

## Legal examination of barriers for credit of official Document in judicial procedure

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**Abstract:** In the first humans communications the origin of ownership was domination and acquire that be done by dependence on domination by passing time and being difficult of social relationship among the man/ the ownership comes in to the other period /in this period, the role of formal document and its importance has been showed, we can say there isn't legal phenomenon in peoples and societies relationship such as formal document and has been accepted by the public so today's life don't progress without formal document. With studying in this research and with the importance of formal document it becomes distinct this part lose its validity .sometimes the main conditions not be considered for document arrangement sometimes the officer for document arrangement hasn't the qualification for it and be fallen of its validity by the legal order for formal documents in this article we examine the importance and validity and the barriers for formal document in judicial courts finally the formal document has this affirmative right and be accordance with judicial courts votes .

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### Introduction

In the past with the importance of ownership right in peoples life and the necessity for approve this right and for detection and re cognize officially the persons mastery on properties as material sample for this right be included in the worthy reasons for proving the ownership right but with the position for force able registered regulations according to 22act of registration rule, after registration of estate the owner is a person that his estate be registered in estate office.

Really the formal document is the reason for ownership and taking in opposition with document be fallen so we can say there is no legal phenomenon except formal document that penetrate among the persons; Because first: the back ground of it exists in religious and national Iran culture, in Islamic a government the persons in court was proof with two witnesses(Jaafari Langroudi, 2010) second: today, it is clear the need of people to formal document from beginning of birth to death because the human beings need this formal document named birth certificate and without it the society doesn't recognize officially. It is necessary to point to the definition of document /its kinds /its validity and barriers.

### 1-definition of document

Document a writer paper that is provable in claim position or defense. The aim of written paper every sign that be showed on a paper; the aim of claim position is an action for registration a violated right or denied right; the aim of deface is (deface for specials). The reason disturb transaction to prove the claimers doesn't have any right and not be acceptable his claim

(Excerpts from Judges Scientific Theses in Legal Affairs, 2010).

### 1-1-The column of document

**Includes:** 1-Be written that in writing of document be considered; 2-The provable of document means that a document be used in defence of a claim or approve the claim.

### 2-1-The parts of document

Every document has two parts: 1-Writing 2-Sign.

For asserting a document must have two parts. The principle for document, every document must have sign al thought about the trader's commercial office and above items in 1302act and 1304civil rules (Excerpts from Judges Scientific Theses in Legal Affairs, 2010).

### 3-1-kinds of document

According to 1386act civil rule /document are divided in to two parts:

#### 1-Formal document

#### 2-In formal document

#### 1-3-1-The definition of formal document:

According to 1287act civil rule, formal document is a document must be adjusted in registration of document office –estate office –notary public or by legal officers according to their authority and regulations and rules. But formal document according to registered rules said to document that be registered in formal notary public according to laws .So in business a house when two persons register their business in notary public. The document that be adjusted by notary public and be given to the Buyer

and Seller is a kind of formal document but not be said to this formal document the ownership document.

### **2-3-1-the definition of informal document:**

According the specification of 1289 act civil, every document except the said document in 1289act civil law be considerable the formal document .The instances for informal document included in: the document be adjusted by formal officers but they haven't authority for its adjustment and be endowment the formal document (Excerpts from Judges Scientific Theses in Legal Affairs, 2010).

### **3-3-1-The definition of ownership document**

There is not definition of ownership in registered law and executive regulations. But with importance of 21act registered rule, it is defined this document: the ownership is a kind of formal document after registration protocol of immovable property and its registration in special office of estate and registrations office that its name is estate office given to the ownership(Jaafari Langeroudi, 2004). So in registered terms the ownership document be said to the booklet that at this time the booklet with different papers and thread in 3kinds of 12papers 16papers and 32papers or only one paper with special hologram punch be published by notary public and be given to the ownership.

### **4-3-1-the difference between formal document and ownership document**

There are many differences between ownership document and formal document

1-the protocol for adjustment and publishing this kind of document is different

2-today the registration of estate in estate office is assign of ending to its progress them its registration not be predicated current estate so be named registered estate. But the registration of document and transferring it in notary public means with regard the current regulation and laws and with grasping all the inquiry and legal accounts of estate be transferred to buyers name and be paid the business incisor and governments right and from the date of adjustment and document sigh the mentioned ownership is buyer.

3- The ownership document reflects the content in estate office but the formal document for doing business reflects the last transferring in relation to registered estate.

4- The ownership document is given in registration office but the transferring be issued and adjusted, in notary public.

5- The ownership document is certain and legal ruling to persons ownership in relation to estate but don't caves the accession but the formal adjusted trans forming document in notary public is legal ruling for person ownerships and causes the ownership and transforming it .

6-the ownership document be issued from the registration office not be considered as specific formal document the topic of 92-93act of this law; because it doesn't have practicable and executive power inherently the content of it not be practicable by it. Self the content of formal document in notary public in related to transferring estates and the assurance in adjusted document without the need of sentence from the justice governor be indispensable and has executive guaranty .This condition is only for adjusted document in formal office . It is necessary to say that a mar rage office is special part of notary office and the content of it must be practicable (Exordium Focus Journal, 1998).

### **4-1-The kinds of qualifications**

The qualifications are divided in two parts:

1- personal qualification;

2- territorial qualification

### **1-4-1-the definition of territorial qualification**

It means that the qualification of office be about the kind of relegated action to him.

### **2-4-1-The definition of territorial qualification**

It means the boundary of officer options in related and legal position of persons that be adjusted for them.

### **5-1-The regard of criterion and legal protocol for adjustment of document**

#### **1-5-1-This regulations included in**

As the laws include the adjustment in special booklets with special closing or adjustment of registered document in certain identity book lets.

B) The laws in clued the condition of 190act and special conditions determined for every espousing.

C) The laws related to good moral and public regulations.

#### **2-5-1-The protocols are divided in to two kinds:**

A) The protocols causes the document not be recognized officially when this protocols not be regarded such as regulations for stamp rights.

B) Protocols which not be regarded the document not be recognized officially we can point to the 667/50/51/63/acts of registration rules and 18-21rules of notary office (Excerpts from Judges Scientific Theses in Legal Affairs, 2010).

### **2-The boundary of validity of formal document**

We must consider two different topics:

1-Happening of business that document prove it.

2- The legal effect of business.

We know that the formal document is very credit for people as the legal effects of business men in discussion of validity of formal document /after every sign that be printed in formal document accreting to 70act is very valid on though the scarabs of it in document be proved the effects of this matter must be practicable of the content of formal document according to 92act .that knows all formal document

and movable property without any need of sentences of the court practicable. The signed document is a usual document that formal officer sign it everything of this declared document not has practicable ability and proving opposite of it not need to forgery claim. But the part of document signed document be reached by formal officer, lose its validity by scarab claim in relation to formal document transcript we say that this transcript has validity be proved by formal officer. We can say boundary of formal document is being gained the legal effects on it's contend.

### 1-2-The effects on registered document

The rule for document that be adjusted according to regulations maintain the special validity and when its opposite not be proved they be known valid the validity of registered document included in:

- 1-The validity of contents and the sign of formal document;
- 2- The validity of all contents of document;
- 3-Not is proved the opposite claim of formal document content by Judiciary circumstantial evidence;
- 4-Its validity in relation to third persons and two sides;
- 5-It is necessary to be dome the formal document;
- 6-Without needing to give the probably of time in relation to registered document and the possibility of broadcast of executives in every time (Shahri,1999).

### 3-The obstacles of validity for formal document

Sometimes something's happen that destroy the validity of formal document they are included in:

- 1-3-Not consideration of main condition in adjustment of document:
  - A) Means that the adjusted officer not be the governments' officers that the formal document adjusted from him not valid.
  - B) Or the formal officer for the adjustment of document has not the essential authority (native or local) for its adjustment. If the officer without regarding his authority adjusts the document, that document not is considered the formal document.
  - C) Or the officer of adjusted document be formal officer or act in boundary of his authority but not consider the producible for adjusted document.

### 2-3- proving the forging of formal document

#### 1-2-3- The forging means:

Changing the origin of document or writhing or other thing such as: making stamp and sign and disappearing for other damages

#### 2-2-3- kinds of forging

Forging is divided in to two parts:

**1-Material forging:** alteration of truth with material act by doing /the external effects of forging

on writing or document other thing not be remained that be bring in to the 523act in Islamic rules

**2-The spiritual forging :**the alteration of truth without any damage to the appearance of document the external effects of forging on writing or document or other thing not be reminded that be declared this kind of forging in 534act in Islamic rules.

### 3-2-3-the plan of forging lain in court

The forging claim divided into two main and Counterclaim or Additional Litigation (Tari), according ti its discussion in court.

**1-The main forging claim:** be discussed in criminal court.

**2-The forging claim Additional Litigation or Tari:** be discussed in legal court (Excerpts from Judges Scientific Theses in Legal Affairs, 2010).

**And in other side the forging claim is divided in to two parts:**

**1-Forging claim without of determining of faker in this case legal court investigate the validity if document:**

**A)** The legal court knows the origin document and gives the order of reparation to its ownership. **B)** Or knows it as forging and takes a actions for cancellation it.

**2-Forging claimer discusses his claim in criminal court A)** his action leads to guilty of the suspect to forging **B)** or be issued the order of innocence (Shahri, 1999). In any way the case of forging document by proved that document loses his validity.

### 3-3-Proving the opposite formal documents content

In this case be paid in 1302 civil law and to rider of registered law. 1302 act Civil law in footnote of document be some contents that shows in validity or cancellation all or part of the document , the said content be determined valid . If they don't have date be canceled the rider of 70 Civil law: when someone confess to giving money or property or promises the yielding of property claims that his confess or obligation against informal or formal document or bill, check is a debt that two sides of business give to that person and the promise not be done or not be paid bill, check this claim must be investigated.

1309 act civil law not accept the witness of observant against the formal document or the document lose its validity that according to the idea of guarding council

1367/8/8 – 2655-infarmal news paper the number 67/8-24-12734the 1309 act of civil law know the witness against legal balances and be canceled of formal document with the witness without legal conditions not be provable if the observant the conditions for witness we can prove the content of that formal document by observant witness .

**4-3- The invalidity of document from legal sides**

**1-4-3-** One of the legal sides is the cancellation of espousing that formal document in relation to it the adjusted in fact one of the two sides of business or third person in business has the right for cancellation or damage the business, the related document not be valid.

**2-4-3-** one of the legal sides is disturb transaction (dismissed )we know that disturb transaction (dismissed ) means the agreement of two sides for cancellation of business and then a business be disturb transaction (dismissed ),the formal document of this business be cancelled by using stamp.

**3-4-3-** One of the legal sides is discrepancy the diverse ownership document is a document be issued in relation with a property totally according to detection of the board of supervisors. The issued document is correct so that the order be issued for its cancellation in the court. The origin is that the .ownership is contrary and be fallen of validity .if their order for its correctness be issued

**4-4-3-**One of the legal sides for cancellation of ownership is the issue of it against the law. For example: a person who registers an estate for himself in time of issue for ownership document. Don't observe the legal steps for issue as publication of advertisement in turn, in all cases and the ownership document be canceled and without validity.

**5-4-3-**One of the validity obstacles for from formal document is the document related to bankrupt trader.

We can investigate bankrupt trader business in three period of time.

**A)**The period before stopping it about the correctness of traders business so the trader wants to do business for this purpose .the creditor not gain sth the formal document related to business lose its validity .

**B)** The period of stop until the issue of bankruptcy order or debt periods at last the formal document related to this business lose its formality .

**C)** The period after the issue of bankruptcy decree at last formal document related to this business is fallen from validity (Excerpts from Judges Scientific Theses in Legal Affairs, 2010).

#### **4) The claim related to registration of document /its cancellation and its correction**

The aim of claims related to document claim that be happened after the registration of estate in notary public and be leveled:

**1-**The claim related to adverse document for ownership;

**2-**The claim is designed according to 25 act of registration rule;

**3-** The claim related to cancellation of document;

**4-**The claim for partitioning protest;

#### **1-4- The claim related to adverse document of ownership**

##### **1-1-4-The definition of adverse document of ownership:**

It is a document in relation to the boundary of other ownership document be registered in notary public an until the final order for correctness of order not be issued is adverse document (Jaafari Langeroudi, 1994).

According to 3act legal bill related to registered errors and adverse ownership document, when in the board of supervisors be distinguished in relation to estate .the adverse ownership document be issued ,in reaction to estate itself ,or relation to easement rights ,the ownership document that its registration is Posterior be named the adverse ownership document. If the date of registration for two ownership documents be different that document which has Posterior date is an adverse document .if the date of registration of tow document be in one day that ownership which its number is more be an adverse document (Shahri,1999).

##### **2-1-4- The reference for determining of adverse document**

According 5-25 act of registration rule, investigation to adverse document is ability for the board of supervisors and the determination about two documents is adverse or is not a duty for the board of supervisors and the court doesn't have any authority.

##### **3-1-4-Task property deed holder in conflict**

According to part two of 2act of 3 legal bill related to registered errors and adverse document ,while the board of supervisors with registration council knows investigation in happening an adverse is clear .the local registration office declares the levels of registration in written to the owner of document according to civil customs to be informed about 2months from the date of notification not refer to the court and not deliver the certificate of designing the claim to registration office and don't gain receipt and the owner of precedent document delivers the certificate for not having design of claim from the competent refer in said time.

The registration office for cancellation the adverse document in relation to adverse case in observation column of registration for estate incorporated and formal registration office .so the owner of adverse document (Posterior registration) for protecting the problem right is obliged to act for claim during two months from the date of notification of the board of supervisors and in other words.

The registration office take action for its cancellation according to rider of 5act ,the legal bill in related to registered errors and adverse document ,the court distinguish after investigation for every adverse document ,the follow of its registration

according the law and regulations determine and cancel the order for the other document .

#### **4-1-4- The condition of claim for cancellation of adverse document with regards the legal texts**

**A)** The owner of adverse document must take action for design of claim during two months after the date of notification.

**B)** The said claim must be done according to the justice and must follow the conditions in 51act the civil rule of judgment.

**C)** title and demand for claim, is the cancellation of ownership document.

**D)** The demander for claim of adverse document.

**E)** The said claim must be declared in local court of near estate.

**F)** The claim for cancellation of adverse document is a financial claim and for be financial claims related to immovable property must be paid some money for justice there is a question, if with a lapse of tow months in part 2 of 3 act won the above legal bill the owner of document, hasn't the right for going to the court and when the owner of adverse document after determined date goes to the court what is duty for court? It sounds that the regulations for register is jus cogens. And the determined time after the lapse of promised time not be heard when the owner of adverse document after the lapse of two months goes to the court ,the court hasn't duty for according the claim without determined time according to 84 act of 11 Civil Procedure custom ,the court issue the cancellation of it , (Shahri,1999)if the owner of adverse document for not taking action declared acceptable excuse ,it sounds that this claim be heard ,acceptance of this idea ,is difficult. Especially in 24 act of registration rule and other registered registration rule and the other registered regulations they accept table excuse not be regarded.

#### **2-4- The claim that be designed according to registered errors**

according to the part 4 of 25 act of registration law, the errors before the registration of estate in primary actions of registration and the time of registration of estate in notary public not be regarded, then, the registration of lice will regard it be set forth it in the board of supervisors then after the inquiry of happening of errors in certain and the correction of error not hurt to somebody right. The board of supervisors issues the orders for correctness of errors. If the correctness of it not hurt to somebody right give noting to the person that refer to the court and the registration office give the order for raising the error or the correctness of it after the final duty in the court be issued .so in this case applicant must request for investigation with demands for correction, the board distinguish the errors and correctness of error not

damage the rights of someone. Then the person can go to the court and can damage for correctness of error and correctness for document.

So in giving the demands, the regard ance of regulations from 51act is necessary and the claim be included the financial claim .the main point with the idea from the board of supervisors, the authority for distinguishing the registered errors is this board .in other words the court has this right for investigation and decision that the topic be designed by the board of supervisors in otherwise the court cant investigate.

#### **3-4- The claim for cancellation of document**

There are many differences between the ownership documents and the formal document .there is the other difference between the ownership documents and the adjusted formal document in notary public and that topic is the cancellation of them from the court .for example: the facial document without any conditions of business and soon and the ownership document from the registration office is canceled easily.

#### **1-3-4- The conditions for acceptance the cancellation of ownership document**

According to 24act from the registration law the time for the protest during the registration records ,the wasting of someone's right not accepted according to 22act of that rule ,when a estate( according to the law )be registered in notary public .the government knows someone as an owner that the estate be registered with his name or some that transferred the estate to him and this transfer be registered in notary public with this definition and with 22,24act of registration law ,it is acceptable they can collation of ownership document ?there is tow ideas :

**The first idea:** when an estate be registered against the law the person wants the cancellation of ownership document this subject doesn't have any conflict with the 22 act of recitation law because the 22 act is a supervisor for estate that be registered but not according to legal regulations be a abandoned from the 22act of registration law.

**The second idea :** the person that believed the ownership document not be canceled according to 22/24 act of regulations rule .because the regulations rule wants the special protocol for ownership regulations with the discipline of society and persons right be done the business whit confidence .the justice requires that the registered action not be done correctly for example is some cases the publication of advertisement is necessary .the advertisement not be publicized because this registration not be done according to the law or not publication of it the right for protesting of persons that can protest for it be spoiled the claimer (s) of right can claim and want (s)their right .it sound the acceptance for the cancellation of ownership document wants many

limitations and not be allowed to accept the cancellation of ownership document with the pretension and reason and prevented of acceptance of this claim in all cases .

#### 4-4-The claim for

According the separation law and selling of joint estates of 1357 act ,this joint estates that the registration of these estates be ended if these estates be demanded by one person or many partners be with the local registration that the said estate is located in that area .the registration un if with regarding all the regulations of the demented estate create them as افراز the 1-2-3-4of execution regulations of this law and selling joint estates that the registration office regulations must determine .so after the providing these acts of 1-2-3-4executive regulations according to 5and of regulation .the responsible of this regulation unit after restarting and the comparison of demands with legal regulation and adaption of it with the position and the regulation records declares his decision for accepting or and the way for separation and according to 6act of regulation the decision of regulation unit with one supplement of record of departments way be notified to all of partners if they can any protest give the local court of their city the way for notification according to the declared laws in executive regulations for formal document is necessary according to 2act of law ,the decision of registration unit is protested by one of the partners in local courts of city –the dead line for protest is 10days of date of notification for decision the courts survey and issue the necessary vote .the role of the court is final the protest by giving the demands and regarding the condition in 57act must be done by considering the cost ,if the ownership is for fight be regarded as financial claim and in other wise not be considered the claim for protest must be declared for all of the presenters according the vote of 60/1/15-29/59 the supreme court of country of jurisdiction act of 313,if there is an absent person agony the owners , the separation law must be done by the court and the registration office can't do it.

#### Discussion

From what we stated in terms of the legal property deed or creates a positive right or right to:

1-When the ownership document (created right) say the legally would not have any objection on its own; in other words, that the property was registered in the name of someone in her office property owner and nothing else If the document is exported contrary to law and fact, that person is not the owner. In this case the true owner is only entitled to claim damages will not be entitled to claim the same property.

2- When the property deed (the right fix) is to say that the legislator has taken ownership of it, therefore, it is possible to prove the contrary. In this case the true owner of the Real Estate Registration Office or correction or cancellation of the property deed issued by the court to apply the law to the contrary, So because is same refundable property, property litigation loss and damage for survival will not (Hashmivziri, 1964) Obviously, the Tribunals of Justice has within the authority to address these claims.

3- Finally, it was determined that, official documents must be is "right prove" Not "create right" in line with the votes of courts judicial and if proven to be distorted Or the document issued in conflict and annulment of official documents and other cases, property deed will lose their credentials.

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