud, Al-Wajeez fi al-in-i'l-i'l, rulings on original property rights and their sources, University Press House, Alexandria, without edition number, 1997..
- X. Real Property Law, No. (13) of 2019, published in the Official Gazette, No. (5573), dated 5/16/2019
- XI. Saeed Mubarak, Summary of the Provisions of the Jordanian Civil Law, Real Rights, without publishing house, 1st edition, 1996.
- XII. Salah al-Din, 2002, Al-Wafi in explaining the Code of Civil Procedure, 2nd edition, Dar Al-Minhaj, Amman, p. 137
- XIII. Zuhdi Yakan, a detailed explanation of the law of real property and immovable real rights, Part 1, Baduz Publishing House, 3rd edition.