

Real Estate Investigation as a Mechanism for the Delivery of Property Titles in Algerian Legislation: Between the Requirements of the Text and Problems of Application

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Abstract

The real estate investigation process is a mechanism introduced! By the Algerian legislature to clear private real estate property. Despite the new provisions brought by Law 07/02, this mechanism faces numerous practical and legal difficulties. These include unjustified responses from state property services without legal basis, delays in file processing, and citizen reluctance to participate. This situation necessitates a legislative review of the current procedures to achieve the law's intended goals.

Keywords: *Real Estate Investigation, Real Estate Property, Title Deeds.*

INTRODUCTION

It is universally acknowledged that real estate plays a crucial role in a country's economic development and social stability since independence, the Algerian legislature has enacted a series of laws to regulate, manage, and protect real estate ownership. Notably, Ordinance No. 75/74, amended and supplemented, aimed at conducting an omprehensive land survey and establishing a land registry.

However, the survey process was hindered by its complexity and the substantial resources required, prompting the search for alternative mechanisms. Decree 83/352 of May 21, 1983, introduced procedures for establishing ownership through acquisitive prescription and the issuance of notoriety deeds in unsurveyed areas, However, these procedures did not yield the expected results and were marred by numerous issues and abuses, as they relied on mere declarations supported by two witnesses and a technical file.

Consequently, the legislature sought a more accurate mechanism for proving ownership to keep pace with accelerating economic reforms, especially for investment projects financed through mortgage loans, and in preparation for a general survey This, led to the enactment of Law 07/02 on February 27, 2007, which established procedures for real estate ownership inspection and the issuance of property titles through real estate investigation.

The importance of this subject lies in its role in real estate purification, as it aims to establish a procedure for verifying ownership rights and issuing property titles through real estate investigation.

However, despite the introduction of this alternative mechanism, its implementation has encountered both legal and practical challenges that have hindered the issuance of property titles and the purification of private real estate. Given the above, the main issue can be summarized as follows:

Has the Algerian legislature succeeded, through Law 07/02, in purifying private real estate ownership?

Addressing this important topic requires an examination of two key areas: the scope of application and preparatory measures of the procedure, and the various practical and legal issues impeding the real estate investigation process.

Section One: Scope of Application and Procedure of Real Estate Investigation

Articles 2 and 3 of Law 07/02 define the properties covered by this procedure and those excluded from its scope.

1. Properties Covered by the Procedure

The provisions of Law 07/02, dated February 27, 2007, apply to properties located in the surveyed sections of municipalities, or parts thereof, that have not yet been subjected to the general land survey stipulated in Ordinance No. 75/74 of November 12, 1975, which pertains to the preparation of a general land survey and the establishment of a land registry. Additionally, this procedure includes privately owned properties for which owners do not possess title deeds and exercise possession according to civil law provisions or for which title deeds issued before March 1, 1961, no longer reflect the current real estate situation as of the application date.

2. Properties Excluded from the Procedure

Law 07/02 excludes properties that have undergone the general land survey and have been temporarily or permanently numbered, as well as properties classified under national assets, whether public or private. It also excludes endowed properties and tribal lands, which is necessary to align with the legislative intent behind this law (Badr Chenouf, 2022, p. 753).

Thus, it is clear that private properties without a title deed are the ones targeted by the law and concerned with it, excluding other types of real estate.

2 - Procedure for Real Estate Investigation:

Executive Decree 08/147, dated May 19, 2008, concerning real estate investigation operations and the issuance of property titles, outlines the procedures to be followed to implement the provisions of Law 07/02. These procedures can be summarized as follows: First - Initiating the Real Estate Investigation: According to Law 07/02, a request to initiate a real estate investigation can be submitted by a natural or legal person who possesses real estate either directly or through another person. The real estate investigation process can be conducted individually at any time or as part of a collective procedure with different protocols. The request to initiate a real estate investigation is presented as a petition to the relevant director of land conservation, in which the applicant(s) request the director to conduct a real estate investigation to issue them a property title (Ahmed Daghish, 2014, p. 758).

A - Individually Requested Real Estate Investigation:

Requests to initiate a real estate investigation are directed to the head of the relevant land survey and land conservation services. These requests, written on a standard form addressed to the provincial director of land survey and land conservation, must be accompanied by the following regulatory documents:

- A topographic plan of the property prepared by a land surveyor at the applicant's expense, on transparent paper and to a scale conforming to the standards specified for the general

land survey, supplemented by a descriptive card indicating the nature of the property, its area, valuation, and the names of neighboring owners.

- Birth certificates and national identity cards of those concerned by the investigation.
- Any document that allows the applicant to prove their right to the property.

It is worth noting the significant role of the land surveyor in accurately defining property boundaries based on the information in the submitted documents (Badr Chenouf, 2022, p. 758).

Requests submitted either directly by the applicant or through an authorized representative (as per a notarized power of attorney) are recorded in a numbered and sealed application log kept by the director of land survey and land conservation.

Each request receives a deposit receipt and is assigned a file number and the date of registration in the special register. It is important to mention that the information recorded on the standard form varies depending on whether the applicant is a natural or legal person (Abdelaziz Mahmoudi, 2019, p. 17).

01 - Examination of the Request:

Upon receiving the request, the provincial director of land survey and land conservation examines it to assess the status of the applicant, whether they are a holder, sole owner, or co-owner. The director verifies if the applicant is acting as a claimant of rights over the concerned property and not as an intermediary. Additionally, the director ensures that the property in question is not already undergoing survey work and that the request is accompanied by the required regulatory documents.

02 - Preparation of the Real Estate Investigation Order:

Following the registration of the request, if accepted, the provincial director prepares an order to initiate a real estate investigation, which includes:

- The name, surname, and rank of the investigating officer assigned to the file.
- The subject of the real estate investigator's mission.
- The name and surname of the applicant(s)' father.
- Identification of the concerned property or properties.

This order, which must be issued within one month from the date of request receipt, is sent to the president of the relevant municipal council for posting at the municipal headquarters for fifteen days prior to the on-site visit by the real estate investigator. This posting informs citizens of the investigation's commencement and ensures broad dissemination, potentially through additional public postings (Hassain Awameria, 2015, p. 102). If the request is not accepted after review, the applicant is notified using a special form.

B - Real Estate Investigation within a Collective Procedure:

This type of investigation applies to the implementation of collective construction programs or rural or urban real estate entities the process involves the following steps:

Decision to Initiate a Real Estate Investigation:

In this case, the real estate investigation is initiated by the provincial governor or the president of the relevant municipal council (Farid Beqqa, 2015, p. 231). This is done through an order specifying the concerned area(s) and setting the period during which requests must be

submitted to the provincial directorate of land survey and land conservation, which is at least fifteen days.

This decision is recorded in the administrative contracts register of the province and widely disseminated through public posting by the provincial director of land survey and land conservation.

The director posts the decision at the headquarters of his services and sends copies to the relevant municipal council presidents and provincial directors of state property, taxes, religious endowments, construction, and urban planning, and agricultural services for further posting.

Moreover, the director of land survey and land conservation informs any service potentially concerned with the operation.

Requests to initiate a real estate investigation within a collective procedure must be accompanied by the same documents mentioned for individually requested investigations and are reviewed similarly.

- Preliminary Examination of the File:

The provincial director of land survey and land conservation ensures the acceptance of the request and records it in a special log for collective operations, numbered and sealed, under the same conditions and forms stipulated for individual real estate investigations.

- Appointment of the Real Estate Investigator:

After receiving the file, the provincial director issues an order appointing the real estate investigator, which includes the same information elements mentioned in the individual investigation order, particularly the investigator's name and rank, which must be a State Property Inspector due to their expertise in handling real estate matters (Techniques of Real Estate Investigation, 2007, p. 42), as well as the date of the investigator's visit to the property location and other necessary investigation information (Badr Chenouf, 2022, p. 758).

Second - Conducting the Real Estate Investigation (Individual or Collective):

The real estate investigation begins as soon as the investigator is notified of their appointment. Before visiting the site, the investigator undertakes preparatory work to understand the field situation, including reviewing various maps and documents that help identify the concerned property and facilitate subsequent inquiries to determine the rights associated with that property.

A. Field Investigation:

1. Site Visit:

The real estate investigator visits the property in question with the applicant present to identify the property, inspect the possession facts, and document the investigation findings.

2. Property Identification:

The investigator uses the attached plan to identify the property and its boundaries based on the declarations of the applicant and neighboring occupants. The investigator must ensure no encroachments on adjacent properties and verify that the plan prepared by the expert surveyor matches the actual property, considering any positive or negative easements and all relevant documents.

3. Possession Facts Inspection:

The investigator gathers information about the possession facts, which should comply with Articles 808 and 827 of the Civil Code. The possession must be peaceful, public, continuous, and free from coercion, concealment, or ambiguity, without any claims or conflicting actions. It should meet the 15-year period required for property rights as per Article 827. The investigator may conduct further research at the real estate registry to verify any prior publication or documents that might contest the applicant's possession or check for state, regional, municipal, or religious property rights. The investigator also seeks documents that establish the possession period (Alaa Eldin Ashi, 2007, p. 53).

4. Handling Pre-1961 Inaccurate Contracts:

The Algerian legislator did not specify the nature of these contracts, whether formal or customary, which were drafted during the French occupation. The lack of mandatory real estate registration hindered the continuity of property transfer records.

Successive heirs often made informal divisions not legally formalized, leading to various scenarios:

- If the document appears to be a valid contract but does not specifically pertain to the property under investigation, possession is verified through inquiries.
- If the applicant's deed specifies a larger area than that in the investigation plan, it must be confirmed that the property in question originated from the one in the deed, ensuring it does not involve unfairly leaving the common property.

If the property is not national or religious, the investigator establishes the legal relationship between the applicant and the property, assesses the possession conditions, and documents statements and testimonies in the investigation form.

B. Documenting Investigation Results:

The investigator must prepare a temporary report within 15 days of the field visit, detailing the investigation results, observations, and statements from neighboring occupants and those assisting in the investigation.

This report is widely publicized by posting at the municipal office for 30 days to allow interested parties to raise objections (Ahmed Degheesh, 2024, p. 16).

Article 12 of Decree 08/147 states that the period for objections begins 8 days after the report is posted. There are two scenarios:

1. No Objections: If no objections are raised within 30 days, the investigator prepares a final report documenting the investigation results.
2. Objections Raised: Objections are recorded in a special register at the Directorate of Land Survey and Real Estate Preservation. The investigator schedules a reconciliation session within 8 days, inviting both parties.

If reconciliation is achieved, a reconciliation report is prepared, and the investigation continues, incorporating the agreement results into the final report.

If reconciliation fails, a non-reconciliation report is issued, informing the objector of a two-month period to file a lawsuit. The investigation continues if no lawsuit is filed, and a copy

of the report is sent to the relevant real estate registry to ensure compliance with lawsuit deadlines and update the temporary real estate record.

III. Confirming Investigation Results:

After the investigation, the investigator submits the file, including the application, attached documents, and reports, to the regional director for a final decision based on the investigation results.

1. Issuing a Registration Decree:

If no objections are recorded and possession conditions and acquisitive prescription are met, the regional director issues a registration decree, confirming property rights. A second site visit is scheduled with the expert surveyor to verify the property boundaries and measurements.

The decree is sent to the regional real estate registry for implementation, which involves registering the property rights, marking the real estate record, and issuing a title deed as per Executive Decree 08/147. In case of joint ownership, the title is issued to one owner with a notarized proxy or written consent from other co-owners.

2. Issuing a Denial Decree:

If the procedure does not succeed, the regional director issues a reasoned denial decree, notifying the applicant and, in the case of a group request, the governor. The denial decree can be contested in the administrative courts within six months from the date of issuance (Alaa Eldin Ashi, 2007, p. 52; Lamariyah Bouqara, 2017, p. 469).

Second Axis: Legal and Practical Issues in Real Estate Investigation and Disputes:

The application of this procedure has revealed legal and practical challenges that hinder achieving the law's objectives and contribute to the increased number of cases in the courts. These include:

1. Practical Issues:

- Difficulty in determining property ownership due to unclear cadastral plans inherited from the colonial era and unupdated transactions affecting properties.
- Lack of possession proof and absence of testimonies from neighboring occupants, relying on declarations, statements, and inquiries to prove possession and acquisitive prescription.
- Possession in common, but the applicant prepares a plan based on individual possession.
- Practically, it is challenging to process a file within one month due to the volume of cases and the procedure's complexity.

02-Legal Issues:

- Delays by some municipalities in responding to the legal status of properties, sometimes exceeding four months, or providing inaccurate and unclear responses.
- Lack of cooperation from citizens with the investigator in conducting investigations, particularly when requesting information from neighbors about the nature and duration of possession and the transfer of ownership.
- Delays in correcting and addressing deficiencies by the file owners, which often take a long time.

Analyzing the information gathered during the investigation necessarily requires the State Property Department to issue a statement regarding the state's entitlement to the claimed property. The central administration set a one-month deadline for this response, starting from the date the message is sent, as per Instruction No. 400 dated 17/01/2010. If no response is given within the deadline, the cadastral and preservation services must continue the property investigation procedures under the responsibility of the Director of State Property.

The issue arises when there is a response that is not explicit, putting the cadastral preservation services in a difficult position of either continuing the investigation or preparing a rejection memorandum, which leads to appeals against the response memorandum rather than requesting clarification from the State Property Department or other administrative services.

Regarding the legal issues related to built properties, there is a question of whether they are subject to urban planning tools or if the investigation is limited to the land parcel, making the application of the provisions of Law 29/90 and the regulatory decrees premature.

Disputes Arising from Law 07/02:

Jurisdiction over disputes related to the results of the property investigation is distributed among administrative, ordinary, and criminal courts in some cases:

- A. Disputes under the Jurisdiction of the Administrative Judge:

Property investigation procedures can end with the regional director's refusal to register the property when the investigation and inspection results are inconclusive. In other cases, the cadastral registrar involved in preparing and registering the property document may refuse to register it, leading to administrative court jurisdiction over the property owner's or the real owner's appeal after the registration process. Additionally, the court can handle the cadastral registrar's request to cancel the property registration according to Article 18 of the law, addressed in the following cases:

1. Administrative Appeal against the Regional Director of Land Survey and Property Preservation:

If the property investigation yields no result, the Director of Land Survey and Property Preservation must issue a reasoned refusal decision, which is communicated to the concerned party to initiate legal proceedings before the competent administrative court.

2. Administrative Appeal against the Cadastral Registrar:

The property investigation may lead to the registration of a property document for the claimant based on an investigation, despite the existence of another registered property document for someone else. The real owner can file a lawsuit before the competent administrative court within a year from discovering the harmful act. The state is responsible for errors made by the cadastral registrar during their duties, retaining the right to sue the registrar in cases of gross misconduct. Notably, filing the initial appeal suspends property investigation procedures temporarily (Taher Birk, 2018, p. 61).

B. Disputes under the Jurisdiction of the Property Judge:

When the property investigator visits the site, they receive statements from the claimant and review documents and circumstances allowing the claimant to exercise possession of the property.

The investigator conducts necessary investigations and prepares a provisional report subject to registration procedures. Third parties can file objections regarding the investigated property. If necessary, the investigator revisits the site to study objections raised by neighboring owners or claimants of any real rights over the property (Amina Abdelli, 2022, p. 404).

The investigator sets a reconciliation session to reach an agreement between disputing parties. If successful, a report is issued; if not, a non-reconciliation report is prepared.

The objector has two months from receiving the non-reconciliation report to file a lawsuit before the competent court, under the risk of having their request denied.

Owners or neighboring possessors, including the state and its regional entities, can object to the claimant's status or file claims for the property in question.

Raising such a lawsuit suspends property investigation procedures until a final judicial ruling is issued (Mahmoudi Abdulaziz, 2009, p. 337).

C. Disputes under the Jurisdiction of the Criminal Judge:

Article 18 of Law 07/02 states that if registration is based on false statements or forged documents, the head of the Land Survey and Property Preservation services must file a lawsuit to cancel the registration and lodge a complaint with the public prosecutor to initiate criminal proceedings.

This law restricts the initiation of criminal proceedings to the regional director without allowing other affected parties to take action. It should be noted that criminal proceedings can only be initiated after a final judgment of conviction regarding false statements or forged documents, which the cadastral registrar can use to demand the cancellation of the property registration.

CONCLUSION

The legislator's introduction of the mechanism for verifying property ownership through property investigation aimed to address the chaos in the property sector, particularly given the decline in investment in Algeria. Studies indicate that this is due to the lack of property guarantees and ownership documents, deterring financial institutions from granting loans to both national and foreign investors.

Despite the benefits of this law, issues in property ownership remain due to legal and practical challenges arising from this new mechanism. Therefore, it is crucial for the legislator to impose stricter legal regulations to oversee the preparation and issuance of property documents, ensuring accurate verification of property ownership through property investigations, whether requested individually or collectively. Results and Recommendations:

A. Results

- The Algerian legislator limited the authority for verifying property ownership through property investigation to the Property Preservation Directorate, excluding other services that contribute to property ownership clarification. This authority should be extended to other services to achieve the law's intended purpose.
- Despite the introduction of this mechanism to clarify private property ownership, property issues persist, especially before competent judicial authorities, raising questions about the effectiveness of this new mechanism.

- The application of Law 07/02, dated 27/02/2007, establishing a procedure for verifying property ownership and issuing property documents through property investigation at the Property Preservation and Land Survey services, faces numerous practical and legal difficulties, notably unsubstantiated and delayed responses from the State Property Department. These responses often lack legal justification for the state's ownership, causing affected parties to resort to litigation to justify the state's entitlement to unclaimed properties, thereby harming administrative interests and citizens with pending files. Enhancing this process requires thorough field inspections and review of various plans and records.

B. Recommendations

- Establish property preservation offices in each municipality to handle all property transactions and alleviate the burden on the cadastral registrar.
- Prioritize the general land survey project as a strategic tool for future property organization by allocating significant budgetary resources in government programs to activate the general land survey process and establish the property registry, which requires substantial financial investment.
- Train and qualify specialized human resources to ensure the success of the land survey process alongside the property ownership verification mechanism through property investigations. This can be achieved by providing continuous training domestically and internationally to equip national cadres with the best training in land surveying, a technical and scientific process requiring advanced technology for efficient execution.
- Enhance the private sector's role in participating in the land survey and property investigation processes. Implementing the new Law 07/02 dated 27/02/2007, establishing a procedure for verifying property ownership through property investigation, should grant the private sector a greater role in managing this procedure by relying on direct land surveys conducted by private entities at the requester's expense.

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