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Syrian Real Estate Law – Simplified for Everyday Readers

A legal toolkit to help everyday Syrians understand property rights, registration, cadaster, liens, powers of attorney, sales contracts, and more.

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The ongoing conflict in Syria has forced Syrians to start thinking about legal terms they once rarely discussed.

Some of these terms are related to criminal issues and crimes perpetrated in Syria, such as war crimes, crimes against humanity, genocides, extrajudicial killings, forced disappearances and other punitive terms. Some of the other terms are more mundane, such as laws related to property and real estate.

Understanding legal rights and obligations can help Syrians pay attention to which documents they should preserve, what to expect out of legal transactions, and what rights the law entitles them. During our travels and interviews with Syrians inside and outside of Syria, researchers with Syrians for Truth and Justice (STJ) realized that many Syrians do not fully understand real estate and property laws and, as a result, have often been taken advantage of by different parties, individuals, and institutions. To help Syrians better understand the legal terms that may affect them, STJ's legal experts created this report to define the most used terms related to property rights. This paper discusses the following legal terms related to property:

- 1) Real Property
- 2) Real Property Types and Real Rights
- 3) Boundary Markings and Registrations
- 4) Boundary Marking and Registration Records
- 5) The Cadaster
- 6) The Encumbrance of Equitable Lien Upon the Cadastral Certificate
- 7) The Power of Attorney
- 8) The Sales Contract

1. Real Property

Real property is defined in article 84 of the “Syrian Civil Code” as “everything stable, fixed and immovable without damage”¹. Therefore, real property includes all lands, buildings, and houses; however, it does not include movable objects we might consider dwellings, such as goat-hair tents and mobile caravans, because they can be moved without being damaged.

However, even though the definition for real property might seem limited, the Syrian Civil Code can recognize other objects and rights as real property if they are immediately related to real property. One example are objects we call “appurtenances”, which can be identified by the owner as real property if they are used to improve or utilize real property, like farming tractors and harvesters (article 84, paragraph 2). “Appurtenances” are treated as real properties in legal transactions between different parties, but they return to being “appurtenances” when they are no longer being used to improve or utilize real property.

¹ The Civil Law. The website of the Syrian People’s Assembly. (Last visit to the link: 16 November 2021) <http://parliament.gov.sy/arabic/index.php?node=201&nid=12162&ref=tree&>

Article 85 of the Syrian Civil Code identifies a few key real rights as they relate to property: “ownership, disposition, usufruct, surface, right of preference of not inventoried and delimited lands, easement rights, mortgage loan and mortgage insurance, lien priority, waqf/trust, dual lease, long-term lease, right of option resulting from the “promise to sell. We define several of the most used rights below:”)

- A. **Ownership:** one of the fundamental rights of natural persons. Property can be public, owned by the state, its administrations, or institutions, or personal, owned by a person, several persons, or nongovernmental foundations. Property can refer to the real property or to the appurtenance (i.e., property can refer to land and to a farm tractor). The owner of a thing alone shall be entitled to its use, exploitation, and disposition, and has the right to all its fruits, products, and accessories, thereof within the limits of the law. Importantly, no one may be deprived of his/her property except in cases determined by the law, in the manner prescribed by the law, and in return for fair compensation.²
- B. **Disposition:** This refers to the right to benefit from the real property and its products. Consequently, disposition can be material, such as constructing buildings or demolishing buildings, or legal, such as selling, renting, mortgaging, mortgaging insurance, bartering, etc.
- C. **Usufruct:** Usufruct is defined in article 936 in the civil code as a “real right to use something belonging to others and utilize it”, which means the right of usufruct can refer to both an appurtenance or a real property, whether the real property is constructed or not, and the usufructuary shall be entitled to the right of use and utilization, while the *bare ownership* of the property stays for the owner³. For example, the right to rent a property. Usufruct can be with or without remuneration, and it can be for life or for a limited period. The right of usufruct shall be barred with the death of the usufructuary, when the property is completely damaged, when the usufructuary waives their right of usufruct, or with request by the owner due to misuse. This right must be registered in cadaster.
- D. **Easement:** Article 960 of the civil code defines the easement right as: “assignment imposed on a property (the serving property) for the benefit of another property (the served property) and run under ownership of a person different from the owner of the first property”. This right can only be assigned to the property in nature and not to transferred assets or appurtenances, such as the right of artificial waterways (drainage) of high areas of lands over low areas, in addition to the rights of way for the besieged property to have way through a neighboring property to reach the main road, with minimal damage and in return for fair compensation.

² See articles 768, 769, 770 and 771 in the Syrian Civil Code.

³ “Right of ownership” means that the owner of a property is a different person from the usufructuary, and the owner of the property shall have the authority of disposition by transferring ownership using one of the property transfer ways such as selling or donation, provided that this conduct does not harm the usufructuary and does not cause any change to the right of usufruct, and the latter remains occupying the property unless they expressly waive their right of usufruct.

- E. **Mortgage loan and insurance:** there are two kinds of mortgage loans, possessory liens and mortgage liens (mortgage insurance):
- a. *Possessory lien:* This type of mortgage can refer to the appurtenance or to the property and is a contract whereby the debtor leaves a property in the hands of their creditor, or another agreed-on person by both parties. The debtor is entitled to the right of holding property until receiving his/her debt in full. In case the debt is not paid, the debtor has the right to peruse expropriation of property from creditor under due process of law (article 1055 of civil code),
 - b. *Mortgage lien (mortgage insurance):* It is a real right made under contract between the mortgage debtor (property owner) and the creditor (mortgagor), whereby the property is insured to pay the debt of the debtor, and the property stays owned by the owner debtor. In case the agreed deadline comes due, and the owner does not pay the debt, the creditor has the right to peruse the legal procedures to sell the property and collect his debt from the price of the property, and what remains from the price of the property and the costs of the lawsuit shall be the right of the owner (debtor). This right must be registered in the cadaster. The mortgage lien does not prevent the owner from the right of disposition to sell the mortgaged property if the creditor is able to peruse their debt from the mortgaged property whoever the owner is. This also applies to most bank loans for property purchase.

In addition to defining the real rights mentioned above, Syrian law also outlines a variety of different types of property, which we have included for you below:

- A. **Mulk (owned)** are the properties susceptible to full ownership lying within the perimeter of administratively determined built-up areas. Within the “legal type” of the property in the cadastral extract, it is referred to as a *mulk* property. In this type of property, estate after death is distributed based on the *Sharia* law, a male inherits a share equivalent to the share of two females, as it entails *Sharia* settlement of succession, and in case the property’s boundaries are marked and registered, the owner gets a permanent ownership title (green *tapo*) but if the property’s boundaries are not yet marked and registered, the owner may get the temporary ownership title (authority to act title).⁴
- B. **Amiri (state-owned)** are the properties owned by the state. The right of disposition applies to them, but the disposing party only has the right to usufruct since the property is state-owned. In the real property register extract, the “legal type” of the property is defined as “*amiri*”. Inheritance shares are equal for males and females in this type of property and a civil settlement of succession is conducted. The disposer right to property disposition is barred after interruption in cultivating the land or using it for five years⁵. In case the *amiri* property was lying within the perimeter of administratively determined built-up areas, the owner or owners may resort to the

⁴A detailed explanation about the boundary marking and registry works to follow.

⁵ See article 775 of the Syrian Civil Code.

relevant court with a lawsuit called “correcting the legal type of the property”, while in case a statement is provided by the council of the city or municipality, where the property is located, proving that the property is located within the administratively determined and populated built-up area, the court shall decide to correct the legal type of the property to make it “*mulk*”. The term “*amiri or miri*” was used when all lands were owned by the Ottoman State, i.e. state-owned lands with disposition rights given to individuals, where they were distributed to residents without giving them the right to ownership.⁶

- C. **Metrouke murfaka (community property)** are owned by the state but subject to a right of use in favor of a collectivity of people and governed by administrative regulations, such as threshing floors and pastures used by people of a village or several villages, without having the right to utilize them or dispose them. The right to use these properties does not imply any other rights however long the period of use, which also applies to public properties (article 926 of the civil law).
- D. **Metrouke mehmiye (public property)** are those belonging to the state at the province or municipality level, and which form part of the public domain, such as roads, public streets and parks. These properties are not registered in the cadaster and are not given property numbers. Every property is deleted from the cadaster when it becomes part of the public domain.⁷
- E. **Khaliye Mubaha (unowned)** are *amiri* state-owned lands that have not been inventoried or delimited, and on which the first occupant with the state's permission acquires a right of preference, within the specific terms in the state property system, i.e., taking possession of those properties entitles the first one who occupies them with a legal permission from the State the right of preference over others to acquire the right of disposition in this type of properties.⁸

In addition to these types of properties, civil life and urban development have imposed new categories of properties within the town's plot plan⁹ and others outside it; those inside the plot plan are the properties that will be part of residential areas, based on the policies of urban planning¹⁰ according to the URBAN PLANNING LAW promulgated by the Legislative

⁶ See also: Real Property Terms: Amiri Property. Enab Baladi. (Last visit to the link: 16 November 2021) <https://www.enabbaladi.net/archives/400319>

⁷ Decision 188 in 1926

⁸ Article 833 of the Syrian Civil Code.

⁹ There is a general and detailed plot plans, the general one is the plot that clarifies the future vision of the residential area and its expansion by marking urban boundaries, the main road network, uses if all lands lying within the plot and the construction program and system that conform to the bases of the urban planning and the construction system. The detailed plot plan defines all the planning details of the main roads and sub roads networks, pedestrian walkways, public spaces and all other urban details based on the planned use, without contradicting the urban planning and the construction system. (The Urban Planning Law promulgated in the legislative decree 5 in 1982), see via the link (website of the Syrian People's Assembly/ Last visit to the link: 16 November 2021). <http://www.parliament.gov.sy/arabic/index.php?node=201&nid=6590&ref=tree> &

¹⁰ The urban planning is the group of principles that regulate the planning process of residential areas including the general scientific engineering foundations for urban planning and construction and the stages to be followed in preparing the planning program for studying the general and detailed plot plan and the system of construction. (The Urban Planning Law, 5, 1982, Ibid).

Decree 5 in 1982 and amended by the Law 41 in 2002. Any other properties are considered outside the plot.

2. Boundary Markings and Registrations

Boundary Markings and registrations are the works conducted based on the regulations of the decision 186 in 1926 (the law on real property boundary marking and registration system) and completed under supervision of the magistrate for land with assistance of one or more engineer and a clerk. Announcements about boundary marking and registration is made in every area by the decision of the magistrate of land and based on proposals by the technical works in the survey department. Works are conducted in each province, village by village, and in each city, area by area. The team presided by the magistrate visits properties in a specific area and asks people about the owner of each property, marks the boundaries of each property based on the statements of those present, and creates a draft site plan for each property area called “*kroki*” or sketch. Survey maps are then designed based on the work of the boundary marking and registration teams after confirming their correspondence to the magistrate’s decision.¹¹ The area *Mukhtar* or chief must be present

In case there is conflict about the right of property, the area *Mukhtar* (or chief) must be present) and certain steps are taken depending on who is currently occupying the property. The name of the property occupant is registered as the presumed owner, and everyone claiming a right is registered as an objector. In case the occupier of the property is unknown, all plaintiffs are registered as objectors, and in case the owner is not present during the boundary marking and registration procedures, register is taken based on the statements of the *Mukhtar* and others present, and the engineer then sets the boundaries of each property based on the real ownership status of the presumed owner.

The reason for recording the name of the plaintiff as the presumed owner is that this initial (temporary) report is not final, and all allegations of property ownership and objections will be resolved at the office of the magistrate for land by a decision taken based on the boundary marking and registration report.

3. The Boundary Marking and Registration Report

The boundary marking and registration report is the document created for each property after boundary marking and registration works are completed. The report includes a description of the property (location, construction, legal type and declared boundaries), the name, surname, age, and profession of the declared owners and partners on the property, the real rights of the property or obligations on it, the objections to the boundaries and to the right of ownership and its extent or to other real rights, a statement of documents and bonds

¹¹ The boundary marking and registration system promulgated in decision 186, 1926.

provided by relevant people, and the chosen residency addresses of the owners and partners in the contract, as well as for the objectors and plaintiffs.¹²

If a plaintiff did not attend the boundary marking, they can submit a complaint or request, supported by official documents and bonds, to the magistrate. The magistrate can then make an appealable decision in the civil court of appeals of the area or the province where the property is located. The decision of the court is irrevocable and forms the grounds for the cadastral certificate of the property.

If a plaintiff claims a right to a property after the magistrate has already made a decision, they can file preliminary litigate at the civil court where the property is located. The decision of this civil court is appealable if the plaintiff disagrees with the verdict; however, once the court of appeals makes a decision it is irrevocable and cannot be repealed.¹³

This litigation can only be filed within two years of the magistrate's original decision. After the two-year deadline has passed, no claim can be made for any real right related to the property. However, a plaintiff can request compensation for the cause of harm and loss¹⁴ five years after the magistrate's original decision. .¹⁵

4. Cadaster

A cadaster is the collection of documents stating the characteristics of every property and its legal status, stipulating the rights and obligations stemming from it, and stating the transactions and amendments related to it. Additionally, it consists of the property record and its complementary documents (the journal, boundary marking and registering reports, survey maps, aerial imagery, survey charts and documentary proofs).

A cadaster is established for each cadastral area, consisting of a village or a town within its boundaries. In Egypt, this is called *Shahr Al Aqari*, announcing the status of a property and making all information related to properties available to the public.

Properties are registered in the cadaster of the area they lie in, according to the descriptions recorded in the boundary marking and registration reports, and in line with the maps created out of the magistrate's decision. Every property is also registered with the number provided by the survey department during the initial boundary marking and registration report.

Every property has a *cadastral certificate* in the cadaster, and every owner is provided a copy of his/her property's cadastral certificate, which is called the ownership title (*Green Tapo*) and is considered the most powerful ownership document. It includes the property's number, the name of the area where the property lies, the property's space and size, the property's

¹² The address defined by the presumed owner, the plaintiff or the person claiming rights in the property, to notify them when needed.

¹³ Article 31 of the decision 186 in 1926.

¹⁴ Article 17 of the decision 188 in 1926.

¹⁵ The legislative decree 48, 2008 amending the article 17 of the decision 188, 1926. The website of the Syrian People's Assembly. (Last visit: Last visit to the link: 16 November 2021)

<http://www.parliament.gov.sy/arabic/index.php?node=5588&cat=4785>

description, the property's legal characterization, the name of the property owner, the property's ownership shares, and all other relevant rights and obligations. Cadastral certificates in every cadastral area are accumulated in a register called the *property register*. Some cadastral areas may have more than one property register, and the properties of every area are registered in the property register according to a sequence of serial numbers.¹⁶

Public properties are not registered in a cadaster unless there are real rights and obligations related to them that should be registered, and the certificate of every registered property is removed from cadaster when it enters the domain of public properties.

Limitation of registered rights does not enter into force in the cadaster¹⁷, and it is not allowed to bring a property certificate out of the relevant cadaster department in the General Directory of the Cadastral Affairs for any reason whatever¹⁸, but it may be reviewed at the relevant department under the supervision of the staff in charge upon judicial or official party request for specific reasons.¹⁹

In addition to the cadaster, there are other registers for other kinds of properties, such as the temporary register, the registers of the Cooperative Housing Union, the registers of the General Housing Institution and the Military Housing Institution, and the registers of residential associations, which all have the same probative value of the cadaster.

5. Encumbrance of Equitable lien

The encumbrance of equitable lien is a temporary precautionary procedure placed on a property's certificate in the cadaster by a plaintiff of a right to reserve their right until the conflict is resolved in his/her favor. Encumbrance is considered the most prominent procedure in terms of its legal implications.²⁰

The law enforces placing an encumbrance of equitable lien on the certificate of the property when the latter is subject to a property real right appeal, and in case no encumbrance is placed, the court will not accept the appeal²¹ in order to protect the plaintiff's right, to prevent the opponent from illegal disposition of the property, and to inform others that the property is marked with an encumbrance of equitable lien in favor of the plaintiff. The reason behind these protections is to ensure that even if the property is sold, if the plaintiff wins their

¹⁶ Decision 189, 1926.

¹⁷ The Cadaster Law 188, 1926.

¹⁸ By reading about cadaster in Syria, the reader may find discrepancies in reference followed by the General Directory of the Cadastral Affairs, because this directory has been run by different ministries, the Ministry of Justice until 1959, the Ministry of Agriculture and Agrarian Reform until 2010 and finally the Ministry of Local Administration.

¹⁹ The Cadastral Code 43, 1971.

²⁰ For further details see: "What is the encumbrance of equitable lien and what are its legal implications?" Mohamah.net (Last visit to the link: 16 November 2021) <https://www.mohamah.net/law/%d9%85%d8%a7-%d9%87%d9%8a-%d8%a5%d8%b4%d8%a7%d8%b1%d8%a9-%d8%a7%d9%84%d8%af%d8%b9%d9%88%d9%89-%d9%88%d9%85%d8%a7-%d9%87%d9%8a-%d8%a2%d8%ab%d8%a7%d8%b1%d9%87%d8%a7-%d8%a7%d9%84%d9%82%d8%a7%d9%86%d9%88/>

²¹ Articles 9 and 47 of the decision 188, 1926.

appeal, they can reclaim their right over the property regardless of who newly owns the property. As long as the encumbrance of equitable lien is placed on the property's certificate, it is registered as the oldest and most significant of other encumbrances²².

The encumbrance result depends on the result of the appeal. The encumbrance expires by the end of the appeal once an irrevocable decision is made, regardless if the plaintiff wins or loses their appeal.

6. Power of Attorney

A power of attorney (POA) is a contract whereby an agent commits to act legally in favor of a grantor²³. POA is created by the notary in the court who works under supervision of the chairman of the Civil First Instance Court urban areas, and the Justice of the Peace for the districts where there are no civil first instance courts, and administratively reports to the Attorney General's office where the Attorney General validates the signature and stamp of the notary.

People create special POAs to entitle an agent with the rights to act on a property on their behalf, which can save the owner time, effort, and money. The reason why is that a special POA can be created in hours or minutes, while a lawsuit may take months or even years.

A special POA must be created with the property features in mind, including the property number, the property's cadastral area, and the property's equity shares if the property represents a share. In other words, a property or properties must be defined clearly in a way that prevents ambiguity, doubts, and interpretations. That means a POA which is written using general instead of specific language cannot be a special POA, because a special POA only allows the agent to act within the guidelines specified in the POA contract.²⁴ While a general POA entails several rights, including as the right to sell, purchase, mortgage, donate, and others, a general POA would not entitle an agent to conduct these actions on behalf of the owner.

A special POA may be created in favor of the agent themselves, which is the most prevailing case in special POA to sell a property, where the agent is given the right to sell the property to themselves, or in favor of another person. In these types of POAs, the grantor may not end the POA or restrict it, therefore it is called the "irrevocable POA". In contrast, the agent may waive his power at any time by informing the grantor.²⁵

However, if a special POA is created to sell a property, no encumbrance of equitable lien is placed on the certificate of the property. Consequently, the right of the agent or the third

²² In other words, in case there are competing encumbrances, the preference will be in favor of the encumbrance with the oldest date and timing defined in day/hour/minute. The encumbrance is placed by the real estate documentation department subordinate to the Directorate of Cadastral Affairs, and a copy of the encumbrance letter is attached to the file of the appeal.

²³ Article 665 – the Syrian Civil Code

²⁴ Articles 667 and 668 – the Syrian Civil Code.

²⁵ Articles 681 and 682 – the Syrian Civil Code.

party is in jeopardy because the owner, after creating a special POA, the owner can decide to sell the property to another good faith person. Unlike the POA agent, the new owner can file for an encumbrance of equitable lien in their favor. As a result, the POA agent will lose his/her right to claim the real property, and his/her right will be limited to an appeal of the owner to reclaim the property price, in addition to the harm resulting from what the owner did.

The “legislator” tries to add further probative value to the POA for property sale at the notary, when the notary law number 15, 2014, subjected the *ratione loci* of the notary in relation to the POA for selling property to the general system. In other words, any notary in any area cannot create a POA outside their administrative area and the notary is obligated to send a copy of the POA of property sale to the directorate of cadastral affairs to codify it on the property’s cadastral.

7. Sales Contract

The sales contract is defined by the Syrian Civil Code as “a contract whereby the seller complies to transfer the ownership of something or another financial right to the buyer in return of cash price.”²⁶

What is important here is that a real property sales contract is a document whereby the property owner or their agent agree to sell the property or part of it to the buyer. It is a binding contract for both parties, where the seller is obliged to transfer the ownership of the (sold) property to the buyer, and seller is obliged to pay the agreed-upon price. The contract is valid with the occurrence of an accord, offer and acceptance, with consideration of what is ruled by the law beyond that for certain conditions to validate the contract. Expressing accord shall be verbal, by writing or using common gestures, as well as by taking a stand clearly and undoubtedly expressing its real intent.²⁷

Traditionally, the contract is created in writing between two parties, and is informally called an “outright sale contract”. In the previous paragraph we noted that the contract may not always be written but can be verbal. Yet, most contracting parties prefer written contracts because they are clearer and more secure. This contract is usually called “outright or final selling contract”. In order to ensure his/her right in the property, the buyer has to register their ownership of the property in the cadaster, following the legal procedure, and in this type of contract, the seller receives the full payment and the buyer receives the (sold) property, while sometimes part of the payment or all of it is delayed until the sold property is turned in, or until the sale is recognized by the court or the notary. This type of contract is irrevocable but sometimes a certain agreed-on payment as a token in advance is made which gives the right to both parties to revoke the contract before receiving the full payment, turning in the sold property and officially transferring ownership to the buyer. In case the person who paid the token in advance reverses their decision, they lose what they paid, while if the other party reverses their decision, they commit to pay double of the advance payment to the other party.

²⁶ Article 386 – the Syrian Civil Code.

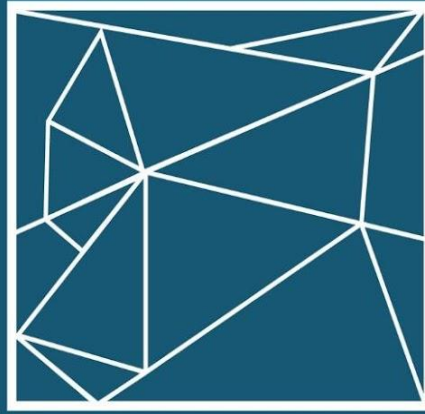
²⁷ Articles 92 and 93 – the Syrian Civil Code.

A new type of contract imposed by the intense use of electronic media in daily life is called “electronic sales contract”, which is like the traditional sales contract in terms of required basic elements, terms of validity, and the responsibility implications resulting from it, but it is different in terms of the means through which it is made, as it electronically conducted, where contracting is done via electronic media. The Law of Electronic Signature and the Services of the Web promulgated in Syria in 2009 stipulates that, “the certified electronic signature inserted in an electronic document, in the scope of civil, commercial and administrative transactions, justified with written evidence in the regulations of the law of personal data protection.”²⁸

It is important to note that the common “Bai’ Al Wafa” property sale contract, used to refer to the sale of a property by the owner to another person (the buyer) in return for an agreed-on payment, is different from other sales contracts in that the owner reserves their right to reclaim the property if they repay the buyer the agreed-on payment. The sale is then considered null according to article 433 of the Syrian Civil Code, as the articles stipulates, “if the seller reserves their right to reclaim the sold property in a certain period of time, the sale is null.”

²⁸ Law 4, 2009. The Law of Electronic Signature and Services of The Web, Article 2. Website of the Syrian People’s Assembly, May 25, 2009 (Last visit to the link: 16 November 2021)
<http://parliament.gov.sy/arabic/index.php?node=201&nid=4732&ref=tree> &

سوريون
من أجل
الحقيقة
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Syrians
For Truth
& Justice



History

Syrians for Truth and Justice was conceived during the participation of its co-founder in the Middle-East Partnership Initiative (MEPI) Leaders for Democracy Fellowship program, who was driven by a will to contribute to Syria's future. Starting as a humble project to tell the stories of Syrians experiencing enforced disappearances and torture, it grew into an established organisation committed to unveiling human rights violations of all sorts.

Convinced that the diversity that has historically defined Syria is a wealth, our team of researchers and volunteers works with dedication at uncovering human rights violations committed in Syria, in order to promote inclusiveness and ensure that all Syrians are represented, and their rights fulfilled.

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