

The Legal System of The Supplementary Daily Real Property Register Under Syrian Law

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Introduction

The importance of the Real Property Register arises from its role as a foundation through which documents protecting real property ownership are established. It safeguards both public and private rights in rem over real property from being lost. The Real Property Register and its documents constitute a national asset. Preserving them is a national duty aimed at achieving social stability and promoting economic development.

In light of the events that Syria has experienced since 2011, which resulted in the suspension of Real Property registration procedures in many Real Property departments and damage to real property documents, the need arose for urgent legislative intervention to address the exceptional circumstances leading to the loss and destruction of real property documents and the suspension of registration activities in certain real property departments. This need was addressed by Legislative Decree No. 11 of 5 May 2016, which established the Supplementary Daily Register.

The research problem revolves around the procedures followed to protect real property ownership in light of the events that Syria has experienced since the beginning of 2011 AD. These events have harmed holders of registered rights in rem registered in the Real Property Register, due to the loss and destruction of numerous real property documents. Additionally, the closure of real property departments in certain areas and the suspension of real property registration and documentation procedures have obstructed the transfer of real property ownership.

The importance of the research is evident in the practical reality of the real property departments as a result of the crisis that Syria has gone through since the beginning of 2011. This research aims to prepare a legal study that can be used in the event of any exceptional circumstances that lead to the loss of real property documents, evaluate the legal solutions that the legislator has developed in order to address or mitigate the damage caused to the real property register and its documents, and try to develop a solution to the issues faced by those

specialized in the work of the Real Property Register in light of the crisis that Syria has gone through.

Based on the above, this research will be dealt with in two sections; the first section will explain what the Supplementary Daily Register is, and the second section will present the provisions of the Supplementary daily Register, according to the following outline:

First Section: Nature of the Supplementary Daily Register.

Second Section: Provisions of the Supplementary Daily Register.

First Section:

Nature of the Supplementary Daily Register:

Understanding the nature of the Supplementary Daily Register requires examining its definition (Subsection One) and identifying its characteristics (Subsection Two).

Subsection One:

Definition of the Supplementary Daily Register

The term “Supplementary Daily Register” was not in use prior to the issuance of Legislative Decree No. 11 of 2016. However, following the enactment of this decree, it became necessary to define the Supplementary Daily Register (First) and to clarify the conditions for opening it (Second).

First – Definition of the Supplementary Daily Register

The Supplementary Daily Register is described as a temporary register. This description may lead to confusion with the “Temporary Register” established under the provisions of the Vacant Land Construction Law No. 14 of 23 March 1974, as amended by Law No. 59 of 15 July 1979.

In fact, the two differ fundamentally. The purpose of the Temporary Register is to protect the rights of buyers who purchase floor-apportioned plots from the owner based on the approved plan before construction is completed. Paragraph (b) of Article 5 of the aforementioned law states that “any sale conducted outside the register shall be considered absolutely null and void”. Paragraph (c) goes even further, classifying any such sale outside the register as fraud, and stipulating that the seller—whether acting personally or through an agent¹—shall be subject to criminal liability.

¹ (Shamdin) Afaf, The Temporary Register established under by Vacant Land Construction Law No. 14 of March 23, 1974, p. 21

While the purpose of establishing the Supplementary Daily Register is to preserve rights in rem over Real Property in accordance with the principle of registration priority, which is legally assigned to the daily Register. It applies in areas where Real Property departments were closed due to exceptional security conditions. The register ensures that registrations made by unauthorized parties in the real property folio are not recognized, in order to protect real property ownership and prevent forgery or tampering with Real Property registers¹.

Accordingly, this register may be defined as a Supplementary Temporary Daily Register, established to replace the Main Daily Register for documenting contracts by the head of the Real Property Documentation Office, in cadastral areas where Real Property registration and documentation procedures have been suspended.

This register is maintained by the head of the Real Property Documentation Office, who registers all transactions and rights in rem over Real Property based on requests by rights holders, judicial rulings, or requests by public authorities. It includes the registration of seizure notations in favor of public entities and the notations of legal claims upon request of the courts.

Second – Conditions for Opening the Supplementary Daily Register

Article 1 of Legislative Decree No. 11 of 2016 provides:((a) The registration of rights in rem over Real Property shall be suspended in the entities legally authorized to maintain ownership registers, in Real Property departments closed due to exceptional security conditions. The start and end dates of the suspension shall be determined by a decision of the competent minister, based on a proposal by the governor and after consulting the relevant directorate.)

Article 2, which follows the above provision, states that (A “Temporary” Daily Register shall be maintained, starting from the date of publication of the decision to suspend registration procedures...).

Accordingly, the opening of the Supplementary Daily Register is subject to two essential conditions:

1- Closure of a Real Property Department due to exceptional security conditions:

The legislator introduced the supplementary register to preserve rights in rem over Real Property in areas where the Real Property departments are closed due to exceptional security situations. Once the closed department resumes operations, the need for the supplementary register ceases.

2- Suspension of registration procedures in the Basic Daily Register of that department.

¹ Circular No. 8/63/Sh/A dated 23 October 2016, issued by the Syrian Ministry of Local Administration and Environment.

Subsection Two:

Characteristics of the Supplementary Daily Register

The concept of the supplementary register reveals several practical characteristics, based on the following roles:

- 1- the supplementary register fills the gap caused by the closure of Real Property departments due to the security conditions that the country went through, which led to a number of departments being out of control; it enabled the continued registration of Real Property transactions and documentation of contracts for citizens who still held Real Property documents.
- 2- This register allowed the rights of some public entities to be preserved; it allowed the registration of reservation notations or seizure in their favor on the supplementary daily Register, based on letters received by the Directorate's mail office, instead of being kept at the mail office and becoming subject to loss and neglect. They are now registered in the sequence in which they are received at the mail office in a legal and documented manner¹.
- 3- The notation of the lawsuit that is registered in the Supplementary Daily Register is sufficient to consider the lawsuit filed in the competent courts. This feature has contributed to preserving people's property and Real Property rights, and limiting civil disputes in the future, by accepting the placement of claim notations of disputed rights before the courts, in accordance with the Real Property Register Law and judicial precedent, considering that litigation proceedings may not proceed and the case before the judiciary may not be decided unless a lawsuit notation is noted on the Real Property folio. Litigants may not be prevented from registering their claims and safeguarding their rights arising from such sales, as failure to do so may result in the loss of their priority rights while awaiting the resumption of registration and documentation procedures in the closed Real Property departments.
- 4- Opening the Supplementary Daily Register and registering contracts takes precedence over leaving them pending until the Real Property folio is reopened, as doing so would lead to increased pressure of review and inquiries at the Real Property Register.
- 5- The idea of creating the Supplementary Daily Register opened prospects and hope that rules and mechanisms will be established to solve future issues that hinder the process of the Real Property Register, and the most general and comprehensive benefit is that the correct and well-thought-out ideas have been responded to from the highest levels in the state, through the legislative decree that organizes this register .
- 6- The idea of creating the Supplementary Daily Register is a pioneering and qualitative idea in the work of the Real Property Register, which contributes to

¹ Al-Thawra newspaper in Syria, article No. 54/16, 9/5/2016.

the openness of minds to find constructive and sound ideas, in case they are exposed to crises, in order to come up with appropriate solutions for them.

Second Section:

Provisions of the Supplementary Daily Register.

Legislative Decree No. (11) of 2016 specified the procedures for registration in the supplementary daily register (Subsection One). The executive instructions of this decree also specified the effect of resuming registration in the basic daily register, after the exceptional security reasons that prompted the opening of the supplementary daily register (Subsection Two) no longer exist.

Subsection One:

The Registration Procedures in The Supplementary Daily Register

The Supplementary Daily Register shall be maintained by the head of the Real Property Documentation Office in the suspended area¹ on the day following the date of publication of the suspension decision in the Official Gazette², in accordance with the provisions of Articles 63-64 of the Real Property Register Law. According to these articles, the register is maintained by the head of the assistant office at the Real Property Register, and the transactions and documents submitted to him are entered in it with a serial number and date. The relevant party shall be given a receipt stating the number and date of the transaction with priority given to the event that was first registered in this register.

This register must be kept in a single copy. Upon its completion, it will be suspended by the head of the assistant office and deposited within twenty-four hours with the registrar of the area, to be stored in the Real Property office's warehouse.

The competent directorate, within thirty days of the date of publication of the suspension decision in the Official Gazette, will review the incoming mail at its mail office and inventory the applications it has received, such as seizure orders for public entities, court requests, and vicariously-heard contracts. It will then document these applications and register them in the supplementary register according to the sequence in which they were received and registered at the mail office.

The head of the office shall register the transactions related to the establishment, transfer, modification and cancellation of Real Property rights in rem in the supplementary daily register, provided that they are based on the Real Property Register entries and

¹ Article 2 of Decree No. 11 of 2016.

² See paragraph (b) in Article (2) of the executive instructions of the above-mentioned decree.

accompanied by supporting documents, starting from the day following the thirty-day period¹.

The head of the office is prohibited from documenting any contract before including a declaration from the concerned parties accepting the Real Property rights registered in the Real Property register, the basic daily register, and the supplementary register. They are responsible for all consequences resulting from this acceptance, including the termination of the contract if there is a legal impediment to completing registration in the Real Property folio in the future. The Real Property Department bears no responsibility for this.

The directorate also issues a statement regarding the supplementary daily register registering lawsuits notations and sends it to the competent court. This statement includes the lawsuit contract number and date, the property number, the Real Property area, and the plaintiff. This statement also states that the reference was registered in the supplementary daily register in accordance with the provisions of Decree No. 11 regarding the supplementary daily register.

After the contract is documented and registered in the supplementary daily register, it shall be sent for review and preservation until registration is resumed on the Real Property register and the emergency that necessitated the opening of the supplementary daily register is over.²

Finally, we note that if the registration of an event conflicts with an earlier event in the supplementary daily register, the earlier event shall prevail. Events registered in the basic daily register that have not been transferred to the Real Property folio shall have priority and precedence in registration on the Real Property folio over the contents of the supplementary daily register.

Subsection Two:

Completion of Registration Procedures in the Supplementary Daily Register

It was previously stated that the Supplementary Daily Register is a temporary register, in operation for a temporary period due to exceptional circumstances. Accordingly, we will explain the reason for terminating registration procedures in this register (first), and then explain the effect of resuming registration in the basic daily register (second).

First - Reason for Terminating Registration Procedures in the Supplementary Daily Register:

¹ Article 4, Paragraph (a) of Legislative Decree No. 11 of 2016.

² Interview conducted by the researcher with the head of the supplementary register office in Douma and Arbin on 23/07/2018.

We previously explained that one of the conditions for opening the Supplementary Register is the closure of a Real Property department due to an exceptional security situation. If the exceptional security reasons that led to the closure of Real Property areas cease, the relevant directorate shall prepare a report stating the reasons for the closure and the possibility of resuming Real Property activity in the area and send it to the General Directorate for approval.¹

One or more committees will be formed to inventory the Real Property documents and report their status. The supplementary daily register, the basic daily register, and the Real Property folio will then be compared and cross-reference.² The committee's recommendations and suggestions will then be referred to the General Directorate of Cadastral Affairs or the public entity legally authorized to maintain a property register-as applicable - which in turn will refer them to the relevant minister.

Paragraph (d) of Article (11) of the Executive Instructions of Decree No. (11) of 2016 stipulates that: (The competent minister shall issue a decision to terminate the suspension decision, including the termination of registration work in the supplementary register in accordance with the provisions of Article 1 of these instructions, whereby work in the supplementary register shall be suspended for a period of two months, to announce the commencement of work in the basic daily register).

Second: The effect of terminating registration procedures in the Supplementary Daily Register:

The termination of registration procedures in the supplementary daily Register entails the resumption of registration in the basic daily Register. In the event of a conflict between events registered in the basic daily Register or the Real Property folio on the one hand and the supplementary daily Register on the other hand, preference and priority shall be given to events documented with the earlier date outside the period of suspension and closure of the department.³ However, any registration or entry registered in the Real Property Register during the period of suspension of registration procedures shall not be considered.⁴

Real Property rights in rem are registered, transferred, or modified based on Real Property data (Real Property registration statement, title deed, in rem right certificate), provided that priority in registration on the basic Real Property Register is for the events registered in the Basic Daily Register, which were not transferred to the Real Property folio

¹ Article 11 of the Executive Instructions of Legislative Decree No. 11 of 2016.

² A committee was formed pursuant to Administrative Order No. 169 dated 4/7/2018, whose mission is to prepare a digital file of the contents of the supplementary register for the Douma area, and to audit the Supplementary Daily Register and match it with the basic daily Register and Real Property folios.

³ Paragraphs (b-c) of Article (5) of Decree No. (11) of 2016.

⁴ Article (5) of the Executive Instructions of the aforementioned Decree.

before the date of suspending registration procedures.¹ Anyone who claims any in rem right related to the events and data registered in the Basic Daily Register and the Supplementary Daily Register and announced them has the right to resort to the regular judiciary to object and register a notation of the lawsuit on the Real Property folio, based on the court's request.²

Finally, it should be noted that the decision to end the suspension of registration procedures will be announced after its publication. The contents of the supplementary and basic daily registers will be posted in the lobby of the General Directorate, the competent administrative authority, and the relevant administrative unit for a period of two months. After that, the contents of the basic and supplementary daily registers will be transferred to their designated place in the Real Property folio after being legally reviewed.³

Conclusion

In this research, I examined the legal system of the supplementary daily register. I also addressed the most important conditions for opening this register. I then examined the provisions of the supplementary daily register, examining the procedures for registering therein and the impact of terminating registration in the supplementary register. At the end of the research, I reached the following conclusions and recommendations:

First - Results:

1. Legislative Decree No. (11) of 2016 only stipulated the suspension of registration and documentation procedures. Any new registration and documentation is considered invalid, unlike the provision of other Real Property services, such as applications for (a Real Property registration statement, a title deed, etc.), which are valid as long as the registers, documents, and seals are present.
2. Law No. (33) differs from Decree No. (11) of 2016 in several respects. In terms of implementation, it is noted that Decree No. (11) of 2016 addressed unaccounted Real Property documents, while Law No. (33) addressed cases of loss or damage to Real Property documents. In terms of implementation time, unlike Decree No. (11), it is noted that Law No. (33) will be implemented after security and stability have returned to Real Property departments in hot and stagnant areas, subject to specific conditions, which will be adopted by the relevant Cadastral Affairs Directorate, and after the necessary reports have been established.

¹ Interview conducted by the researcher with the head of the supplementary Real Property documentation office in Douma and Arbin on March 11, 2018.

² Article 5 of Resolution No. 1425/Q, which includes the executive instructions for Legislative Decree No. 11/2016.

³ Article No. 11 of Decision No. 1425/Q which includes the executive instructions for Legislative Decree No. 11/2016.

Second - Recommendations:

1. Giving archiving the utmost importance and productivity to digital cameras, and periodically sending copies of the digital archive.
2. The necessity of transferring temporary registers to the Real Property Register within a specified period of time, in order to emphasize the principle of strengthening a single Real Property reference.
3. Relying on technical and scientific tools and methods that will help in the future to develop unclear information on these folios (ink development materials - ink clarification using X-rays).

Reference List**First: General References:**

1. (Shamdin) Afaf, The Temporary Register established under by Vacant Land Construction Law No. 14 of March 23, 1974.
2. (Majid) Mustafa, Explanation of Real Property Registration Law No. 43 of 1971, Part Two.
3. (Al-Nashwati) Muhammad Sayyah, Restrictions on real property ownership and Their notation in the Real Property Register, Volume One, First Edition 1993.

Third: Legal Articles and Encyclopedias:

1. A memorandum on the work accomplished by the General Directorate of Cadastral Affairs during the years 2013 to 2016, prepared in response to letter No. 512/S/Sh/A from the Ministry of Local Administration and Environment dated February 2, 2017, attached to letter No. 945/1 from the Prime Minister dated January 25, 2017.
2. Tishreen Newspaper, Issue 13/97, dated December 2, 2017.
3. Al-Thawra Newspaper, Issue 54/16, dated May 9, 2016.
4. Al-Watan Newspaper, Issue 2392, dated May 9, 2016.

Fourth: Laws and Decisions:

- Legislative Decree No. 11 of 2016 suspending the registration of Real Property rights in closed circuits.
- Decision No. 1425/Q dated 10/26/2016, including the executive instructions for Legislative Decree No. 11 of 2016.
- Legislative Decree No. 12 of 2016.

Fifth – Interviews and Seminars:

1. Television interview conducted with the Director General of the Directorate of Cadastral Affairs and the Director of Real Property Legislation and Registration, on the program ‘Ammar Ya Souria’, dated 26 October 2015.
2. Private interview conducted with the Director of Real Property Legislation and Registration and the Director of Cadastral Affairs in Rural Damascus, dated 30 May 2017.
3. Special seminar on the functions and activities of the Directorate of Cadastral Affairs, dated 11 February 2018.