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Procedures for Implementing Real Estate Seizure in Algerian Legislation: Preliminary Stage Prior to Sale of Property

Abstract

This study examines real estate seizure as a means of compulsory enforcement that allows creditors to subject a debtor's immovable property, or property encumbered by subordinate rights, to judicial sale and satisfy their claims from the auction proceeds. It argues that the Algerian legislator has deliberately maintained a highly formal approach to real estate procedures, particularly by imposing a set of mandatory preliminary steps prior to sale, strictly regulated by the Civil and Administrative Procedure Code. The article focuses on the drafting, filing, and notification of the list of sale conditions as the core preparatory mechanism structuring the transition from seizure to public auction. It also analyses the ancillary claim of ownership as the principal instrument for resolving incidental disputes that may arise during enforcement, and assesses how this mechanism balances effective debt recovery with the protection of debtor and third-party property rights. The research adopts a doctrinal legal methodology.

Keywords: Real estate seizure, Compulsory enforcement, Algerian Civil and Administrative Procedure Code, List of sale conditions, Ancillary claim of ownership.

Cezayir Mevzuatında Taşınmaz Haczi Uygulama Prosedürleri: Satış Öncesi Hazırlık Aşaması

Öz

Bu çalışma, taşınmaz haczinin, alacaklıya borçlunun taşınmaz mallarını veya üzerinde tali hak bulunan malları adli satışa konu ederek alacağını satış bedelinden tahsil etme imkânı sağlayan zorla icra yöntemi olarak incelenmesini amaçlamaktadır. Araştırma, Cezayir kanun koyucusunun taşınmaz işlemlerine özgü yüksek düzeyde biçimsellik ilkesini koruduğunu; özellikle satıştan önce uygulanması zorunlu bir dizi hazırlık aşamasını, Medeni ve İdari Usul Kanunu hükümleri ile katı biçimde düzenlediğini ortaya koymaktadır. Makale, hacizden satış aşamasına geçişi belirleyen temel hazırlık işlemi olarak satış şartları listesi'nin düzenlenmesi, tevdi edilmesi ve tebliği süreçlerine odaklanmaktadır. Ayrıca, yargılama sürecinde ortaya çıkabilecek tali uyumsuzlukları çözmeye temel hukuki araç olan istihkak davasını analiz ederek, söz konusu mekanizmanın borcun etkin tahsili ile

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borçlu ve üçüncü kişi mülkiyet haklarının korunması arasında nasıl denge kurduğunu değerlendirmektedir. Araştırma doktrinal nitelikte bir hukuk metodolojisi benimsemektedir.

Anahtar Kelimeler: *Taşınmaz haczi, Zorla icra, Cezayir Medeni ve İdari Usul Kanunu, Satış şartları listesi, İstihkak davası.*

Introduction

Real estate occupies a central place in both economic and social life, combining material and moral value in all legal systems. It represents a key factor of stability and continuity, and thus naturally drives individuals to seek its acquisition and preservation. Algeria is among the states that have accorded particular importance to real property, progressively expanding and structuring its real estate regime through a series of legislative texts adopted over specific historical stages. As a general legal principle, the birth of an obligation is followed by its performance, and the debtor is only discharged once execution has effectively taken place. This is commonly expressed through the rule of performing obligations in good faith. However, when a debtor refuses or fails to perform voluntarily, the creditor must resort to compulsory execution under the supervision and control of the judiciary. Enforcement is directed against the debtor's assets, including real estate, and the role of the courts therefore extends beyond the mere issuance of judgments to ensuring their actual implementation so that creditors may effectively vindicate their rights. Among the mechanisms of compulsory execution, real estate seizure occupies a particularly sensitive and technically complex position. Its procedures involve several actors—the creditor, the debtor, judicial officers, and sometimes third parties whose interests may be affected. The Algerian legislator treats enforcement on immovable property as an exceptional measure, subject to a dense framework of substantive and procedural conditions laid down in the Code of Civil and Administrative Procedure.

The enforcement of a real estate seizure unfolds through successive stages. This study focuses specifically on the preliminary phase leading to the sale of the property, governed by special rules within the Code. Although the legislator has accepted this exceptional enforcement mechanism as a means of safeguarding creditors' rights, it has simultaneously introduced a set of procedural and substantive safeguards in favor of any person who holds a right or a legitimate interest, notably through the ancillary claim of ownership.

The importance of the present study is both practical and theoretical. From a practical perspective, real estate seizure is one of the most powerful instruments available to a creditor for the satisfaction of monetary claims. A precise understanding of its preparatory procedures is therefore essential for practitioners—judges, lawyers, and bailiffs—to conduct enforcement in conformity with the law and to avoid nullities that may jeopardize the entire process. From a theoretical and protective standpoint, the study highlights the guarantees built into the system

of enforcement. By requiring strict compliance with formal requirements and providing avenues for contestation, the Algerian legislator has acknowledged the particular gravity of depriving an individual of their immovable property against their will. In this context, the ancillary ownership claim functions as a key substantive safeguard, offering debtors and third parties a juridical tool to challenge violations of their rights and to ensure that the pursuit of the creditor's interests does not culminate in unjust dispossession.

In terms of the conceptual and doctrinal framework, this study is situated within the broader scholarship on Algerian enforcement law, which generally emphasizes the principles of compulsory execution and identifies real estate seizure as an exceptional yet essential remedy. Prior legal literature has tended to examine enforcement in its entirety, describing the chronological steps from the initial judgment to final satisfaction of the claim, but has rarely isolated and examined in depth the preparatory phase immediately preceding public auction. The present study seeks to contribute to this body of work by concentrating on the procedures “preliminary to selling the property,” including, in particular, the drafting and filing of the conditions of sale. It also engages with the treatment of enforcement disputes through the ancillary ownership claim, conceived as a mechanism specifically designed to address the subsidiary disputes that emerge during enforcement and to reconcile procedural efficiency with substantive justice.

Based on a close reading of the Algerian Code of Civil and Administrative Procedure, the study proceeds from the following central hypothesis: the effectiveness and legal legitimacy of real estate seizure in Algeria depend on meticulous compliance with a series of mandatory preliminary procedures. These steps—such as formal notification, the preparation of the conditions of sale, and the management of objections—are not merely administrative formalities, but core legal safeguards. The ancillary claim of ownership, in turn, is posited as the primary judicial vehicle for resolving substantive disputes arising during this stage, ensuring that the powerful instrument of forced sale is not misused and that the rights of all parties involved are adequately protected.

Methodologically, the research adopts a doctrinal legal approach. It undertakes a detailed, provision-by-provision analysis of the articles of the Civil and Administrative Procedure Code that govern real estate seizure and the preparatory procedures leading to public auction. This textual exegesis is complemented by a systematic interpretation that situates individual provisions within the broader structure of the Code, clarifying the functional relationship between the various stages of enforcement. Finally, the study conducts a conceptual analysis of key legal notions—such as “real estate seizure,” “preliminary procedures,” “public auction,”

and “ancillary ownership claim”—in order to construct a coherent theoretical framework that accurately reflects the Algerian legislator’s design in the field of enforcement on immovable property.

Procedures for Initiating the Sale

It should be noted from the outset that before reaching the stage of selling the seized property, it must have gone through an initial phase of enforcement litigation by signing the executive seizure on the property or the real right through the registration of the seizure order in the real estate registry, after passing through the preliminary phase represented by carrying out the execution measures and determining the subject of the executive seizure. Then follows the final stage, which consists of selling the property in a public auction and distributing the proceeds to the creditors, thereby enabling the creditor to recover their debt from the sale price of the seized assets.

The sale phase proceeds through several stages, the first of which is the preparatory stage for selling the property and/or the seized real right. This stage refers to the procedures required for preparing the property for sale, mainly based on the obligation to prepare a list that includes the conditions of sale (A), followed by depositing this list and announcing it (B).

Preparing the List of Sale Conditions

The list of sale conditions represents the first procedural step toward selling the seized real estate. It consists of a series of interconnected procedures, where each step depends on the completion of the one preceding it. This list acts as a descriptive record of the property, containing all necessary information related to the asset intended for sale. Accordingly, its conceptual aspect may be examined by defining its meaning, followed by clarifying its legal nature.

Concept of the List of Sale Conditions

Once the property is seized by registering the seizure order at the real estate registry, the preparatory phase for sale begins. In this stage, the legislator requires the creditor to initiate the procedure directly by submitting the list of sale conditions within a specific legal deadline. The list must be accompanied by supporting documents, and the creditor must subsequently announce its establishment (Hikala, 2008).

There are various jurisprudential definitions for the list of sale conditions. One opinion defines it as a document issued by enforcement officers within compulsory execution on real estate rights. It contains a proposed sale that specifies essential data relating to the details of the property and/or the real right subject to sale, in addition to the conditions governing the compulsory sale of the seized property (Khalil, 2006). Another view considers it a legal

document that includes all information necessary for accurately identifying the property intended for auction and determining the conditions on which the public sale is based, enabling stakeholders to submit comments or objections regarding the contents of the list.

Drafting the Sale Conditions List

It is established under Article 737 of the Algerian Code of Civil and Administrative Procedures, which states that if the debtor against whom the seizure order was issued does not fulfill payment within thirty (30) days from the date of official notification of the seizure order, the judicial officer shall draft the list of sale conditions and deposit it with the registry of the court having jurisdiction over the seized property. In the case of multiple seized properties and/or real rights, the list is deposited in the registry of the court where any one of these properties is located.

This time limit begins for the debtor from the date of serving the seizure order. For the possessor or real guarantor, if present, the period begins from the date they receive the warning to pay. The legislator has set a mandatory period that must expire before drafting and depositing the sale conditions list with the competent court registry, established as (30) days from notification of the seizure order (Djaber, 2011). The Algerian legislator has specified the mandatory information that must be included in the sale conditions list, aiming to enable accurate identification of the seized property and clarify the conditions governing its sale at public auction. The list is therefore essential for participants in the auction and for any party interested in ensuring procedural validity, allowing them to submit objections and observations during the objection session (Omar, 2012a).

Returning to legislation, Article 737 states that *“The list of sale conditions must include, in addition to the usual information, the following:”*

*The name, surname, and residence of all registered creditors, the seizing party, the debtor, and others involved.

*The enforceable deed authorizing the seizure and the amount of debt.

*The seizure order, its notification and registration dates, and the date of warning to the possessor or real guarantor, if present.

*A detailed description of the seized property and/or real right, including its location, boundaries, nature, components, surface area, parcel number, designated name if any, whether separately or jointly owned, and any other identifying information. If the property is built, the street, building number, and unit details must be indicated.

French jurisprudence considers the list, prior to objection hearings, as a draft contract benefiting only one party; however, once objections are decided, it becomes a final act binding

the parties (Julien & Taormina, 2000). As for Algerian law, the legislator does not define the list conceptually. Based on jurisprudential interpretation, it can be regarded as a legal document containing data for precise property identification and outlining the terms upon which the auction is based, ensuring clarity and preventing ambiguity.

The Legal Nature of the List of Sale Conditions

The legal nature of the sale conditions list has been subject to doctrinal debate. One view defines it as a list connecting the seller—despite not being the property owner—and the successful bidder, considered the buyer at auction (Wali, 1971). This interpretation is criticized since although both contractual sales and compulsory sales aim to transfer ownership for payment, the nature of each differs: contractual sale is based on mutual consent, whereas auction sale lacks consent and is governed by legally prescribed formalities. Another view states that before the objection session, the list constitutes a unilateral contractual offer, but once objections are ruled upon, it becomes a binding document representing the agreement of auction participants (Omar & Houda, 2003).

The list must also include:

*Identification of the property's occupant, their legal status, and whether it is vacant or occupied.

*Terms of sale, base price, and expenses.

*Division of the property into lots if beneficial, with a base price for each and selling order where relevant; however, economic units or agricultural complexes may not be divided.

*Identification of the court conducting the sale. The president of the competent regional court shall validate the deposit, set an objection session date, and a subsequent sale date. If this information is absent, invalidity may be requested before the objection session; otherwise, the right is forfeited.

Due to the importance of this information, it requires clarification. The executive deed constitutes a core element in any enforcement file and must be duly served to the debtor, enabling them to monitor the legitimacy of procedures taken against them (Julien & Taormina, 2000).

Terms of Sale

This element represents the core component of the list of sale conditions, as it must contain the conditions set by the creditor who initiates the enforcement procedures. These terms form the basis on which the seized property will ultimately be sold. It is common practice that all general conditions which would typically appear in consensual sales—and which may conflict with mandatory rules—must be excluded from the list of sale conditions. The creditor,

through the judicial officer, may add any terms they deem appropriate, provided they do not contravene the law, particularly provisions governing real estate sale through compulsory execution. Consequently, additional expenses are imposed beyond judicial fees (Seliman, 2017).

Statement of the Court Where the Sale Will Take Place

The competent court responsible for conducting the public auction is specified under Article 753 of the Civil and Administrative Procedures Law, which states: *“The sale by public auction shall take place in a public session, presided over by the president of the court or by a judge appointed for this purpose, at the court where the list of sale conditions has been deposited.”* Accordingly, the competent court shall be the court of territorial jurisdiction over the property, or one of the courts where one of the seized properties is located, since the list is deposited in the registry of one of these courts, as stipulated in Article 737.

The president of the territorially competent court signs the minutes confirming the deposit of the list of sale conditions and schedules a session for objections, followed by a session for the public auction, including the date and time for each. If the list lacks this information, it may be annulled upon the request of any interested party before the objection session, otherwise the right is forfeited. If annulment occurs, the list must be reissued at the expense of the judicial officer.

Deposit and Official Notification of the Sale Conditions List

The process of selling the seized property through public auction is subject to strict procedural requirements, the breach of which may invalidate the entire process. The purpose is to protect rights, avoid harm to creditors, and ensure repayment of debts, reinforcing the principle of honoring financial obligations. After drafting the list according to legal requirements, the judicial officer proceeds with notification and execution measures. The law assigns him several duties, including preparing the list and depositing it at the court competent over the seized property—or one of the courts in the case of multiple properties—within thirty (30) days following the date of official notification of the seizure order (Meguellati & Ben Zekri, 2022).

It is insufficient for the judicial officer to draft the list and keep it without deposit; it must be submitted to the court registry where the sale will take place, in accordance with Article 737 for registered property, and Article 770 regarding unregistered property. Under Article 770, interpreted alongside Article 766, seizure of unregistered real estate requires the presence of an administrative decision or customary deed with fixed date validation. The seizure procedures must be accompanied by a copy of the enforceable bond, proof of debt amount, a report proving

insufficient movable assets, and documentation establishing ownership or right over the property.

After completing these procedures, official notification of the list is mandatory. Once the judicial officer drafts the list, attaches supporting documents, and deposits it with the competent court, he is legally required to notify all parties directly related to the seizure within fifteen (15) days following the deposit. This enables them to submit objections, remarks, or nullity claims safeguarding their rights. Notification is carried out through an official document known as the report of notification of the list of sale conditions.

Sub-disputes in the Enforcement on Real Estate

In order to achieve balance between the conflicting interests of the parties involved in enforcement procedures, as well as to protect third parties who may be adversely affected by enforcement for reasons unrelated to the debt, most legal systems have established mechanisms allowing any party with a recognized interest to formally object to enforcement before the sale hearing. One of the most significant effects of this mechanism is that it enables clarification of the property's legal status and removal of procedural obstacles prior to auction. This procedure is referred to as an *Objection to the List of Sale Conditions*, which aims to resolve disputes that may hinder enforcement, ensuring that the seized property is ready for sale (Sawi & Yahi, 2005). In addition to stakeholders directly involved in enforcement, the legislator also protects third parties whose property may be wrongfully seized by granting them the right to file a *subsidiary entitlement claim*, which serves as a legal remedy to protect ownership rights. Accordingly, and based on Articles 716, 772, and 773 of the Code of Civil Procedure, the mechanism must be examined through three elements: definition (A), conditions for initiation (B), and legal effects (C).

The Concept of the Subsidiary Entitlement Claim

The subsidiary entitlement claim is a substantive lawsuit filed by a party other than the debtor, alleging ownership of the property subjected to enforcement and requesting recognition of their ownership and the annulment of enforcement measures (Sakr, 2008). Substantive enforcement disputes arise when one of the parties or a third party requests a substantive ruling regarding enforcement—whether concerning the validity of enforcement, the right to enforce, or the legitimacy of procedures taken. The goal is to obtain a final judicial decision on the matter rather than a temporary protective measure. The dispute may relate to the enforceable document, the right established therein, the property subject to seizure, the procedure itself, or an incidental matter connected to it (Daymi, 2018–2019). The general concept of entitlement claims extends to any claim seeking to prove ownership over a property held by another person,

regardless of whether the asset is movable or immovable (Mohammed, 2000). This leads to the question of legal nature, as doctrine classifies this lawsuit as a substantive enforcement dispute filed after seizure but before completion of sale procedures. It is treated as an independent ownership claim, not subject to the same rules as recovery of movable property (Omra & Hindi, 2003). Filing the lawsuit does not automatically suspend the sale. The claimant must submit a petition to suspend the sale at least three days before the auction session, accompanied by a financial guarantee determined by the court president to cover potential republication costs. This applies where the claimant fails to establish ownership, as stated in Article 772 paragraph 3 of the Code of Civil and Administrative Procedures.

Filing the claim requires the presence of litigating parties, consisting of the plaintiff (the alleged owner) and the defendant. The lawsuit is filed before the competent court of first instance to establish ownership over a seized asset before the sale is finalized, seeking removal of seizure (Abdelkader & Nabil, 2007).

The Defendant in the Subsidiary Entitlement Claim

According to civil doctrine, the plaintiff in such a claim is the individual asserting ownership over property held by another. It is illogical for an owner to seek ownership of property already under their control; the claim arises only where possession has shifted to another (Alsanhoury, 1952–1970). Therefore, the subsidiary entitlement claim is filed solely by a *third party*—meaning a person not involved in execution procedures and unaffected by their outcomes. Parties involved in enforcement cannot file such a claim; instead, they may assert rights through objections to the sale conditions list. The subsidiary claim exists exclusively to protect external ownership rights (Noureddine & Hamidi, 2021).

The Defendant in the Subsidiary Property Entitlement Claim

The defendants in a subsidiary property entitlement claim must include the direct creditor involved in the execution procedures, the debtor, the possessor, or the real guarantor. Since the claimant seeks recognition of ownership, the lawsuit must be directed against the debtor, possessor, or guarantor so that a judgment may be issued against them. It must also be directed toward registered creditors participating in the enforcement, as the claim seeks invalidation of the enforcement procedures (Khalass, 2007).

Conditions for Filing a Subsidiary Entitlement Lawsuit

For a subsidiary entitlement lawsuit to be accepted in matters relating to real estate enforcement, several legal conditions must be satisfied.

***The Lawsuit Must Be Filed by a Third Party**

A third party, in this context, refers to an individual who is not part of the enforcement proceedings. Parties already involved in the execution may raise objections through contesting the list of sale conditions rather than filing entitlement claims. If the person is part of the enforcement procedures, they lack standing to file such a lawsuit.

If a party merely seeks time to prove their right without contesting execution, the motion is not considered a lawsuit. Even if filed during execution and later withdrawn or transferred, it does not convert into a valid entitlement claim but becomes an original ownership claim (Hassanine, 1990, p. 198).

***The Lawsuit Must Be Filed After Seizure Has Begun and Before the Sale**

The Algerian legislator requires that the lawsuit be submitted after the attachment order is issued and the debtor (and those in equivalent status) is notified. If initiated before or after enforcement procedures are complete, it transforms into an ordinary real estate ownership lawsuit rather than a subsidiary entitlement action (Khalass, 2007).

***The Lawsuit Must Be Based on a Claim of Ownership of the Attached Property**

The claim may concern full ownership or a defined share of the attached property. However, ownership cannot be claimed under a suspensive condition—for instance, a buyer holding an unregistered sale contract cannot file entitlement unless ownership has legally transferred through registration. The claimant is not required to prove ownership of the entire property, only of the portion claimed (Shahin, 2005).

Since the lawsuit concerns ownership, the claimant cannot seek recognition of rights other than ownership—such as usufruct or easements. These rights do not prevent execution, and holders may instead object through the list of sale conditions. However, if enforcement targets usufruct alone, the holder may file a subsidiary entitlement claim to protect this right (Badawi, 2007–2008).

***Filing a Request to Annul Enforcement Procedures Relating to the Claimed Property**

Acceptance of the lawsuit requires that the plaintiff explicitly request recognition of ownership and the invalidation of the seizure imposed on the property. In other words, annulment of enforcement must be demanded as a consequence of establishing ownership (Omar, 2012b).

The lawsuit must also comply with general procedural requirements, including territorial and subject-matter jurisdiction as outlined in Articles 13, 22, 23, 24, and 25 of the Algerian Civil and Administrative Procedures Code. This includes legal interest, capacity, properly formulated claims, and lawful notification (Boussanboura, 2010).

The Consequences Resulting from a Subsidiary Entitlement Claim

Once filed in accordance with the above conditions, the claim is deemed valid. The claimant may simultaneously request an urgent suspension of sale procedures until a ruling on entitlement is issued. If the real estate court finds the claim supported by sufficient legal grounds, it may recognize the claimant's ownership and annul enforcement measures. The judgment may either temporarily suspend the sale or allow the sale to continue depending on the finding (Hassanine, 1990).

Conclusion

We conclude that the enforcement of execution on the debtor's real estate is carried out through its seizure, followed by its sale at a public auction by the judiciary. This is among the most important legal measures that ensure the payment of the creditor's rights and the other creditors involved in the seizure. However, at the same time, it is considered an exceptional method and not the norm, as the norm is the voluntary and consensual execution of obligations. The Algerian legislator is aware of the sensitivity of the matter and has not left it without procedural framework that must be met to protect against any abuse by the parties authorized to demand execution. After the seizure is placed on the debtor's real estate to place the properties under the judiciary's control, a new phase of enforcement procedures begins. This is a preparatory and preliminary phase that includes a series of legal procedures. The Algerian legislator has mandated the procedures for the real estate sale, primarily consisting of drafting and depositing the list of sale conditions, and the obligation to notify the concerned parties to enable them to submit objections regarding disputes directly related to these preliminary procedures. In return, these procedures will address what is known as subsidiary disputes in the enforcement on the property. These appear in the subsidiary property entitlement lawsuit, which serves as a guarantee and substantive dispute in the enforcement process. It holds significance in requesting legal protection for the parties involved in the enforcement and third parties who may intervene in the substantive enforcement dispute, seeking legal protection in cases where it is proven that there has been an infringement of their rights.

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Telif ve Lisans Bildirimi

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