

## Criticism and analysis of regulations related to the requirement of official registration of real estate transactions

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abstract

n this research, while criticizing and analyzing the provisions related to the law requiring official registration of real estate transactions, we examine the challenges and ambiguities in the implementation of this law. Using the descriptive-analytical research method and relying on the legislative records and legal and judicial procedures of the past, we study and interpret the various articles of the said law.

The results of the analysis show that the new law has expanded the scope of legal acts subject to registration and considers various transactions such as contracts (sale, peace, exchange, gift, pre-sale of building) and events (will of possession, lease, settlement of interests, lease subject to possession, mortgage, endowment, right of usufruct, right of easement and obligation to perform legal acts) that are valid for more than two years, must be subject to registration. Also, the bequest of benefits for a period of more than two years and the commitment to perform the aforementioned legal acts in relation to immovable property are also included in this category

However, in cases such as possessive will, intercession and preparation of corrective report by the courts, the exact and unambiguous implementation of the law faces doubts and challenges. In addition, compared to the registration law and previous versions, changes have been made in the approach of the new law regarding the requirements of registration of legal acts, which require a more detailed analysis. Finally, this research provides solutions to resolve ambiguities and facilitate the implementation of the law, as well as to prevent judicial disputes.

Key words:

registration of official documents \_ transaction \_ movable immovable property \_ society

## Introduction

The increasing importance and value of real estate, land and buildings is not a secret to anyone, because such properties have long played an irreplaceable role for residence and employment as the provision of the basic and basic needs of humans and the expansion of agriculture and industries, and due to the limited nature of such assets, their value has increased day by day. In recent years, the prices of land and apartments have skyrocketed and their education and possession has become an unattainable dream for many people. Due to the extraordinary value of real estate and the establishment of security and stability in trading relations and the maintenance of general economic order in the field of immovable property, shortly after the adoption of the Civil Law in 1307, the Registration Law in 1310, in articles 22 and 46 to 48, made it mandatory to register transactions regarding immovable property, and the guarantee of its implementation was the non-acceptance of normal documents, as well as the non-identification of the owner of the person whose name the property has not been registered in the real estate office of the Real Estate Registration Organization. However, after the Islamic revolution and especially with the repeal of some articles of the civil law (including articles 1306 and 1309) and the Guardian Council's interpretation of the articles of the registration law and due to differences in legal doctrine and judicial procedure, which will be explained in the text of this article, the prevailing opinion among law professors and courts was based on the fact that only the ordinary document related to real estate transactions should not be accepted as positive evidence of the transferee's ownership, but this will not prevent the acceptance of other proofs of litigation, especially the Shari'i testimony of witnesses. It was for this reason that in the following laws, especially the section under Article 62 of the Law on Permanent Decrees of the Development Programs of the Country approved in 2016, it was clarified that ordinary documents with Sharia validity are accepted in the courts and can even invalidate the opposing official document.

This approach brought many problems to the legal system and even negative social and economic effects for the entire country, the most important of which are the ease of annulment of official documents based on ordinary documents with the testimony of witnesses, and as a result, increasing the risk of immovable property transactions, the deterioration of legal security, and the deprivation of the legitimate trust of persons who have transacted according to the law and based on a valid official document; A large number of lawsuits related to informal transactions of immovable property, such as lawsuits to prove the existence of a contract of sale, proof of ownership, the requirement to draw up an official document and a criminal complaint

for the transfer of non-immovable property) and prolongation of proceedings, the absence of a real estate database and the impossibility of identifying immovable property in the country, the abundance of sham transactions and contracts with the motive of evading religion, the weakening of the ownership of individuals and the government on land and real estate, the spread of property crimes in the field of immovable property, especially forgery, fraud, and the transfer of non-immovable property

and conflicting transactions and providing grounds for money laundering and land grabbing, in order to solve these great problems of the legal and judicial system, many proposals and bills were submitted to the Islamic Council of Parliament, which after being approved by the parliament by the respected Guardian Council, one after the other were found to be against the Sharia and rejected, or the parliament could not get out of this impasse by complying with the theory of the Guardian Council and making amendments to the draft, such as Article 62 of the Law of Permanent Decrees. One of the submitted plans was the plan to improve the credibility of notary documents in the capacity of amending Article 46 of the Registration Law, which was announced on 10/1/1395 with the signature of seventeen representatives in the 10th Parliament, and later by changing its title to the plan to require the official registration of immovable property transactions on 11/6/1398 in the Judicial and Legal Commission of the Parliament with amendments in Article 16, it was approved and submitted to the Parliament in the meeting dated 2/31/1399 with amendments in 17 The article was approved and sent to the Guardian Council; However, due to the council's objections and the need to make amendments to it, this resolution was changed four more times in the form of resolutions dated 4/6/1400, 6/28/1400, 6/9/1401, and 9/6/1401. It went back and forth between the legislature and the Guardian Council, and finally, because the parliament insisted on the survival of some important articles, especially the discrediting of unofficial transactions, and the Guardian Council also saw it as against the Holy Sharia after the intervention of the authority. The Supreme Leader referred the matter to the Expediency Assembly, and this assembly, after holding numerous expert meetings and due to differences between the members, made important changes on 2/26/1403, and found the resolution to be in accordance with the Expediency System.

The most important principles of drafting and approving the law are to establish the ownership of immovable property by giving exclusive credit to official documents and invalidating normal documents in the field of real estate, which results in ensuring the stability of security and trust in real estate contracts, applying the government's sovereignty over land and real estate, and transparent monitoring, control and identification of sovereignty over real estate and contracts related to real estate, preventing the unauthorized acquisition of immovable property by foreigners, preventing fake transactions or with the motive of religion, reducing the number of

petitions and significantly delaying proceedings. It is from committing property crimes and fighting against land grabbing. In addition, organizing the market of real estate transactions in companies and real estate consultants, the creation of a comprehensive database and

Up-to-date regarding real estate, ease and acceleration of inquiries about the ownership status of immovable property and easy access to information related to contracts concluded in relation to real estate online and prevention of tax evasion are other fundamental goals of passing the law.

The law requiring the official registration of immovable property transactions has many innovations, ambiguities and challenges, especially in the field of civil rights, including contracts and civil liability, registration rights, civil procedure, criminal law, financial (tax) law, social security and land rights, and it is natural. It is not possible to deal with all of them in one scientific article. Therefore, in this article, the impact of the mentioned law on the general rules of contracts and certain contracts in terms of transactions requiring registration and the status of unregistered transactions will be investigated, and other topics will be postponed to another independent article. For this purpose and because, on the one hand, the new law repeats the same provisions of Article 22 of the Registration Law, and hence the previous legal and judicial disagreements regarding this article can also be raised about the new regulation, and on the other hand, the analysis of the recent law, especially the determination of the guarantee for the execution of an unregistered transaction in terms of substance, without studying and knowing the existing procedure, especially the position of the judicial procedure, legal doctrine and legislative precedents, will not be possible. is checked; Then the legal acts that require registration and the legal status of unregistered transactions after the new law are studied.

. Legal actions that require registration and the status of unregistered transactions before the approval of the law requiring official registration

In order to see the status of informal transactions of immovable property before the introduction of the new law, the position of the registration law of 1310 and the approach of the former judicial procedure, the views and opinions of the Guardian Council, the position of legal doctrine and judicial procedure, as well as legal challenges after the removal of some articles of the civil law and the approval of the law on permanent orders of the country's development programs are discussed.

1-1 The position of the Registration Law of 1310 and the approach of the previous judicial procedure around it

The registration law in 1310, in articles 22 and 46 to 48, made it mandatory to register transactions regarding immovable property and declared normal documents related to said transactions inadmissible. Article 46 of this law stated: Registration of documents is optional, except in the following cases: 1 All contracts and transactions related to the object or interests of real estate that have already been registered in the real estate register 2 All transactions related to rights that have previously been

It is registered in the real estate office. Article 47 of the Registration Law also stipulates that the document registration office

and real estate and notary offices are available and the Ministry of Justice deems it necessary to register the following documents

1. All contracts and transactions related to the purpose or benefits of immovable property that are not registered in the real estate register 2

Deed of Settlement, Deed of Deed, and Deed of Company, Article 48 of the Registration Law also stated in the capacity of guaranteeing the implementation of Articles 46 and 47: A document that must be registered in accordance with the above articles and is not registered will not be accepted in any of the offices and courts, therefore, the normal document related to real estate transactions is not admissible in the courts and government offices. Article 22 of this law also stated in an important ruling: "As soon as a property is registered in the real estate registry in accordance with the law, the government only recognizes the person in whose name the property is registered or the person who The said property has been transferred to him and this transfer has also been registered in the real estate register, or the said property has been inherited from the official owner, the owner will know.

In spite of this, at the same time, before the Islamic revolution, the registration law ruled that the law of registration of transactions related to real estate was considered ceremonial, or that

the said formalities are not a condition for the validity of transactions related to immovable property. But the famous opinion in judicial practice and legal doctrine (Imami, 1/1385 (183) was that the preparation of an official document is not a condition for the authenticity of the transaction, and if the parties admit that the transaction took place, the court must accept the concluded contract. For example, the 4th branch of the Supreme Court in the document number 594 dated 19/7/1327 commented on the legal status of the unregistered transaction. Inheritance, the court's argument on the lack of rights of the petitioner will not be correct in the opinion of various other branches of the Supreme Court, the same approach has been accepted regarding the purchase and sale of real estate with an ordinary document and the commitment to transfer them in the notary office (Katouzian 2008: 271-273 and 3810-3810; Katouzian 2007/1 (A): 92-93) in addition to that, the decree No. 1252 dated 8/27/1326 was issued by the branch. In support of this opinion, the Supreme Court clearly stated: If the defendant admits in court to issuing a normal document from his district, the court does not have permission to refer to Articles 47 and 48 of the Document Registration Law against the petitioner Safai 1399 (A): 51-53)

However, the acceptance of the mentioned position at that time did not disturb the trading order and stability and security in legal relations, because on the one hand, Article 1306 of the Civil Code limited the value of testimony to prove transactions to five hundred Rials, which in the case of real estate, this small amount was often not used, as a result, it was not possible for the judge to accept an oath and the judicial emirate, according to Articles 1324 and 1325 of the Civil Code, and on the other hand, according to Article 1309 of the Civil Code, against an official document or a document whose validity is proven in court. A lawsuit that contradicts its provisions or contents cannot be proven by testimony. Acknowledgment of the transfer of immovable property was rare. Therefore, with the non-acceptance of a normal document, the possibility of proving an immovable transaction that was not registered in the notary was very small, so that the philosophy of establishing the registration law and the general goal of the legislator, which was to prevent conflicting transactions, was not violated.

## **2-1 Opinions of the Guardian Council after the Islamic Revolution regarding the registration law and similar laws**

After the Islamic revolution, doubts and differences arose in the conformity or non-conformity of the aforementioned rulings with the Holy Sharia; In such a way that the Guardian Council stated in Theory No. 2639 dated 8/4/1367 about the validity of a will that does not meet the conditions stipulated in the Customary Affairs Law, in theory No. 2639 dated 8/4/1367: In general, the validity of a will is the same as that of other documents if there is a Shariah proof for its contents. In this regard, the Guardian Council, in Theory No. 2655 dated 8/8/1367, Article

1309 of the Civil Code and in the theory dated 8/4/1395, the application of Articles 22 and 48 recognized and invalidated the registration law as against Sharia standards. For details of the discussion, see: Mirzanjad 135-73, 1357) Similarly, Article 1306 of the Civil Code, which stated that except in cases where the law has made an exception, none of the contracts, agreements, and obligations whose subject matter or price exceeds five hundred Rials can be proved only by oral or written testimony, and Articles 1310 and 1311 were repealed on 8/14/1370 And practically, with the withdrawal of Articles 1306 and 1309, proof of ownership and contracts related to real estate and even cancellation of official documents of ownership with the testimony of witnesses became possible and even facilitated.

3-1 Disagreement of legal doctrine after the revolution regarding the registration law and the consent or formality of the transfer of registered properties

After the revolution in the legal doctrine about the legal status of normal transactions related to registered immovable property, wide differences were formed.

The ruling stipulated in Article 22 of the Registration Law and its philosophy, which is to prevent adversarial transactions, considers the sale and purchase of registered real estate as a ceremonial sale, and they believe that the sum of Articles 46 and 47 of the Registration Law and Article 22 of it means that the transfer of registered real estate is valid only if it is done by an official document and registered in the real estate registry, and before this, the formalities of transfer do not even have an effect on the relations between the two parties. Even if both sides admit it happened. In fact, the need to draw up an official document for the sale of registered properties is one of the rules related to public order, and even the defendant's acknowledgment of the sale is ineffective because the acknowledgment of the news is true and does not give validity to an action that is ineffective in the eyes of the legislator. Especially, unlike religious rights, there is an objective right against all people and it is not limited to a specific relationship; That is, it cannot be claimed that "A" is the owner of the property against B, but he does not have ownership against "C", therefore it cannot be claimed in normal transactions that the buyer is the owner against the seller, but if the adjacent neighbor encroaches on his rights, he as the owner cannot ask for his eviction. Therefore, the sale of registered property is the subject of Article 46 of the Registration Law, according to the explicitness of Article 22 of the Contract Registration Law, it is a ceremonial contract, and the occurrence of the sale depends on the registration formalities, because in the case of this type of clean property, ownership can be of a general and general nature and cannot be Consider someone as an owner against the defendant

and a usurper against others. But in the case of unregistered real estate, which is the subject of Article 47 of the Registration Law, because the guarantee of the execution of the official document and registration in the real estate registry according to Article 48 of the Registration Law is only if the normal document is not accepted in court, the registration formalities are to prove the contract, not its occurrence, so with the defendant's admission of the sale, the court must accept it as evidence. Katouzian 2013 37 and 56)

According to famous jurists, the official registration of the transaction document related to immovable property is necessary only for the development of the effects of the transaction, not for its authenticity and validity, because Article 22 of the Registration Law does not imply the invalidity of an unregistered immovable transaction, but only indicates the government's lack of recognition of the transfer of immovable property without issuing an official document, and this in itself does not invalidate the transaction; Rather, what is meant is that government organizations cannot verify the transaction by presenting normal documents, but these provisions cannot be used, that even through judicial proceedings, it is not possible to verify the valid request and acceptance of the said transfer, and if the authors of the registration law meant to declare the transaction void, they should have explicitly used the word void and did not simply state the lack of government recognition.

Validated the invalidity of immovable property transactions without setting up an official document because there is no reason for it;

Rather, it can represent the incompleteness of the apparent effects of the transfer and its non-recognition by government institutions without issuing a judicial ruling. Mentioning the phrase "Courts" in Article 48 does not mean that the normal document of transfer cannot be cited in the courts even for the purpose of judicial proceedings in the case of the occurrence of a transaction, rather, it means that the transfer of the normal document of transaction is not recognized by the owner, just by presenting it. However, what is rejected in this article is the document, not the contents of the document, in addition, there are positive evidences in some of the registration regulations that indicate the legal validity of immovable property transactions without the preparation of an official document, such as Article 72, where the opposite meaning of the phrase "full validity" is a presumption of the validity of the said transaction, even if incomplete, and Article 93, the opposite meaning of which is the validity of the document of normal real estate transactions registered by referring to the courts, that is, the judicial verification of the validity of its provisions (Shahidi, 1388-117) 116; Shahidi 1372-10 onwards, as a result, although the law

requires the registration of real estate transactions and the donation of these properties and the preparation of an official document regarding them, they cannot be considered ceremonial because the registration and preparation of the document is not a condition for their validity, but the registration is important in terms of proving the lawsuit, and a normal document should not be accepted to prove these contracts, but the contract will remain in effect from the date of conclusion, and if the contract is not disputed, it will be proved or acknowledged in court. As stated in some of the Supreme Court's opinions, the contract cannot be considered void even though the registration and formalities of the document have not been completed (Safa'i 1385-51; 1385-53-54 Bariklo; 1394-21-21 and 149)

It should be mentioned that some authors in newer theories about the effect of not registering transactions regarding immovable property and stating the guarantee of the implementation of Article 22 of the Registration Law, citing various bases and analyzes, have considered the unregistered contract valid between the parties, and considered it inapplicable only against third parties.

4-1 The position of the post-revolution jurisprudence regarding the transfer of real estate and the interpretation of the registration law

Most of the legal courts after the Islamic Revolution followed the opinion of famous jurists and accepted the normal document to prove the transaction; Although there was also an opposing opinion. in fact

The legal procedure for avoiding the implementation of the provisions of Articles 22 and 48 of the Law on the Registration of Ordinary Documents of Sale and Purchase includes some kind of explicit or implicit obligation of the seller to officially transfer the property to the buyer or the obligation to be present at the notary office to draw up the official document of transfer, and with this solution in practice and contrary to the text of Article 48 of the Law on the Registration of Ordinary Documents related to registered immovable property transactions, it was heard; Although in the case of expropriation, which is related to the proof of the ownership of the plaintiff, the unanimous opinion of the General Board of the Supreme Court No. 672 dated 10/1/1383 and the advisory opinion of the Legal Department of the Judiciary No. 7/730 dated 11/2/1384 did not consider the normal document admissible, but considered the said lawsuit to be heard only with the presentation of the official document of ownership. The result is that in the current situation and before the law requiring official registration came into force, the courts do not invalidate the informal transaction related to real estate, but at the request of the buyer,

they issue a ruling requiring the seller to fulfill the obligations contained in the ordinary affidavit (cf. Katozian 1/2007 (A): 56-61 and 92-93; Safai 1399 (A): 51-53 Katozian 2008: 2383-381

A property with a deed, regardless of whether the property is from favorable urban or barren land or otherwise, is not legally the owner except in special cases and by observing special arrangements that are foreseen in some regulations, as stated in theory No. 7/659 dated 5/2/1385, a property that has a license plate if it is registered in the real estate register... according to articles 22 and 47 of Q. T. Its transfer cannot be effected by a normal document, and it cannot be confiscated in the face of a transfer conviction.

1. It should be mentioned that even before the revolution, many branches of the Supreme Court had resorted to the same solution to avoid the implementation of Articles 22 and 48 of the Registration Law. For example, the 8th branch of the Supreme Court of Iran in the document number 779 dated 5/12/1327 and the 6th branch of the country's court in the document number 380 dated 3/5/1325 declared: Articles 47 and 48 of the Registration Law are related to the claim of transfer of property. Therefore, if the plaintiff does not claim the transfer and only requests the defendant to fulfill the obligation to attend the official office after obtaining the monopoly of inheritance in order to transfer the property that he has already sold, it will not be in accordance with the aforementioned articles in the decision number 479 dated 4/5/1331 and decision No. 3547 dated 11/30/1341 of the General Board of the Supreme Court also defends a similar approach, Katozian 1388 271-272 and 381-383 Katozian 1/1387 (a) (92-93) also to see the admissibility of the claim of proof of ownership or whether it cannot be heard in judicial procedure, Rak, Kazemi 1398-1-41; Khoda Bakshi 2007 333-291 Aziziani 2002-265-282 Kazemi, 2002: 631-663)

2 Regarding the correctness of normal transactions from the perspective of judicial procedure, the consensus decision No. 42 of the General Board of the Supreme Court in 1363 (Barikhlo, 2014 (32-30)) and the advisory theory No. 7/3675 dated 11/8/1362, General Legal Department of the Judiciary, Rahe Pik, 1387 (149) are also cited.

5-1 Legal challenges after the removal of some articles of the Civil Code and the approval of the Law on Permanent Judgments

After the repeal of Articles 1306 and 1309 of the Civil Code in 1370 and with the acceptance of testimony and, accordingly, the oath and judicial emirate to prove transactions and ownership of

immovable property and the ability to hear claims against the contents of the official document through the testimony of witnesses, for the details of the discussion, see: Katuzian 1/1390: 307-308 Shams 1394 155; Katouzian 2/1390 59-62; Andalib and Alidost 2019 110-125; And for the criticism of the heterogeneity of legal articles, see Katouzian, 1/2017 (A) 256-260; The status and credibility of notarized documents declined, and lawsuits for annulment of notarized documents through ordinary documents and perhaps the testimony of witnesses became very common, and this disturbed the security of transactions and the stability and reliability of contracts related to immovable property. Finally, in 2015, the Guardian Council found the application of Articles 22 and 48 of the Registration Law to be against Sharia. In such an environment, Article 62 of the Law on Permanent Decrees of the Development Programs of the Country was approved and stipulated on 11/10/1395: "All transactions related to registered immovable property such as peace sale, lease, mortgage, as well as the promise or commitment to carry out such transactions must be officially registered in notary offices. Normal documents that are drawn up regarding transactions regarding immovable property, except for documents that are recognized by the court as having Shariah validity, cannot be relied upon by third parties and cannot be contradicted by official documents. In the text approved by the Islamic Council, there was no phrase except documents that are recognized by the court as having Shariah validity, and the parliament sought to devalidate official documents and their inability to contradict with official documents in an absolute manner, but due to the objection of the Honorable Guardian Council, this phrase was added, and apparently it means the admissibility of ordinary documents and the validity of unofficial transactions in the presence of Shariah evidence or the testimony of witnesses. and made the judicial procedure face a new challenge; In such a way that despite the opposition of some courts, such as the second branch of the Khorramabad General Court of Law in decree number 9709976613400172 dated 5/2/1397) and some of the jurists of Khoda Bakshi 1397 (10181), the majority of the courts and a group of Islamic law professors Kanawati and Heydari 1397 (44-53) were inclined to accept the absolute acceptance of ordinary documents whose Shariah validity was obtained with the help of certificates and emirates for the court and their preference over official documents. And they simply ruled on the annulment of official documents, for example, the 8th branch of the Court of Appeal of Tehran province through the document number 9209970220801614 dated 11/20/1392, while violating the document number 422

. dated 6/31/1391 from branch 156 of the Tehran General Court of Law stated: According to the theory

Article 1309 of the Guardian Council... is contrary to Sharia standards and has been annulled, therefore filing a lawsuit for annulment and amendment of official documents based on the testimony of witnesses is admissible... According to Article 241 of the Civil Procedure Law, the value and effect of a certificate is determined by the court; Therefore, the court is obliged to examine the evidence of the parties and evaluate it. The argument contained in the judgment objected to it on the basis that the contents of official documents cannot be changed based on the testimony of witnesses, does not have legal justification. Branch 11 of the General Court of Law of Kermanshah also preferred the ordinary sale of the first mortgage over the subsequent official mortgage according to the document number 9609978311101056. And according to the satisfaction of the contract of sale of late mortgage, he has considered the transaction for another's property and invalid. The 25th branch of the Supreme Court of the country has also defended the said approach in the same context by means of decree number 9609970908500400 dated 12/27/13961. To see the recent decision, refer to Khoda Bakshi 1397:97-97). In this situation, the law requiring the official registration of immovable property transactions was approved in order to improve the credibility of notary documents, stabilize the ownership of individuals and maintain the security of the contract, which we will discuss further.

Legal actions requiring registration and the status of unregistered transactions after the approval of the law requiring official registration

In order to analyze the innovations and developments of the law requiring official registration, compared to the previous laws and the existing procedure, legal acts requiring registration and the legal status of unregistered transactions are studied in order and in more detail.

#### 1-2 Legal actions that require registration

Article one of the law requires the official registration of immovable property transactions in the case of legal acts that must be registered, one year after the official launch of the system for organizing informal documents. The subject of Article (10) of this law is any legal act, including a contract and agreement, the subject or result of which is the transfer of actual ownership or the transfer of usufruct rights, whether for life or competition, for a period of more than two years, or the transfer of the easement of immovable property, and the

endowment, as well as the conclusion of a mortgage contract regarding them and the conclusion of useful contracts.

The transfer of the interests of the aforementioned property for a period of more than two years and lease on the condition of acquisition and any type of pre-sale of the building, whether it is in the form of a share of the entire area or of nobles, and the commitment to perform all the aforementioned legal acts must be registered in the electronic document registration system.... The head of Article 10 of the said law also adds: "The organization is obliged within one year from the date of promulgation of this law to create a system entitled organizing informal documents to register claims regarding the ownership of the same ownership of interests for more than two years and the usufruct and usufruct rights of the property. Immovable property and documents related to it that were created before the launch of the mentioned system and do not have an official document. Based on this, the transactions that require registration can be categorized as follows: Legal actions of the transferor of the same property, legal actions of the transferor of benefits, and other legal actions related to real estate, such as mortgages and endowments.

#### **1-1-2 Legal actions of the transferor of the same property**

The regulation stipulated in Article 1 of the above-mentioned law regarding the necessity of registering any legal act, including a contract and an agreement, the subject or result of which is the transfer of real ownership, will include the following legal acts.

A) Sale of immovable property The most important contract that is subject to the new ruling is the sale contract regarding the transfer of property. As we have seen for a long time, there has been a wide difference of opinion regarding the consent or formality of the sale of registered properties in legal doctrine and judicial procedure. In the meantime, the new legislator has firstly considered the registration of the contract of sale regarding immovable property in the "Electronic Document Registration System" mandatory, and secondly, for its non-registration, as it will come, in the following part of the article, he has imposed a strict enforcement guarantee and has returned to the legal system stipulated in Article 22 of the Registration Law, so the sale of immovable property will be the said property Whether the immovable property is inherent, the land or the field, or the result of human action, buildings, trees, or nobles, and whether these properties are acquired as a sale or the price, they are subject to the provisions of the article. In the case of immovable property (the subject of Article 17 of the Civil Law), they are inherently movable, and it is not mandatory to register transactions regarding them in

the aforementioned system; as well as subordinate immovable property (the subject of Article 18 of the Civil Law) or concrete rights related to the property and claims regarding immovable property are also excluded from the scope of the article.

B. Exchange, settlement and gift of immovable property The exchange of two properties or the exchange of immovable property with movable property or financial rights (Article 464) of the Civil Code is also subject to the ruling stipulated in Article 1 of the said law; Also, the peace of immovable property, whether it is paid or free, is subject to the same ruling

757 and 758 of the Civil Code and must be registered in the system. Also, the gift of immovable property, regardless of the scope of Article 795 of the Civil Code, must be registered in the mentioned system; That is, in the case of a gift, in addition to the necessity of a receipt (Article 798 of the Civil Code, its registration is also mandatory; 2 although the necessity of a physical receipt is no longer felt, despite the fact that registration is mandatory, because the philosophy and purpose of a receipt is realized by registration, and even according to the customary concept of a receipt, the preparation of an official document of a gift can be considered as a receipt. Safai and Javaher Kalam, 1403 No. 136

Possessive will regarding immovable property. The civil law does not provide for special formalities for concluding a will, both possessive and contractual, but articles 276 to 279 of the Customary Affairs Law have established conditions for drawing up a will in normal cases, whether the will is related to movable or immovable property, such as the need to prepare an official document or deposit the will in the registry office. However, there is a consensus that the said formalities are a condition for the authenticity of the will or that the will is a legal act of consent and it can be proved with all the proofs of the lawsuit. However, Article 1 of the law requiring registration also includes wills with respect to immovable property. In fact, although there is a difference of opinion on the legal nature of wills, see Emami 3/1385 6059 Katouzian 1387 (b) 293 302; Jafari Langroudi 1390: Shahidi 14-15, 2008 53-54; Mohaghegh Damad, 1394 33 41; Katoozian 2005 (b) (68-69), but the opinion that considers it to be iqaa is stronger, Safai and Jawaharlal Kalam (2018-29-34) and perhaps this is the reason why in Article 1, every legal act, including contract and iqaa, whose subject or result is the transfer of ownership is specified, so that in this way, the will, which is a unilateral legal act or iqaa, is subject to the ruling stipulated in the article. Thus, from the appearance of article one of the discussed law, it is clear that currently, the registration of a will related to the same property (either immovable property inherent or caused by human action) in the electronic document registration system is mandatory; otherwise, it will be faced with the same guarantee of implementation as stipulated in article one.

The will in extraordinary and ordinary cases, especially the will, follows a series of specific goals and philosophy, among which we can mention the validity of the will without formalities in emergency situations and also not informing the heirs of the contents of the will during the life of the testator in order to prevent family quarrels or putting pressure on the testator to withdraw from the will and the like, and this philosophy requires that the acquisition of immovable property in the form of a will is excluded from the scope of Article 1. Especially since the will is one of the matters of discretion and the philosophy of the provision of the matter requires that we limit it to the matters of settlement.

Thus, the effect of the will, which is the transfer of ownership, is not realized at the time of its composition, but is suspended until the death of the testator. Also, the testator can revoke the will during his lifetime and invalidate it. All these rulings are not compatible with the necessity of registering the legal act, the purpose of which is to establish the ownership and preserve the transferred rights.

Pre-sale of the building Article 1 of the law requires the registration of any type of pre-sale of the building, whether it is in the form of a share of the whole area or the owners. Article 1 of the Building Presale Law approved in 2009, which has been amended as follows in accordance with Article 15 of the law requiring registration as follows, in the definition of the apartment presale contract, it says that any contract with any title by which the official owner of the land undertakes to participate in the construction with another person, or any contract whereby a person commits to the construction and delivery of a building unit to another, and also any type of transfer of rights and obligations arising from the said contracts is considered a presale of the building. Kalam, 1401: 53-55, which the legislator has required to register all its types; Even the new amendment of the contract of participation in the construction has been considered as an example of the pre-sale contract, which, although it is acceptable in terms of the need to register an action, but it can be criticized in terms of its nature. It should be noted that Article 14 of the law requires the registration of the pre-sale of the building, the plan of which includes the number of floors, the allowed occupation area and the number of units per floor issued by the legal authority issuing the building permit, it foresees the possibility of setting up the official document of division between the owners in the electronic document registration system and the allocation of a unique 18-digit code identifier for each ownership document that is entered in the upper part of the document for each unit, and it specifies that the preparation of the official document of legal actions subject to Article 1 of this law is only with Rafa is possible using the mentioned unique ID. In this way, the pre-sale registration of the units that will be built and completed in the future will be done in the mentioned order

will take

Exchange company in immovable property beside the company in the sense of distribution and company in the sense of an agreement to manage common property and share profits and losses, which is known as an authorized company. One of the types of companies that has a contractual aspect and is considered to be a contract of ownership and exchange is a company of exchange, whereby each of the partners acquires a common part of his property to a partner or other partners so that the distribution of all the property of the company is realized. Safai and Javaher Kalam, 1401 41-55; Katouzian 18-12 2016; Jafari Langroudi 3/1386 140-141; Kashani, 2008 64-66; Katouzian 2005 (A): 296-303; Rahe Peik 1387 (b) (1614) based on this, whenever a contract that creates joint ownership refers to the creation of distribution in property or immovable property, because the subject or result of the said contract is the acquisition of immovable property, it is subject to an article of a law that requires registration and must be registered, as a result, contrary to the well-known opinion in legal doctrine and judicial practice, which during the rule of Article 48 of the Law of Registration, the failure to register a company letter in notary public offices did not invalidate the contract, and the company is considered a contract of consent. They brought Safai and Javaher Kalam, 1401: 58-61; Katouzian 1388 271-274 Katouzian (1387 (a) 92-93; and also cf. Katouzian 1385) (a): 302; Katuzian 2/1386 (21) According to article one of the law, the requirement to register the exchange company contract must be registered in the system, otherwise it will be faced with the guarantee of implementation mentioned under the article.

c) Lease and loan If the lease contract results in the acquisition of immovable property, this contract is also subject to Article 1 of the law requiring registration and needs to be registered; For example, a person enters into a fraudulent contract in order to find a medicine and forges it as immovable property, Articles 561, 562 and 567 of the Civil Code. Also, although lending immovable property is not common in the society, if a person lends a property to another in order for the borrower to return it, Articles 648 and 650 of the Civil Code, what happened due to the ownership of immovable property to another will be subject to the ruling of Article 1.

c) Acquisition by intercession, as we know, acquisition by intercession is in terms of the nature of iqaa, and according to Article 808 of the Civil Code, for the acquisition of common immovable property sold by one of the partners to a third party, it is realized by paying the price to the buyer, Safa'i and Jawaharlal Kalam 1398 326 onwards and 371 onwards; Katouzian 2015 (b) 21 onwards; The son-in-law researcher 2004 6 onwards; Reh Pik 1387 (c) 15 onwards). Therefore, since the result of taking the intercession is the transfer of ownership of the immovable property to the intercessor, it is mandatory to register it; However, it is obvious that the buyer of the joint

property is interested in setting up an official document in the name of Shafi'a There is no registration in the system, and as it will come, the lawsuit requiring the preparation of the document is not heard against the buyer. Therefore, a measure should be provided for how to register the acceptance of intercession by the intercessor in the executive regulations of the law, and the courts should pay attention to this legal gap in the interpretation of Article 1 so that the recent resolution does not cause the closure of the institution of the right of intercession.

h) Advocacy in the position of sale Today, in the custom of our society, representation in the position of sale is very common, especially in the field of car and real estate transfer; In this way, although the parties sign and regulate the formal power of attorney by granting the authority to transfer the power of attorney to any person, even to the lawyer himself, with any price and conditions that the lawyer deems appropriate, but the goal of the parties is to transfer the subject of the power of attorney to the lawyer, and for this reason, documents and documents related to the subject of the transaction are handed over to the transferee's lawyer, and the price is often exchanged between the parties. Therefore, if the said power of attorney precedes the previous normal contract, or if the Muslim custom and evidence and the circumstances governing the contract show that the main purpose of the parties in drawing up the general power of attorney was in fact to transfer the power of attorney to the lawyer, in terms of nature, these power of attorneys should be considered as evidence of the occurrence of the sale that the client has also given power of attorney to the lawyer to complete the formalities of the official transfer document, so that he can do this without the need for the client (seller) to be present. slow As nowadays, the said letters of attorney are very common in the buying and selling of cars (Safa'i and Javaher Kalam, 1400, 39-46). Based on this, in addition to the recent part of the unanimous ruling No. 847 dated 2/25/1403 of the Supreme Court of the Republic of Iran, the note two of article one of the law accepts and stipulates the requirement to register the validity of the power of attorney in the position of sale: the amount of registration fee and copyright tax on the establishment of the power of attorney for the transfer of ownership in the case of immovable property, the subject of this article is equivalent to the preparation of the official deed of transfer of the property in notary public offices, and if within nine months from the date of the preparation of the power of attorney of the said property, it is transferred as an official document The transfer is regulated without the need to re-pay the property transfer tax and registration fee. In this way, if the parties draw up a normal contract for the transfer of immovable property or verbally agree and set up

an official document in the name of the buyer of an official power of attorney is given to him; this official power of attorney does not prevent the application of the provision stipulated in article one; In any case, the contract must be registered in the system.

k) The division of common property in note one of article one of the mandatory registration law approved on 6/9/1400 and 6/28/1401 and 9/8/1401, the division of land and common real estate was recognized as requiring registration; But in the final text, unfortunately, this phrase has been removed. However, the philosophy of law enforcement requires registration and social expediency and security in legal relations requires that the registration of the partition of real estate is also registered; Especially, in the division, a kind of exchange takes place between the common property and the separate property, and in other words, the division is based on negotiation and transaction. Safai and Javaher Kalam, 1401 258-263; Katouzian 2006 No. 26; Emami 2/1385 140-141) and for this reason, its registration will be subject to Article 1. Article 14 of the law on the obligation to register also, as mentioned above, in the case of the pre-sale of the building, stipulates the possibility of preparing an official document of partition between the owners.

d) Obligation to perform the aforementioned legal acts according to Article 1 of the law, which is required to be registered in the same way as the ruling stipulated in Article 62 of the Law on Permanent Injunctions, in addition to carrier transactions, the same obligation to perform all the aforementioned legal acts must also be registered in the electronic document registration system. As a result of the obligation to enter into a contract of sale or a promise to sell, whether it is bilateral, a mutual promise of sale or a contract, or a one-sided promise (sale) Katuzian 386-377 2008; Katouzian 2007 (A): 56-73; Rahe Pik 2007 (A): 24 26; Katouzian 2015 (a) 25-31; Katoozian 2013 (81-84) should be registered; As well as the commitment to conclude other transactions mentioned above, such as the commitment to transfer the property in the form of peace, compensation for the donation of the exchange company and the pre-sale of the building, it must also be registered.

z) Drafting of a corrective report by the courts One of the loopholes in Article 1 of the law requiring registration is the possibility of drafting a corrective report by the courts regarding the agreements of the parties to the dispute regarding real estate, because the appearance of this article does not consider the drafting of a corrective report on immovable property by the courts valid without registration in the system; Unless it is said that the regulatory correction report by the courts, which is an official document and is considered a decision, should be registered in the system after being adjusted by the representative of the execution of the judgments. Of course, in the case of properties for which the title deed after the new law comes into force

Boundaries are issued because according to Note 4 of Article 1, they are immediately subject to the law and according to Articles 1 and 10 of the Law, the case for revocation of the document cannot be heard in them. However, in the case of other properties, the position of the judiciary and the validity of the issuing document require that the hands of the courts are not tied in preparing the correction report; Rather, after setting the agreements of the parties in the text of the court minutes and issuing a writ based on that, the regulator should send its amended report to the registry office for registration. 1

## 2-1-2. Legal acts of conveyance of immovable property interests

Based on the terms of concluding beneficial contracts for the transfer of the interests of the said property for a period of more than two years and lease with the condition of possession... and the commitment to perform all the legal acts mentioned in Article 1 of the law, the obligation to register the beneficial legal acts of transferring the ownership of the property interests and lease with the condition of possession in immovable property is examined separately.

a) Beneficial legal acts of transfer of ownership of immovable property interests in Islamic jurisprudence and Iranian law, legal acts that cause the transfer of ownership of financial interests include lease, settlement of interests and bequest to interests, therefore, if the lease of immovable property or settlement of interests is concluded with respect to a property for a period of one or two years, they do not need to be registered; However, if the duration of the said legal actions is more than two years, they must be registered; Also, the commitment to write these contracts requires registration. It should be noted that the lawmaker has not decided to register a difference between the lease of business and trade premises and residential premises. In addition to that, if the will for the interests of the property is made for more than two years, according to the appearance of Article 1, it will be subject to judgment; Although the same philosophy mentioned in the case of a possessory will in relation to the same immovable property and the exclusion of the will from the scope of the ruling as described above, in the case of

Bequests to interests are also valid. In any case, since leases of more than one year are not common in our country and there is a possibility of conflicting transactions in leases of less than one year, it is difficult to find a justification and a basis for the provision of the article.

B. Leasing with the condition of possession Lease with the condition of possession in our country have various forms and types and their nature is also different; In such a way that some people consider such a contract as "rent" and the paid amount as rent installments, and they believe that only after the last installment of such a contract is paid, it will be considered a "sale contract" and it leads to the transfer of ownership. On the other hand, some other jurists consider such an agreement to be a pending sale contract, which is concluded upon the payment of the last installment, sale. Also, the commitment to conclude it also needs to be registered.

### 3-1-2 Other legal acts related to real estate

From the phrase "any legal act, whether a contract or an agreement, the subject or result of which is the transfer of the usufruct (whether for life or competition for a period of more than two years or the transfer of the usufruct of immovable property, and the waqf, as well as the conclusion of a mortgage contract regarding them... and the commitment to perform all the aforementioned legal acts, it follows that the conclusion of the contracts creating the right of usufruct, the waqf and usufruct, as well as the mortgage contract must be registered as follows.

A) Mortgage for concluding a mortgage contract in civil law according to jurisprudence, even for property Ceremonial immovable property, such as the preparation of a document, is not foreseen, and even contemporary jurists have considered the occurrence of a mortgage through actions and transactions to be sufficient, Khoui 1410 176; Isfahani 1422 475; Khomeini B to 3; Mughniyeh, 1421 24; Rouhani 1421 56-57; Critical visuals 28/6/1413; Irvani 1427 247-246; Sistani 1417 325; Sadr, 1420: 201; However, Article 62 of the Law of Permanent Decrees specifies the registration of immovable property mortgages, and it seems that articles 46 to 48 of the Registration Law also include immovable property mortgages, although there is no specification, in support of this opinion and the status of unregistered mortgages, see Safai and Jawaharlal Kalam, 1403 (14), however, the prevailing opinion, especially citing the theory of the Guardian Council in 2015, was that the mortgage is not a ceremonial contract and its occurrence can be proven with the help of witness testimony and other evidence. and Javaher Kalam, 1403 Sh. 141; Safa'i and Javaher Kalam 1402 46-48) but Article 1 of the law required the official registration of immovable property transactions and specified that the mortgage of immovable property must be registered; Otherwise, the same performance guarantee as stated in this article will be applied to the unregistered mortgage. It should be said that there is a difference of opinion regarding the replacement of the registration instead of the bill of the

owed property, although some jurists and jurists have accepted it Makarem Shirazi 1427 301; Safai and Javaher Kalam 1402-27-28; Jawaharlal Kalam, 1403 Sh. 136, it seems that the preparation of the document and the registration of the mortgage can provide the philosophy and purpose of the bill, and perhaps better than the instant bill of the mortgaged property (Article 772 BC) it secures the rights of the mortgagee.

b) Waqf One of the positive innovations of the new law is the mandatory registration of Waqf, because in the traditional society, the Waqf contract was often concluded normally and perhaps verbally, or finally, the Waqf letters were drawn up with local scholars and religious authorities and Friday imams or the representative of the legal guardian (Articles 55 and 56 of the Safaei and Hosseini Civil Code 1399 (b) 344-346); Katoozian 2007 (b): 156-159 and 170-172), there was a possibility of denying the endowment by the heirs or seizing the endowment by third parties and concealing the endowment easily; But the new law, in a new measure, has made it mandatory to register the endowment contract in the electronic document registration system in order to prevent damage to the endowment and the rights of the endowment. Regarding the sufficiency of writing a deed and registering a waqf instead of the necessity of a bill in Articles 59, 60 and 61 of the Civil Code, the discussion is the same as what was said about gift and mortgage.

"Official" is modified in the document electronic registration system, and accordingly, the same phrase was retained in the subsequent amendments. Of course, under Article 1, it has been stated that the judicial and administrative authorities only recognize the owner as the person whose name is registered in the real estate office of the country's Deeds and Real Estate Registration Organization or who has inherited it from the official owner. Therefore, today, transactions regarding immovable property must be registered in the aforementioned system instead of being registered in the official notary office, and from there it is registered in the real estate office of the Deeds and Real Estate Organization. As a result, articles 1 and 10 of the new law have a new provision that did not exist in the previous laws, and in fact, the main difference between the new law and the previous approach in the registration law is that the legislator has replaced the traditional registration system, which is the same system for registering the ownership of immovable property in notary offices, which is based on the online registration system of transactions in order to expand security in the preparation of documents using modern technologies. This method of registration not only makes the registration of documents safer, easier, faster and less expensive, but also reduces the possibility of forgery and distortion and loss and destruction of documents and facilitates online inquiry and seizure of such property by judicial authorities.

In this way, the owners of immovable property, whose properties have not yet been issued with a title deed, or who are recognized as the owner with normal documents, must first convert their normal documents into official documents according to Article 10 of the new law and within the stipulated deadline. Immovable property or tangible rights that oversee it, within two years from the date of the establishment of the system for organizing informal documents, documents and documents related to the actual ownership of immovable property or their interests for more than two years, or having the right of usufruct for more than two years and the right of easement of immovable property, and related documents and their claim in the said system, and the registration organization, after examining the documents and documents and determining their legality, proceed to issue the official certificate of ownership or ownership of the said tangible rights in the name of the applicant. After going through the legal formalities, it is registered in the electronic document registration system; Otherwise, the claimant of ownership or possession of the said objective rights on the immovable property will have to file a lawsuit to prove ownership or prove the existence of a contract and be required to draw up an official document so that after the results of the aforementioned actions are determined, the legal authorities will enter the result in the system of this article. After the official document has been issued in the name of the owner as described above and the details have been registered in the electronic document registration system, the transfer of immovable property must be notified to the Real Estate Registry Organization to change the owner's profile and update the new owner's profile in the real estate office.

#### **2-2-2 Guarantee of non-registration of immovable property transactions**

The Judicial and Legal Commission of the Parliament, in the resolution dated 11/6/1398, provided for the guarantee of invalidity of the legal act for failure to register the transactions that require registration in the notary registers; However, in the initial approvals of the Islamic Council dated 2/31/1399 and 4/6/1400, after the obligation to register immovable property transactions in official notary offices, there was no guarantee of non-registration of the invalidity of the transaction, but it was stipulated that contracts and transactions that have not been registered will not be accepted in any of the offices and courts...". But in the amendment dated 8/26/1400, it was decided that the transactions that are not registered in the notary offices are invalid and will not be accepted in any of the offices and courts. In the amendments dated 9/6/1401 and 6/9/1401, only the electronic document registration system was replaced by notary offices, but the guarantee of non-registration of the transaction remained the same. But in the final resolution

And after the objection of some jurists of the Council of Expediency, it was finally decided as follows regarding the guarantee of the non-registration of legal acts regarding immovable property: otherwise, claims regarding the said legal acts that have not been registered and the evidence related to them in the part that is useful for the said cases cannot be heard before the quasi-judicial and arbitration authorities, and it has no validity, and except the lawsuit for the restitution of the substitute, no criminal complaint or legal suit or demand regarding that legal act and related documents, such as a complaint for the transfer of property other than 2 The claim of proof or execution of the cancellation of the official document of ownership, the requirement to prepare the official document of dispossession, and the requirement to fulfill the obligations contained in it are not heard in the mentioned authorities. Also, unregistered documents related to the aforementioned legal acts are not accepted in any of the executive bodies subject to Article (29) of the Law on the Sixth Five-Year Plan for Economic, Social and Cultural Development of the Islamic Republic of Iran approved on 14/12/20195, and in the aforementioned judicial and administrative authorities, only a person is recognized as the owner of the property, who is registered in the real estate office of the country's Deeds and Real Estate Registration Organization in his name or inherited from the official owner.

Thus, in Articles 1 and 10 of the law on the obligation to register immovable property transactions, the legal status of informal transactions has not been clearly specified, and only evidence and evidence regarding immovable property transactions have been declared inadmissible and invalid. This is despite the fact that due to the society's tendency to carry out informal transactions and established customs, especially in rural and remote areas, in a situation where many properties do not have official documents and it is not possible to register them in the system, it is very likely to conclude normal transactions with respect to immovable properties, and therefore, it is necessary to clarify the status of the transaction in terms of the authenticity of the invalidity or the lack of validity.

It may be said that the informal transaction of immovable property is not void in the new law, because the final resolution after the objection of the Guardian Council and the Chairman of the Council of Expediency that normal transactions of immovable property are not void was drafted in this way, and invalidating it contradicts the historical background of Article 1 and the details of its negotiations. However, if this view is accepted, in that transactions

The issue is that the discussion of dissolution of the contract is ruled out. It should be believed that the unregistered transaction has no legal or valid effect and for this reason, the party who gave the price or the price can withdraw it. In fact, although the new legislator has not

specified the invalidity of unregistered legal acts, he has openly accepted the effects of invalidity.

2. In the final part of Article 1, after the inadmissibility of legal claims and criminal complaints regarding informal transactions of immovable property, such as the claim to prove or execute the transaction of annulment of the official document of ownership, the requirement to draw up the official document of dispossession, discharge, and the complaint of the transfer of property, it is clearly stated that the claim requiring the implementation of the obligations contained in the informal affidavit cannot be heard either; That is, contrary to the common interpretation before the approval of the new law, no obligation arises from an unregistered transaction, and therefore, the carrier cannot be held liable for official transfer and request his obligation from the court; This indicates the invalidity of the informal agreement.

According to Article 1, in the judicial and administrative authorities, only a person is recognized as the owner of the property, who has registered the property in his name in the real estate office of the country's Deeds and Real Estate Registration Organization or inherited it from the official owner. This phrase also indicates the invalidity of the unregistered transaction, and in fact, the legislator considered the transaction of immovable property to be formal and requires registration, and returned to the same traditional system as the subject of Article 22 of the Registration Law. In fact, the legislator in the new regulation, following the suggestion of some law professors on the necessity of the intervention of the legislator to make the registration of real estate transactions mandatory and refraining from accepting the testimony of Katuzian 2007 (A) (256-256), followed the opinion that based on Article 22 of the Law, he saw the registration of the transfer of registered property as a formality and considered the registration as a condition for its occurrence, and thus Article 1 transfers ownership only on the basis of the registration of the transaction in the electronic document registration system, which is preceded by registration in the real estate registry. accepts

4. The theory of nullity of normal contract is more compatible with the philosophy of law making, which fully supports formal transactions, because if informal transactions are not void in relation to real estate, then the same disagreements between legal doctrine and judicial practice regarding the status of affidavits and normal promises will erupt and divert the law from its mission and main purpose in order to avoid the same result.

The legislator states that no obligation arises from an informal transaction, and even a lawsuit to prove the existence of a contract and the obligation to draw up a document is not

admissible. Based on this, the incorrectness of the theory of validity of the informal transaction between the parties and its inability to be invoked against the holder of the official document is also revealed.

d. Apparently, the opposite meaning of Note 3 of Article 3 of this law, which stipulates: "The performance of any legal act between the parties is valid only within the framework of the provisions of this law, indicates the invalidity and invalidity of informal transactions related to real estate."

6 During the reign of Article 62 of the Law of Permanent Decrees and based on the rulings stipulated in it, two general theories were presented about the status of informal transactions, one is the theory of the validity of a normal contract and the ability to rely on a normal document against an official document, and even the priority of a normal document over official documents if its Shariah validity is verified by the court. and the other is the theory of the impossibility of citing the transaction subject of a normal document against the official document of Khoda Bakshi, 1397: 83-101). However, Article 15 of the Law on Obligation to Register explicitly canceled Article 62. Therefore, it is clear that the legislator has no faith in the previous situation and the analyzes surrounding Article 62, especially that the provisions of Article 1 of the new law are not compatible with the validity of informal transactions and even the inability to refer to them as described above, and for this reason, the implication of the legislator's will to invalidate informal transactions is stronger.

Invalidity and inability to cite "evidence and all claims related to unregistered legal acts have no result other than invalidity of the contract and the exclusiveness of the evidence proving real estate transactions to be officially registered in the electronic system of documents and then the real estate office.

the result

The law requiring official registration of immovable property transactions approved on 2/31/1399 with amendments dated 4/6/1400, 6/28/1400, 6/9/1401 and 9/6/1401, finally due to considering some illegal

One of the fundamental rulings against the Guardian Council and the parliament's insistence on discrediting normal documents and granting exclusive credit to immovable property transactions, and after the intervention of the Supreme Leader, the Expediency Evaluation Council on 2/26/1403 was found to be in accordance with the expediency of the system. One of the main provisions of the law, which was previously the site of wide differences in legal doctrine and judicial practice, is determining the rules for legal actions that require registration and the legal status of unregistered transactions regarding immovable property. The main question is, which of the legal acts, whether it is a contract or an agreement, must be registered according to what formalities, and if they are not registered, are the transactions generally invalid or do they have a different status? After studying and interpreting the law using descriptive and analytical research method, it was concluded that the legal actions of the transferor are the same, such as peace sale, gift exchange, pre-sale acquisition will of the exchange company building in relation to immovable property and the like, as well as the legal actions of the transferor of interests in immovable property for a period of more than two years, such as peace lease of interests and bequests to interests, as well as lease on the condition of possession, as well as mortgage and endowment of real estate and usufruct for more than two years, easement rights, and commitment to Performing the aforementioned legal actions against immovable property must be registered. However, and despite the appearance of Article 1, there are serious doubts regarding the inclusion of this Article in relation to the possession of the will in relation to the object and interests of immovable property, as well as taking intercession and preparing a corrective report by the courts. In addition, contrary to the registration law and despite the fact that in the initial version and the first approvals of the law, it was required to officially register the said legal acts in notary offices, in the final version, the registration in the electronic document registration system was replaced. In addition to that, in some of the amendments of the aforementioned law, the guarantee of the implementation of non-registration of legal acts was the nullity of transactions; However, in the final version, the legal status of the unregistered transactions is not clearly defined, and only the claims and evidences regarding them are declared inadmissible and invalid. However, the nullity of unregistered transactions is more consistent with the philosophy of the law and the rulings stipulated in it, because the legislator in Article 1, firstly, has limited the claims that can be filed regarding informal legal acts to the return of exchange, which is one of the effects of nullity of the transaction; Secondly, all other lawsuits, including the contract confirmation lawsuit, the requirement to draw up an official document and the requirement to fulfill the obligations contained in the informal transaction, are considered inadmissible, which indicates the invalidity of the normal contract; Thirdly, "the evidence related to unregistered legal actions has been considered invalid, which means the same as the confession of oaths and emirates and indicates the exclusiveness of the evidence

of immovable property transactions to the official registration in the electronic system of documents.

In the end, it is suggested that the judicial procedure, in order to prevent the creation of new disputes in the interpretation of the law and the prevalence of situations of authenticity and the impossibility of citing unregistered transactions in the judgments of the courts, not only explicitly consider these transactions invalid and invalid; Rather, with a logical interpretation of the provisions of the law and in line with the philosophy of law making, it should allow the preparation of a corrective report by the courts and exclude the creation of a will for possession of immovable property from the scope of Article 1 of the new law. Also, in order to prevent vote fraud, it is necessary for the legislator to specify the duties of these two legal acts by adding a note to Article 1.

#### Resources

Eslami, Seyyed Mohammad Hadi Jalil Kanawati and Abbas Ali Heydari (2019)  
Commentary on Article 62 of the Law on Permanent Decrees of the Development Programs of the Country approved on 11/10/13951 Fiqh and Fundamentals of Islamic Law, Volume 11, No. 1, 37-58

Emami, Seyyed Hassan (2008) Civil Rights, Volume 1, 2 and 3, Chapter 26, Tehran: Islamia

Amini Mansour (2008) The role of document registration in the sale of immovable property in French law and examining its admissibility in

Iranian Law Journal of Legal Research, Vol. 49, pp. 211-238

Bariklou, Ali Reza (2014) Laws of Contracts, Moin Contracts (1), Tehran, Mizan

Jafari Langroudi, Mohammad Jafar (2008). Al Faraq, Volume 3, Ganj Danesh, Tehran

Jafari Langroudi Mohammad Jafar (1390) Civil Laws of Wills, Volume 3, Tehran Ganj Danesh

Jawaharlal Kalam Mohammad Hadi (1402) transaction regarding future property, sale of future property and pledge of assets in circulation, Tehran, publishing company

Khoda Bakshi, Abdullah (2008) legal analysis of the lawsuit to prove the ownership of legal researches, pp. 291-333

Khoda Bakhshi Abdullah (2008) Another analysis of Article 22 of the Law on Registration of Documents and Real Estate, Legal Journal of Justice No. 71, 9-39

Khodab Khoda Bakshi Abdullah (2017) the ability to cite a normal document against an official document; Jurisprudence and solutions for excellence in law, period 4, Vol. 1, 78-101

Reh Paik Hassan (2015) Civil Laws, Laws of Contracts, Tehran, Khorsandi

Reh Paik Hassan (2008) Civil rights of Moin contracts (1) Tehran Khorsandi

Reh Paik Hassan (2008) Civil rights of Moin contracts (2) Tehran Khorsandi

Reh Paik Hasan (2008) Civil rights obtained in Shafea Ch 2 Tehran Khorsandi

Shams, Abdallah (2014) Proofs of litigation, Tehran Drak

Shahidi, Mehdi. (1371-1372) Sale of immovable property without setting the official legal research document, No. 11 and 12, 7-44

Shahidi, Mehdi (2008) Formation of contracts and obligations, vol. 7, Majd: Tehran

Safai, Seyyed Hossein and Seyed Ehsan Hosseini (2019) Persons and Property Ch 29, Tehran: Mizan

Safai, Seyyed Hossein Javaher Kalam Mohammad Hadi (2018) Civil Rights of Will and Inheritance, Shafea Ch2, Tehran Publishing Company

Safai, Seyyed Hossein; Jawaharlal Kalam Mohammad Hadi (1400) Advanced Civil Rights, Volume 2, Agency and Trust, Tehran Publishing Company

Safai, Seyyed Hossein Javaher Kalam Mohammad Hadi (1401), Advanced Civil Rights, Volume 3, Madani Company, Tehran Publishing Company

Safai Seyyed Hossein Javaher Kalam Mohammad Hadi (1402) Advanced Civil Rights Volume 1: Guarantees of Religion, Volume 3

Tehran publishing company

Safai, Seyyed Hossein Javaher Kalam Mohammad Hadi (1403) Moin contracts of non-exchange contracts, Tehran publishing company

Safai Seyed Hossein (2019) General Rules of Contracts Ch32, Tehran Mizan

Aziziani Majid (1402) Challenges of judicial procedure in the case of proof of ownership from theory to practice, Legal Journal of Justice No. 121, 265-282

Andalib, Hossein Alidoost Abulqasem. (1399) The conflict between the image and the official document from the point of view of jurisprudence and the subject law of Iran, the proposal to amend the article 1309 of the Civil Code, Jurisprudential and Usul Studies, Volume 6, Number 21, 103-132.

Katouzian Nasser (2008) Legal applications of contract - Iqaa Ch9, Tehran publishing company

Katouzian, Nasser (2015) Civil Law Lessons from Moeen Contracts Vol. 1, Vol. 9, Tehran Ganj Danesh

Katouzian Nasser (2008) Civil rights of the guardianship of the will of inheritance, 6th Tehran, Mizan

Katouzian Nasser (2008) Civil rights: property and ownership Ch 11, Tehran: Mizan

Katouzian, Nasser (2008) Moin contracts Vol. 2 Partnerships - Peace, Vol. 7, Tehran Ganj Danesh

Katouzian Nasser (2008) Moin contracts for exchange transactions - Acquisition contracts, Ch 10, Tehran publishing company

Katouzian, Nasser (2008). Moin contracts, c. 3, Ataya, ch. 6, Ganj Danesh, Tehran

Nasser Katouzian (2008) General rules of contracts, the concept of conclusion and validity of the contract, 8 Tehran publishing company.

Katouzian, Nasser. (1390). Proof and reason for proof of C. 1 and 2, Tehran: Mizan

Kashani Seyyed Mahmoud (2008) Tehran Mizan special contracts

Kazemi Mahmood (2018) Dismissal of the conflict between the official and ordinary cash documents on the document number 9709972993700410 of the second branch of the legal court of Rudbar Qasran district, Judis Quarterly, Volume 19, No. 100-100

Kazemi Mahmood (1402) The lawsuit to prove the ownership of immovable property in Iran's judicial procedure; Criticism of the existing practice of criticism and analysis of judicial opinions, Vol. 4, pp. 631-663

Mohaghegh Damad, Seyyed Mostafa (2008), Iqah Hajm, Tehran Humanities Publishing Center

Mohaghegh Damad, Seyyed Mostafa (2014), Wasit Ch 5, Tehran, Humanities Publishing Center

Makarem Shirazi Nasser (1427 AH) New Esfattayat Vol. 2, Vol. 2, Qom Publishing House of Imam Ali Bin Abi Talib (AS).

Mirzanjad Joybari Akbar (2015) Controversy about Articles 22, 46, 47 and 48 of the Registration Law under the pretext of the new theory of the Guardian Council, Rai Quarterly, Volume 5, No. 14, 35-73

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