

The real property conservatory system in morocco

Law



The Real Property Conservatory System in Morocco GBU 3301 — Legal Environment of Business Dr. Benlamhidi, Sidi Abdellah Spring 2012

Introduction: The Real Property Conservatory System is a set of laws and procedures that organize the real estate field in a way that saves people's rights over their possessions and that protect them from any illegal attempts of theft or taking over by other parties. The Royal Dahir that currently regulates all the procedures of real estate conservation dates back to 1913. Before 1913, land property in Morocco was very complex as there were different types of land property. First, there was " Melkia", which is a possession that is testified by a certificate from the Adoul, and follows the traditional Muslim rules. Second, lands dedicated for the agriculture. Third, Guiche that are lands given by the sultans to the soldiers and are owned by the state and can only be rented. Finally, public lands that are owned by the state such as forests. After 1913, " La Conservation Foncière" or Real Property Conservatory System (RPCS) was first brought by the French colonizers to help their citizens register the properties that were taken from the Moroccan farmers and landowners by force. Each real estate property taken by the French, such as a piece of land or a building was clearly defined in terms of its geographic location, borders and size so that none can claim its ownership other than the " owner". Any type of real estate possession is not recognized or protected by the law unless it is registered either through the real estate conservatory system or the traditional way that was used before the 1913. In this paper we will also introduce the different persons involved in the process of registering real estate property, define their roles, the procedures that should be followed to register a property, the difference between a registered and a non-registered property and a case study that

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illustrates the role of the "notaire" or the solicitor. I. What are the advantages of registering a property under the "Real Conservatory Property System"? The real conservation is a written law that should be respected by each Moroccan citizen, and any foreigners who would like to invest in Morocco except if it is an agricultural land where a foreigner has no right to possess one. Lands and buildings are not recognized in an absolute way by the law as being one's property only if they are registered under the Real Property Conservatory System. The registration under this Conservatory System enables a final and unimpeachable land title, protects the owner from any other possible claim on his or her property, and simplifies any property transaction. It also provides a better access to loans from banks and avoids eventual conflicts concerning the property. A registered land is more valuable than land that is not. However, when a belonging is not registered under the Real Property Conservatory System, it has less value than a registered one because it is riskier to own it and people generally tend to avoid buying it. In fact, the land that is not registered does not benefit from the advantages that the real conservatory has brought. When a land is not registered, it is taken in charge by a "Adoul" who makes only the contract to buy or sell the land or property. In this case, there may be many different problems and one of them is that the seller of the land can sell it to different individuals and benefit from the money. The problem of the repartition of the land is often present, the buyer buys a land that is not well partitioned and stumbles upon some problems. II. Steps to Register a Property: Concerning the formalities and steps required for a land or property registration, there are two ways to register your property either by going through the normal formalities and steps or by adopting the special <https://assignbuster.com/the-real-property-conservatory-system-in-morocco/>

procedure. For the normal procedure, the formalities are the following: 1. Requisition deposit: the owner of the property must deposit a registration request at the national agency of land registration (ANCFCC) 2. Requisition extract publication where an extract of the registration request is published in the official gazette and posted with a boundary notice at the court and the local authorities responsible for the property in question. 3. Determine the property boundaries, and it is considered as a topographic operation, an act of publicity and a legal investigation. 4. The creation of a plan, which is a document that determines the surface and the exact limitations and boundaries of the property. 5. The closing: Upon receipt of the statement and the boundary plan, the conservator publishes a boundary closing notice in the official gazette that fixes the opposition deadline and displays it at the court and the local authorities responsible of the property in question. 6. After the closing, the property can either be: - Registered in the absence of objections or after resolution of objections in favor of the applicant, the registrar shall establish a registration and title deed on behalf of the owner. - The request can be rejected or canceled by a judgment dismissing the applicant, or for a lack of documentation supporting the application or failure of the applicant. - In case of opposition, the Conservative transmits the requisition to the trial court to adjudicate upon the dispute concerning it. III. Introduction to Three Legal Professions: The Solicitor, The Lawyer, and The Adoul

The Solicitor : A solicitor is someone who has undergone legal training and been admitted to the practice of law. In some countries, the legal profession is split into two separate categories: solicitors and barristers. Solicitors handle legal matters outside of court, providing legal advice to clients, preparing legal arguments, and so forth. They are also sometimes

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admitted to practice in the lower courts. The main function of the "Notaire" is to draw authenticated legal documents such as contracts of sale of immovable properties, marriage contracts, wills, loans and similar instruments. Notaries are regulated by laws which were last modified in 1934, although a set of new regulations drawn up with the assistance of the National Association of Notaries is currently under review. Notaries are supervised by the National Council for Notaries. They form an independent profession, recruited on the basis of a professional examination open to graduates with a bachelor of law, for which the Institut National d'Etudes Judiciaire offers a specific preparation course. In addition, the solicitor intervenes in the process of acquisition or sale of a property. He/she can intervene only if the property is registered (according to the Dahir of 12 August 1913 relating to the legislation concerning the registration of the building application for registration). The solicitor must conduct a consultation with the land registry (conservation foncière) of the location of the property to determine the land situation. The property must be free of any charge, mortgage, or attachment that can complicate the transaction of the real estate. A Solicitor must not only inform his clients about the impact of the commitments they will make, but also provide the formal validity of the act he/she will write. The solicitor has other three main roles apart from work paper that we can summarize in: advisory role, security role and prevention, and role of conciliation and mediation: - Advisory role: Beyond the role of writing contracts, the solicitor can give his client many advice and information about: private law, property law, business law, company law, private international law and also on tax and wealth management. It also aims to inform the parties about the commitments they will make. - Security

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Role and Prevention: He watches over the documents and public papers. He performs the various tax and legal formalities that are necessary for the achievement of contracts under the legislation. - Role of Conciliation and Mediation: Faced with a disagreement between the parties, the solicitor is best placed to find solutions and lead to intermediate and end the differences amicably. The Lawyer The lawyer is a professional in law and justice. Its role is to advise, assist and defend individuals and businesses on personal or business issues. In general, he/ she has three main missions: he advises, he reconciles, he defends. This means that he/ she assists the client in all stages of negotiation, mediation, proceeding or any other form of dispute resolution. As advocates, they speak for their clients in court by presenting supportive evidence. As advisers, they counsel their clients on their legal rights and obligations. The lawyer acts on behalf of another and voices the belief of his/her client in a way that suits their best interests. IV. The Difference between the Lawyer, the Solicitor, and the Adoul The solicitor is a legal expert who has a public authority. He prepares contracts in the authentic and legal form on behalf of its clients. He exercises his functions in a liberal framework. The lawyer, in the other side, is a practitioner and a legal professional whose traditional function is to advise clients on legal issues, whether on their daily legal life, or in more specialized issues. The lawyer can also defend clients in court, pleading to protect their interests and, more generally, to represent them. The lawyer service is sometimes mandated by national law, notably to ensure the rights of defense. " Aduls" however, act as both official witnesses and notary publics and always operate in pairs. - The Adoul In Morocco, the profession of Adoul is perceived as the traditional concept of the profession of Notary. The Adoul fulfills the <https://assignbuster.com/the-real-property-conservatory-system-in-morocco/>

role of Clerk of the Court and is made responsible for recording statements and judgments. This profession is considered among jobs exercised as part of judicial assistance in addition to the role that it plays as legal representative. 5, 000 Moroccan Adouls lead all steps to allow the recording and the reproduction of all documents that they write in accordance with law and the new family code. Besides marriage, they are competent for broader activities than those allocated to modern notaries. They establish different contracts such as acts of joint ownership, transactions between individuals, estate taxes... The job of traditional notary fascinates more and more young persons. Numerous are those who go even to the point of applying to PhD programs to master the job better. A job that gets more and more organized and modernized as time goes by. - How to Become a Solicitor? The process to be a solicitor is not easy. It takes many years of acquiring experience and challenging examinations. Once they are approved to be a solicitor, they are obliged to work in different cities (that they don't choose) based on the needs of these communities. The person, who is concerned of becoming a solicitor, has first to earn a law degree. After that, he/she must take an internship with a professional solicitor to acquire the knowledge and improve their understanding toward this kind of work. When taking the internship, the student is automatically enrolled in the registers of both, the trial court and the court of appeal. By doing so, the student is kept under the control of the general prosecutor who can come at any time to oversee their activities. The internship lasts normally two years; which is followed by several assessment tests that are usually conducted by the General Attorney of Rabat, and a jury composed by a solicitor from Casablanca, another one from Rabat and a Magistrate. Normally the trainees take the first exam which is known in the <https://assignbuster.com/the-real-property-conservatory-system-in-morocco/>

jargon of solicitors in Morocco as " un examen de premier clerc", if the candidate succeeds this test, he/she has to accomplish another internship again for two years that are followed by another test somewhat similar to the first one. After completing a four year internship and succeeding the assessments tests, representatives of several government departments meet, and decide who goes where, all the " Ready-to-be Solicitors" are appointed to go and work in different cities along the Kingdom of Morocco depending on the needs of these communities. The solicitor receives eventually his/her official nomination by Royal Dahir, and receives in return a ticket that allows them to open a practice. However, according to Badr Boulghoudan, solicitor in Fes, the new procedure to be a solicitor in Morocco is much easier, after receiving the law degree, the candidate must pass an entrance examination to the national center for training of solicitors; if he/she succeeds, the candidate receive a special training concerning the job of solicitors for 1 year, then doing internship in a professional practice for 3 years instead of 4. V. Case You are a famous " notaire" in Casablanca and one day a group of foreign investors come to your office, they have just found a piece of land (1 hectare) and the price ins 3 million MAD. They are planning to build a factory. They agreed about the price. They want you to be their " notaire" and hire you to write the sale contract, transfer the property in their names and make sure that there are no problems with the land. What are you going to do as a " notaire" to protect the foreign investors' rights? What steps should you take so that the property goes from the owners to the foreign investors ? According to Badr Boulghoudan, the process that all the parties involved in the selling contract should follow is: 1- Verify whether the land is registered in rural area or urban area. And this, by <https://assignbuster.com/the-real-property-conservatory-system-in-morocco/>

getting "attestation agricole" from "alamala". 2- Check whether there is no problem related to the state of land (hypothèque, heritage, conservation foncière) 3- Write down the selling contract that covers information about the seller, buyers, land and the agreed price, and then finish by signing this contract (the buyer, the seller, and the solicitor) 4- The solicitor takes the money (that he/she should not keep more than 20 days), and then starts the process of land registration (Do the Steps in order to register a Property we discussed earlier), if the procedure lasts more than 20 days, the solicitor must transfer the money into a temporary CDG account. 5- If all the steps above are done correctly, the solicitor gives the money to the seller.

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