

# Challenges and Solutions of Separation and Transfer of Common Documents

## Abstract

It is elective or mandatory to create joint property ownership under the legislation governing the registration of papers and real estate. In the legal analysis of separation and separation, it is noted that it is not feasible to separate and separate in each location or circumstance due to legal impediments. A descriptive and analytical approach was used in future research to examine the problems and potential solutions associated with separating and transferring common documents. When there are several owners of a piece of property without clear boundaries between their ownership interests, this situation is called diffusion. Any owner may take any possession of his property, as stated in Article 30 of the Civil Law. The next article makes provisions for it, except for property that is specifically prohibited by law because the aforementioned article is not founded on the jurisprudential principle of total subjection and has been limited by the legislature to preserve order and justice. No one should be allowed to hurt another person by taking control of their property, except reasonably taking to satisfy needs or compensate for losses, following social fairness and the need to avoid intergroup conflict.

**Keywords:** *Challenge, solution, division, separation, transfer of common documents*

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## 1. Introduction

Large lands with single or joint ownership are increasingly being split into smaller parcels by the owner or owners within the confines of the law due to the growing population and the desire for personal ownership. When used literally, the separation and classification of the term refer to the actions of separating two objects from one another. Deferred property occurs when one partner, all of them, or all of them request that the desired property be split separately or in parts. Regarding the challenges of the category above, it should be noted that each owner has the right to take any possession of their share, including bailing it, after the legal processes and expropriation operation are completed. No other person has the right to intervene, and opponents or opponents are dealt with in accordance with the laws in the legal court. The legal limitations and barriers that fall under the purview of the laws governing the criteria of action, the approvals of the Supreme Urban Planning Council, the approvals of the Commission of Article 5 of the Law on the Establishment of the Supreme Urban Planning Council of Architecture, the special laws of the city council approvals, separation, etc. must be observed as part of the separation process. People have several issues as a result of these limits. One of these issues is that it will not be possible to offer any registration services, such as the production of a different or supplementary ownership document. A joint document will be provided for such lands and properties upon request. There are no barriers to the cooperative transmission of papers. No matter if the property is moveable or immovable, there should be an equal amount of private or communal property. In both situations, a review is conducted at the request of each partner with knowledge of the relevant legal requirements for that property or property. Of course, with agreement and approval from both parties, each

partner can share the desired property. Each partner can take legal action through the registration authorities in the event of a dispute or lack of permission, and in the event of an objection, they can turn to the local court where the property is situated. However, immovable property is divided into many pieces and withdrawn from the joint state at the request of the owner or owners during a separation, which differs from a separation in several ways. You should be aware that separation is carried out at the registrar's office and that the form of the separation assembly is prepared, taking into account all the characteristics of the separated property, including the size of the portions, and making the property ready to issue a document. However, the competent court decides on each partner's request. It implies that the separation may be pursued in both the court and the registered office. For the operation to be completed part by part in the property without needing to be divided, it must be shared by two or more individuals. However, the property can still be divided even if there is only one owner. It should be noted in the following that distribution is a kind of ownership and is one of the key ideas in civil rights. The issues and solutions of the separation and transfer of community records have been extensively studied and researched; they should be emphasized at the conclusion. Each of them has advantages of its own, but they also have certain drawbacks. Most of them have merely looked at the topic's outward appearance; they haven't talked about its existential philosophy, problems, or recommendations for remedies. The present research will feature fresh and unique components since we plan to look into the aforementioned unexplored elements as well as the difficulties and solutions.

## 2. Definitions and concepts

A collection of terminology and concepts that science is founded on are introduced with any new body of knowledge.

In the context of that science, theories are developed to understand these principles. As a result, in an effort to have a deeper grasp of the topic, we make an effort to pay attention to the ideas and terminology that are related to the topic of demand. This will enable us to have a thorough comprehension of the topic.

### **2.1. The lexical and terminological concept of separation**

To separate something from something else is what the word "separation" refers to. (Moein, 2013, 313). Separation refers to the division of immovable property, whether joint or not, into two or more independent portions. 67 (Scotty, 2008).

In Iran's new laws, the word "separation" has been used to denote division and separation, but it is distinct from those terms. The concept of diffusion is necessary for both separation and division, but it is not necessary for separation for the condition of diffusion to occur. For instance, the phrase separation is used, although there is no dissemination, in Article 112 of the Code of Execution of Official Documents of 1322. Or a landowner who wishes to divide a huge plot of property into smaller ones. While distribution is not addressed in this instance, it is under Article 106 of the Real Estate Registration Law, where it is used correctly to refer to both common lands and non-common lands (Jaafari Langroudi, 2012, p. 172). Simpler terms for separation include "to separate," "to open up," and "to split the immovable property into smaller portions" in the registration practice.

### **2.2. Separation barriers**

There are separation barriers, but they cannot always be done without restrictions. According to the detailed plan's projected densities, the size of the separations is determined, and its rules and regulations establish the acceptable and ideal size of the components based on low, medium, high, and special densities (Ziyari, 2018, p. 177). All current rules have focused on ensuring the minimum size of separation of residential parts in the present environment, taking into account that the urban regulations in all urban development plans, including comprehensive, thorough, and prepared, are restricted to the minimum. There is no barrier if one is seeking the maximum, but one must adhere to the minimum (at least in high, medium, and low density according to the conditions of that city). For instance, residential structures with high densities must have a minimum separation level of 150 square meters (Hosseini, 2006, p. 152).

Therefore, several obstacles to segregation are highlighted in this section of the debate.

1. Disallowing the partition of buildings with more stories than are permitted. It refers to the division of real estate where at least 70% of the space is set aside as open space and where the number of floors is increased above the allowable density limits.

2. Issuance of development licenses for properties positioned inside the junction design Refuge is also forbidden, as is the separation of properties inside the Refuge.

3. Concerning lands in the industrial area that are less than 1000 square meters, it is prohibited to split the land into parcels that are less than 1000 square meters, except for the utilization of existing, small-scale urban industry.

4. In the realm of health, land division is often avoided, with the exception of extraordinary circumstances when Tehran Municipality presents the issue to the Article Five Commission of the High Council of Urban Planning and Architecture for a judgment and provides arguments<sup>1</sup>.

5. There are additional restrictions on commercial and athletic applications. Although partitioning the Tehran Bazaar's commercial portion is forbidden, it is permitted to do so in the market's residential area in compliance with the applicable legislation to build residences<sup>2</sup>. Separating land for sports stadiums will not be permitted<sup>3</sup>.

6. Except in the circumstances specified by legal approvals, the city limit of Tehran is prohibited from land division and the construction of any buildings, particularly residential complexes and settlements, following the approved comprehensive plan of Tehran and Article 6/1/59 of the Revolutionary Council of the Islamic Republic of Iran. The Revolutionary Council's decision and the overall plan both stipulate that the limits of lands should only be used for agricultural purposes. Additionally, the government of the Islamic Republic of Iran does not have an interest in the city's indiscriminate development, especially when it destroys agricultural lands near Tehran. As such, the municipality of Tehran has a legal obligation to strictly forbid the construction of buildings on lands that are part of the city limit.

7. With the exception of settlements whose separation plan has been approved by the municipality and which will be put into effect after a year has passed following the completion of the infrastructure and executive facilities as well as the hardening of the buildings, it is not possible to separate barren lands located in liberated areas between the ages of 5 and 25.

8. The partition of gardens and agricultural lands is forbidden both inside and outside of the city borders, according to a circular that the Ministry of Agriculture distributed to all

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<sup>1</sup> Paragraph 7 of the minutes of the meeting No. 1 of the Development Monitoring Council, 1973/10/14

<sup>2</sup> Paragraph 2 of the meeting minutes No. 157 of the Coordination Council, 1974/01/19

<sup>3</sup> Paragraph 1 of the minutes of the meeting number 8 of the expansion monitoring council, 1974/01/12

departments; nevertheless, this prohibition was overturned in light of the Administrative Justice Court's ruling.

9. There is a quorum limit over which it will not be able to split the utilized lands. Owners of advantageous land whose land area exceeds the quorum allowed by urban land legislation.

The implementation of Article 10 of the urban land law<sup>4</sup> in this type of land is required to adhere to the minimum area of the parcel for the government (200 square meters) with a minimum width of 6 meters along the length of the plate if they have not previously utilized the benefits provided by the urban land laws and do not have suitable housing. If it is not feasible to divide the share of the government in the aforementioned order, it will be awarded to the organization and urban planning's assignment of the area in excess of the quorum required by law.

### 2.3. Segregation complications

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The municipality where the property is located calculates the separation tolls based on the rules governing the levying of tolls and collects from the applicant that this is completely separate from the issue of separation cost and has nothing to do with the separation cost that is levied at the Real Estate Registry Office during the separation process whenever the owner or his legal representative applies to the municipality where the property is located for the order of separation. The primary method of collecting the tolls that the municipality receives is: Paragraph A of Article 43 of the Law on the Collection of Certain Government Revenues approved in 1369 and Paragraph 1 of Article 35 of the Law on Organizations of Country Islamic Councils approved in 1982, and the law of adding a note to Article 53 of the Law on Organizations of Country Islamic Councils, Oct 20, 1985, Urban Renovation and Development Law approved in 1958, the Law on Repeal of Article 90 of the Public Accounts Law approved in 1363 (Kamiar, 2015, p. 134), but the calculation table of separation charges with different uses is stated as follows:

1- For every square meter of residential use, 10% of the regional price on the day of the property

2- The cost of each square meter of commercial and industrial land is equal to 100% of the area's price on the day the asset is acquired.

3. Regarding other uses of urban development plans, 10% of the regional price should be applied if the aforementioned property is granted to the institutions covered by paragraph b of article 9 of the urban land code for the provision of public services. Land division fees associated with the Urban Land

Organization: Following the Dispute Resolution Commission's opinion issued on behalf of the executive bodies housed in the presidential institution, land division fees for residential, commercial, and industrial use from the lands of the Urban Land Organization must be collected (Mirzaei, 2017, p. 486) When each of the owners of the aforementioned license plates refers to the municipality, the separation fees will be calculated and collected based on the most recent approval of the municipality for the license plates that were divided by the registration offices without complying with Article 101 of the Law on Municipalities based on Articles 147 and 148 of the Amendment Law on the Registration of Documents and Real Estate approved in 2016. (Rostami Bukani, 2013, p. 75). If a person's land or property is included in the municipal plan, or if, in accordance with the law, a government agency or department occupies a portion of the property and pays the owner for it, then only the portion of the property that is occupied will be subject to separation fees; the remainder of the property is exempt.

If applicants want to use the amenities of a communal residential real estate whose owners, without abiding by the land division regulations and without putting Article 101 of the Municipal Law into effect, have their property in the plots that are being divided and are already occupied, and who built residential structures there before 1981, they must pay, in addition to the division fees, with the owners' consent, for each square meter of the requested plot, which is equal to one time the regular division fee.

The revenue department will also be required to reflect the level in writing to the urban development department by mentioning the bank receipt number and the amount paid. Calculating land division fees is the responsibility of the urban development departments of each region. They must declare the determined amount in writing.

### 2.4. The lexical and idiomatic meaning of separation

To separate something from something else is what the word "separation" refers to. (Moin, 2013, p. 313)

In accordance with Article 591 of the Civil Code<sup>5</sup>, each partner's portion of the joint property must be divided, either by a subsequent agreement between the partners or, in the absence of such an agreement, through a court order. A deed of sale, or specific immovable document, written and recorded in the notary office, for instance, might be used by a man to transfer his property to his wife. In this instance, the real estate has two common owners as of the day the document was created and registered in the real estate office of the registrar's

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<sup>4</sup> The executive body of the party is required to turn over the replacement or pay its fair price in the event of advantageous lands that are accessible to those who satisfy the requirements

of Article 7 of the legislation and need to be designed subsequently.

office: a male for three dongs and a woman for the remaining three dongs. Therefore, the woman may ask the registrar's office to surrender her joint interest in the property based on the aforementioned paperwork (Hamiti Waqif, 2012, p. 120). The lexical term's division of the participle's infinitive comes from the word oath (Dehkhoda, 2012, p. 6878). Terminologically, it is also described as granting joint ownership independence by dividing up the property equally among the spouses (Kashani, 2016, p. 65). The definition of division has also been debated, and as previously said, partition is both separation and division, among other things. For instance, when a person passes away, his estate is divided among his heirs. This estate consists of both mobile and immovable property. In this instance, the term "division" is used, not "separation," and it refers to the transformation of the common portion into a distinct share. A business contract is created when several owners unite their ownership to achieve unity, but occasionally the ownership union falls short of perfection and transforms into a community without losing the unique characteristics of each owner. In this kind of consolidation, assets are combined in a way that makes it impossible to separate them from one another, or the owners opt to turn their distinct but private assets into shared ones. Diffusion is the name given to this condition, and it denotes particular rules (Katouzian, 2013, p. 9). Every owner has a fundamental right to share, and no owner may be compelled to do so. This issue is highlighted in Article 815 of the French Civil Law, which restricts the continuance of distribution to circumstances when it is ordered by a court or decree (Kashani, 2016, p. 76). "Any partner can request the division of the common property at any moment, save in instances where the division is banned by this law or the partners are required to not split," states Article 589 of the Civil Law.

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Certain hold that division is indeed the best course of action, and both Imamiyyah jurists and some well-known jurists agree with this (Mohaqq Hali, 1408, p. 7). According to Article 591 of the Civil Code, the division will take place in a fashion that the partners agree upon whenever there is an understanding regarding the principle of division, and they have the plan to split amongst themselves and just seek to make it public. The document registration office and notary offices' involvement in this situation is required, and at notary offices, the division of the official letter is structured in line with the rules.

### **3. The difference between separation and division**

Although, as we previously stated, the division is both separation and separation under the law of real estate registration and encompasses both kinds, it should be noted

that the two also have variances from one another, the most significant of which are as follows:

1) immovable property doesn't need to be split during a divorce; therefore, a person who owns six dongs of a big plot of land may divide it into smaller halves. However, this word is not used when dividing non-shared and non-shared properties because it is essential for the property to be shared.

2) Even after the split, the partners still have ownership in each piece in proportion to their share of the common property, meaning that the state of distribution and sharing does not end if the common property is divided. However, the distribution between the applicant for the sharing on the one hand and other partners or joint partners on the other is categorically disallowed when it comes to the sharing of the partner's share.

3) The existence of a disagreement between the owners is essential to the sale of real estate. In actuality, one or more owners must be against the property's release, while one or more must be in favor of it. However, when a property's owners are many people, they must all consent to the split, and there cannot be any contention.

4) Since the share of the partner who is applying for the separation must be specified and divided in the separation, there may be a disagreement among the partners as to whether the separation is correct, whether it complies with the law, or how much of the partner's ownership interest is included in the joint ownership.

5) The court and judicial authorities make the final decision in this instance. Separation, however, has never had a judicial component and has always been and remains under the jurisdiction of the registered office since it does not have the title of recognizing and distinguishing the right and separating the share of the common owner.

6) The divide in division activities is based on the share prices of the partners. In other words, the value of each joint owner's part is what is regarded as the main factor and plays a significant impact. As it's feasible that the partners' ownership stakes don't have the same impact as their share prices. However, in separation operations, the topic of the separation is determined by the real and current condition of the different portions, not by the value of each partner's share or by the foundation of their ownership.

### **4. The challenges of banning divisions and their costs**

In this section, we will look at the barriers and their costs in relation to the legal articles 595, 591, and 597 of the Civil Code:

#### **4.1. Contraindications for division**

*The barriers to the division are as follows:*

1- According to Article 595 of the Civil Code, "the partition is banned even if the partners agree if it implies the loss of all the common property or the portion of one or more partners from the property." Because of this, it is also true in the event of the

transfer of common property that the transfer is banned if it results in the loss of the common part of the property.

2. The Civil Code states in Article 597 that "splitting the endowment amongst the endowments is not permitted, but dividing the property from the endowment is permissible."

3- The Civil Code's final paragraph states that "forcing a division that includes loss is not authorized." Damage is defined as "a significant reduction in price to the extent that cannot be forgiven" under Article 593 of the Civil Law.

4- In accordance with the Legal Department of the Judiciary's theory, it is not permitted to expropriate before the registration office's requirement is satisfied whenever the act of expropriation by the registry office requires the modification of property specifications because the modification must be done in the presence and with the consent of all joint owners.

5- If a conflicting ownership document has been issued with regard to the common share sought to be alienated, in this case, alienation will not be permitted until the conflict is resolved, according to the note of Article 1 of the Law on Alienation and Sale of Common Properties approved in February 1979<sup>6</sup>. A price of 500 riyals has been established (Samavatipour, 2011, 83).

## **5. Ruling solutions to the challenges of separation and division**

We find rules that in some way correspond to the division of land even in the Islamic period<sup>7</sup> (in the morphology of Islamic cities) since these laws are a component of the laws of urban law, which have their origins in the development of laws and regulations throughout history. In the Islamic era, the following economic and ideological elements impacted social interactions and city development: 1-Preventing injury 2. Remaining a group; 3. Deciding to withdraw Personal seclusion is crucial from this perspective for a person to live in his or her own house without being seen by others. 4- The right to receive the necessary light and air (this viewpoint is related to the light, i.e., respecting the building's north and south views in land preparation) and 5- Respecting other people's property (based on this viewpoint, no action should be taken to decrease the value of other people's buildings and property) (Shakoi, 2013, p. 187).

In this section, guidelines and directives controlling separation and segregation have been compiled utilizing the materials offered by the scientific centers in the library.

### **5-1- General and unique separation laws and regulations**

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<sup>6</sup> Commentary on Article 1 of the Law on the Sale of Shared Properties approved on 1978/11/13 "Regarding the shared property for which conflicting ownership documents have been issued, the sale will not be carried out until the conflict is resolved."

The following general and particular provisions apply to the separation: Below, we'll look at each of these general regulations and particular restrictions in turn:

#### **5-1-1- General rules**

The land separation regulations, along with zoning regulations, are regarded as the most significant legal tools for implementing the land use plan because they are crucial to how urban land is divided, how large plots should be, what kind of transportation system should be in place, and how the foundational elements of urban infrastructure and services should be established. However, in contrast to the past, land separation regulations now have a wider scope and a more dynamic nature to improve the urban environment and its quality. Instead of the previously dry and uniform rules within the framework of the traditional comprehensive plans of construction, it is now focused on the preparation of the land, i.e., environmental construction and land construction. Land preparation has a more delicate function, particularly in third-world nations, since it must address concerns of urban growth and reconstruction and contribute to the provision of healthy housing for those in the community who are low-income (Mehdizadeh, 2013, p. 290).

Controlling the housing market is necessary to achieve a standard and balanced housing market. This can be done by applying general land development regulations through zoning, building and subdivision guidelines, levies on the development of urban land, and the creation of investment-boosting plans. Separation is unquestionably the primary component and the origin of building work, even if it is not explicitly regarded as a construction activity. Building regulations won't work well if land division in cities is improperly done and not enforced (Saeed Niya, 2013, p. 48). One of the most crucial challenges in urban and urban development is the segregation of land, which is also the foundation for the balanced expansion of cities, the execution of comprehensive plans, and the standards set out in the aforementioned plans. Indeed, by using basic rules and methods, through control and supervision of land and building separation and to have authority for the relevant authorities in urban planning affairs to review and modify the proposed separation plans by the land owners before the registration actions, at least 6% of the corrective viewpoints implemented meticulous strategies and carried them out (Hashmi, 2011, p. 15). Indeed, the detailed plan serves as a link between the master plan's ideas and what the city is expected to do.

~~However, these laws also existed before Islam, which can be referred to Hammurabi's law of 1771 BC (Kamiar, Gholamreza, p. 15).~~

Compared to the master plan, the executive plan is examined in greater detail, and the division of each property or plot of land is made clear in terms of use, density, height, land division, etc., in the city, district, and neighborhood areas (Nourian; Sharif, 2012, pp. 62-63). In other words, only the major city traffic networks are described in the master plan, and only the major routes are carefully documented in the detailed plan, while the subsidiary routes and passes are only mentioned in the detailed maps. Any system's political economy dictates how scarce or plentiful resources are distributed among the users who are vying for those resources. As a consequence, relevant land policies and laws should be prepared to ensure the effective application of urban building policies, and with the proper monitoring and execution of laws connected to urban land, urban growth and development should be monitored (Shakoi, 2013, p. 139).

### 5.1.2. Special regulations

Now, additional circumstances are discussed individually following the general statement of the regulations controlling separation below. Article 3 of the aforementioned by-laws on the division and division of lands located outside the legal boundaries and sanctuaries of cities, according to the third chapter of the by-law relating to the use of land and the construction of buildings outside the legal boundaries and sanctuaries of cities, it is dedicated to the area and division of settlements. These regulations apply to settlements that are less than twenty hectares in size (Hojjati Ashrafi, 2003, p. 542). The completion of infrastructure operations, the issuance of the exploitation license, and the division permit are all prerequisites for carrying out operations related to the registration and division of settlement lands, according to article 14 in chapter number. Depending on the circumstances, the infrastructure operation, the issuance of the exploitation license, and the separation permit may be issued for that part and handed over. Additionally, under the circumstances determined by the Commission following Article 13 of this regulation, a license may be provided to divide and sell portions of buildings and land before carrying out infrastructure activities in any area of the town, provided that the applicant has a sufficient guarantee, the order of which will be determined in the instructions of the note of article 12 of this regulation. The necessary changes to the division map will be made by the commission of Article 13 of the regulation by issuing permission to modify the classification map to carry out the infrastructure operations of the aforementioned parts in the event that the method of division of lands and settlements

that were constructed prior to the approval of this regulation is not in accordance with the criteria prescribed for each one.

#### *Separation rituals for properties larger than 10,000 m<sup>2</sup>:*

The requests for the division of lands larger than 10,000 square meters into areas within and outside the five-year urban services scope to review and adhere to the regulations of detailed plans and maps were previously presented in the 5th commission of the High Council of Urban Planning, and such requests will be addressed in accordance with the theories of the aforementioned commission<sup>8</sup>.

#### *Land subdivision of more than three thousand m<sup>2</sup>:*

Before considering and commenting on detailed plans regarding all requests for land subdivision of more than three thousand square meters sent from the Urban Land Organization and also the lands of more than 10,000 m<sup>2</sup> are requested by private owners, and after the file is created and completed, it is mandatory to send the records to the General Department of Planning and Urban Planning for consideration and comments (General Department of Urban Planning and Municipal Architecture, 1987, p. 34). 10% of the land was designated for services in conjunction with the per-capita standards for urban growth and complexes, and it was merely meant to distinguish between areas that would be given up to the complex and territories that would be more advantageous and barren. Since only the fertile and barren lands assigned to the Urban Land Administration are included, as well as common barren lands, which are exempt from the government's surplus share under the urban land law, 10% of the land is assigned to services for the design of lands between 10,000 square meters, the subject of the per capita instructions of urban planning and collection<sup>9</sup>.

#### **Separation of buildings:**

In circumstances where the owner of the registered properties seeks separation based on Article 104 bis of the Regulation, and the field belongs to someone else, as stated in Paragraph 382 of the collection of registration circulars, the owner of the field must be informed and cautioned before any changes to the property's limits are made. There will be no more disputes regarding the original owner once the land ownership record has been issued according to Article 104 of the Code of Registration Law. The portion of the building on the field that the tenant of the leased field constructed with the owner's consent is what is meant by separation. Assume that someone has constructed a 200 square meter home on a plot of land with a 1000 square meter size, whose title deed is in the name of another person, and that person demands the issuing of a 200

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~~f the minutes of the meeting No. 121 of the Coordination Council dated 1973/05/05 and paragraph 4 of the minutes of the meeting No. 77 of the Coordination Council dated 1972/05/10~~

~~es of land and real estate of more than ten thousand square meters are the criteria of action.~~

m<sup>2</sup> title deed. Indeed, the applicant's property's area and the area will be divided from the areas of one thousand square meters, and then the ownership document—typically only provided for endowed lands—will be issued. Due to the ban on the transfer of endowment lands, the Endowments Organization transfers ownership of vast areas in common form and smaller areas in the form of a lease deed for authorization to develop. The issue of the ownership document of endowment in the leased area with the construction of the building will be demanded by the owners of such papers or, in reality, the endowment renters. The registered office must first request the municipality's opinion on the detailed plans and take any necessary action in accordance with the aforementioned regulations if the tenant of such lands does not obtain a building completion certificate from the municipality and submit a certified copy of it (Rostami Bukani, p. 64). The following steps are taken to issue the title deed to the tenants: upon the beneficiary's request, the registration office schedules a visit to inspect the property and establish the boundaries of the tenant's possessions. This visit is also informed to the area's neighbors and the arena's owner (endowment administration) for their knowledge and attendance at the location at the scheduled time. The registration surveyor, registration representative, and endowment administration representative visit the site, prepare a sketch, and organize the boundary determination plan. In the case of non-possession, they should write in the relevant column that there is no objector. Typically, this notification is done with an administrative notice. If for whatever reason, the surrounding owners do not get the notice of attendance on the designated day and they are unaware of the cause, they are still required to be at the location and sign the demarcation sheet along with the representative, the surveyor of registration, and the applicant. Under Article 83 of the Registration Law<sup>10</sup>, the action representative drafts the noble ownership deed by the official in charge of the registration unit of the parliament; it was registered in the indicator office with the aforementioned sheet attached, along with a drawing of the location. After the objection time had passed, the case was moved into the action cases row for a month. After the objection period has passed, the file is returned to the action's representative, who will recheck it together with the required certificate of registration on the lack of further documents and the non-receipt of the objection. The representative of the action will handle the case by verifying the required certifications for the registration order and doing any other necessary steps. After the case has gone through the administrative processes, the ownership document will then be issued. In other words, in cases where the owners of registered

properties are registered under article 104 bis, the owner of the field and the neighbors must be informed when the boundaries of the properties are established, according to paragraph 382 of the collection of registration circulars. It is necessary to alert and caution the field of rank. The claim of registration of the original property will no longer be heard when the title deed is issued<sup>11</sup>.

#### **6- Solutions for dividing and selling common property**

On 2/20/1958, the Ministry of Justice created and authorized the rules based on Article 5 of the legislation on the sale of common property, which we analyze and examine. This law was adopted on November 22, 1997.

If one or more partners seek the transfer of a common property whose registration procedure has been completed, whether or not it is included in the property register, it will be handled by the local registration unit where the property is situated<sup>12</sup>. The registration department releases the requested item while abiding by all rules and laws.

Note: There shall be no transfer of the joint property concerning which a conflicting ownership document has been issued until such dispute has been resolved.

Article 2: Each partner may appeal the registration unit's judgment in the court of the city where the property is located. The time for objections is ten days after the disputed judgment was notified.

The matter will be heard by the city court, which will render the proper judgment. It is possible to appeal the city court's decision.

Article 3: When the final transfer decision is implemented, the registration unit will receive the separation fee specified in Article 150 of the Amending Law on Registration of Documents and Real Estate.

Article 4: At the request of each partner, the municipal court will order the sale of any property that is ultimately found to be inalienable.

Article 5: The registration unit's notification of papers, the sale of immovable property process, the division of the proceeds among partners, and the general execution of this law's regulations will all be following the rules that the Ministry of Justice will authorize.

Article 6: Exclusion cases brought up in court on the day this legislation goes into effect will still be taken into consideration, and judgments will be rendered; however, if the exclusion claimant wishes to bring up his claim in the registration unit, he must return the prior claim from the court (Hojjati Ashrafi, 2013, p. 166).

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~~Article 83 of the Registration Law "The jurisdiction of each of the official document offices will be determined by the system of the Ministry of Justice".~~

It is vital to clarify that while the conflicting ownership document is not defined in the note to Article 1 of the registration legislation, it is referenced in Article 3 of the legal bill addressing registration mistakes (the collection of laws of 1955, Published in the official newspaper 2901 year 33, page 192). However, some authors believe there are several ways to avoid conflict. For instance, if they purchase a property, they should complete the administrative work as soon as possible until the transaction is recorded in the real estate office of the registry office and they receive the title deed in their name (Hamiti Waqif, 2013, p. 94).

Currently, it appears that the Ministry of Justice's assertion that the legislation on the transfer and sale of common property, adopted on May 20, 1998, is valid is supported by the aforementioned instances.

Article 1. A request for separation from one or more of the shared property partners located in the aforementioned registration region is sent to the registration representative by the head of each registration unit.

Article 2. The registration representative will review the property file to determine the license plate's registration status. Regardless of whether the plate is listed in the real estate register or not or whether it has a conflicting ownership document or not, he will then give his opinion and bring the matter up for the head of the department's consideration.

Article 3. The registration procedure has been completed, and there are no conflicting ownership documents for the property. The head of the registration unit designates the registration surveyor to check the location while the applicant, other partners, and the registration representative are invited and present. Additionally, he will create the map and send it to the signature of the registered representative and all of the current partners following the possessions and records of the registration and with respect to their rights.

Article 4. The surveyor is in charge of drawing the map under divisional custom, establishing the boundaries, areas, and specifications of each divisional part, reflecting this information in the form of the parliament, having the representative of the registration and the current partners sign the document, and delivering it to the representative of the registration unit.

Article 5. After reviewing and comparing the application with legal requirements, taking into account the format of the regulatory assembly, the elevation plan, and its compliance with the status and registration records, the person in charge of the registration unit will announce his decision on rejecting or accepting the application and the method of allocation.

Article 6. In accordance with the requirements of Article 2 of the Law on the Transfer and Sale of Common Property, the decision of the person in charge of the registration unit is communicated to all the partners along with a copy of the

meeting minutes and a photocopy of the division map (in case the property is declared to be alienable). If they have any objections, they must submit them to the city court where the property is located. The notification procedure complies with the notification requirements under the rules governing the application of official document provisions.

Article 7. The rules governing the summary procedure must be followed while handling complaints filed in the city court against decisions made by the registration unit.

Article 8. The guidelines for carrying out civil judgments will apply to the implementation of the extradition's final sentence.

Article 9. If the property is ultimately found to be indivisible, the city court will order its sale to the court's enforcement division at the request of one or more of the partners. The executive manager shall proceed with the sale of real estate under the law's guidelines for the application of civil rules pertaining to the sale of moveable property.

Article 10. After subtracting the cost of executive operations, the proceeds from the sale of immovable property will be distributed among the partners in accordance with the municipal court's ruling.

A property that has been definitively ruled to be non-alienable will be sold by court order at the request of each partner, under Article 4 of the Alienation Law and Article 9 of the Bylaws of the aforementioned law.

It should be noted that to issue an order authorizing the sale of common property, a petition must be filed with the municipal court in accordance with Article 48 of the Code of Civil Procedure and Judicial Procedure (currently general). Unfortunately, the legal department of justice decided, with the majority of votes, at the aforementioned consultative theory that it was not essential to file a petition as a basis for action (Zahidi, 2010, p. 206).

The opinion of the majority: As stated in Article 9 of the Law on the Sale and Distribution of Joint Properties, "in case of deciding on the indivisibility of the property, the city court will order its sale to the court enforcement department at the request of one or more of the partners." In light of the above legal clarity, there is no need to submit a petition because the recent action indicates that one or more partners requested the action after the judgment was issued, and it is currently in the execution stage. Therefore, there is no need for a petition, and a request is sufficient, and naturally, since there is no need to re-enter the substance, the judge's order is sufficient.

Minority's opinion: According to them, because Article 48 of the Code of Civil Procedure—which is one of the necessary laws—is so clear that it needs the submission of a petition before any legal action may be taken, it is impossible to start legal action without first submitting a petition.

## **7. Conclusion**

In the future study, we looked at the problems and potential fixes for separating and distributing common documents. The concept of dispersal is a fundamental requirement for separation; without it, the division lacks both meaning and significance. There is no need for such a concept in separation, and generally speaking, the separation of six-part properties and lands, as well as common lands and properties, may also be included in the definition of separation and division. The legal analysis of separation shows that it is not conceivable in every location and circumstance and that there are difficulties in the way of separation. In this sense, it appears that some of these limitations are acceptable and appropriate. Many of these impediments, however, are unjustified from a legal and economic standpoint and go against the ownership and control principles. Everyone should be free to use their property and land however they see fit and to split it or allocate it as they see fit. If he wants to restrict the division of a garden that is in possession of the heirs, especially when the garden is in the form of property, the possibility of division and division between the heirs will run into trouble. Because each property has unique characteristics that set it apart from other properties, the law should be more lenient.

When describing the legal foundations governing separation and separation, it should be noted that Article 101 of the Law of Municipalities, approved in 1330, is the first—and therefore the most explicit—law related to separation, followed by the registration circulars that have been collected and published under the name of the collection of registration circulars. The registration and judicial authorities apply the legal bill on the division and alienation of lands occupied by the government, passed on December 22, 2018, as well as the legislation on alienation and sale of common property, adopted on November 22, 2018, when it comes to alienation. There have undoubtedly been decrees or rules in this area, but they are omitted in the thesis since they are mentioned there in the ways and means of separation and separation, which the thesis' second section investigated. The requirements that the applicant for separation is unavoidably compelled to go through have been inferred from the rules and regulations governing the route of separation and the customary procedures in the registration offices. Before requesting an order of separation, each applicant must first create a separation map in accordance with the laws of the city or town where the requested property is situated. One should visit the official document office with a prepared map and written request, and the aforementioned office, after acquiring the required papers, should refer the problem to the registration office of the same region. The registration office notifies the local municipality for approval within the city limits after reviewing the documents and registering the request. Outside the city limits, the registration

office notifies the pertinent institutions, such as the district administrations and the housing foundation.

The problem of the deadline for answering the registration inquiry is something that might be taken into consideration at this time. If the municipality or other authorities do not respond with their consent or disagreement to the separation applicant's request within two months of the date of the inquiry and receipt of the letter, the registered office may begin dividing the level of the map that was submitted. However, to avoid having to amend the detailed map, the handover map must match the proportions specified in the formal document stating ownership and rights of the land or property. The location of the property is another important factor in how to separate the two. If the requested property is more than 30 kilometers away from the registry office, the applicant is responsible for paying the commission fees due to the officers, such as the surveyor, etc., who must deposit the money in a bank.

One of the other duties of the registry office during the separation process is to pay attention to the lack of custody of the ownership document, which must be done by a written inquiry from the relevant unit. After that, the registry office must proceed to collect the separation costs equal to the notified tariffs and then obtain the head of the registry office's signature.

It should be noted that there are certain variations in the method of separation, such as the separation of real estate and land, which may be demanded by the court, in addition to the fact that there is a share in the administrative procedure associated with the method of separation. That is, in addition to the fact that people submit requests for release, the court may also get involved in some situations owing to disagreements between co-sharers, and the request is then made following the court's decision. The registration office is in charge of informing all partners of this request, which is another consideration that has to be made.

The existence of a partner in the common property is one of the factors that is crucial since it can lead to several logistical and legal issues. The partners' disagreement with the distribution mechanism is the primary concern in this matter, and it should be addressed legally in the owning location's court. The court also plays a crucial role if one of the beneficiaries is unknown during the transfer of property or if the property itself is unknown. This is because the transfer of property involves government agencies, each of which has certain requirements.

## **8. Suggestions**

1. Separation fees can be collected more fairly and without using arbitrary techniques if they are computed separately and paid for by the municipality and the registrar's office.

2- Contrary to customary policies, the division of agricultural lands and gardens should be reviewed, and the possibility of division into smaller pieces should be explored. This is important because smaller farms and gardens require less water and maintenance, so they should be made accessible to the general public.

3- Inconsistent and redundant circulars have been examined, and by eliminating needless legislation, the remaining instances will be made transparent and intelligible to the general public.

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