



## Property Mortgages

(Review No. 620 dated 20.08.1376 precedent General Board Supreme Court)

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### ABSTRACT

The effect of allowing the mortgagee to the mortgagor transaction, different views have been expressed on the part of jurists and lawyers, some argue that by allowing the sale of mortgaged their right to void has also mortgaged, but unlike the time of authorization and conditions some believe it is the consent of the mortgagee would be to admit the authenticity and accuracy of the mortgage transaction. But it seems like the rights of the mortgagee in the document indicating the transfer of the right to the same mortgaged mortgagee does not cease in case of transfer, such as the mortgagee agrees to said third mortgagee.

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### Introduction

First paragraph - different opinions on precedent As expected, this rate is not only not a precedent, but the differences have fueled the legal system has created another divided and procedures, which are based on judgments issued by courts of first instance, noted be. Some judges discuss the case, citing the precedent of having to set the property because of the official document was not plausible and is believed to mortgage property in any type of claim is not plausible and even some jaw lawsuit loan, lawsuit before the obligation to set against a commitment to both official document was not admissible. Another procedure which case the obligation to set an official document indicating the property mortgaged accepted but are essential to protect the rights of the mortgagee. However, other procedures (III) recently has brought large majority of the judges in this case is that the claim required to set up an official document (mortgaged property) if you are in that claim and believe raised mortgage jaw, mortgage jawless there is no possibility of having to set up an official document at the same time, however, the possibility of a lawsuit as well.

And the answer to the question raised in Tehran province judiciary committee considered legal.

Question - Is the claim required to set up the official document of the mortgaged property to the vendor capacity with respect to number 620 dated 08/20/76 precedent and insist No. 21 dated 12.12.76 rate is plausible?

Theory overwhelming 09.13.82 members of the Commission present at the meeting:

In the first part of the question:

Although the tone of the legislator in Article 793 of the Civil Code and the Civil Procedure Law 264 registered and 299 former and 34 repeatedly modified and non-litigious provisions of Act No. 620 dated 08.20.76 precedent that the idea of banning Shi'a jurists and blunt of such transactions followed, and the action plan of the individual beneficiary vendor of the property mortgaged to the capacity required to adjust to the demands of the official document blocked.

But what is that goal, thus preserving the rights of the mortgagee in possession of any such property would be permitted to say the idea of judicial logic and practice of the courts to see an example of votes insist 21 / dated 12/12 / 76, and shortly after precedent No.

620 issued, as well as with many of our scholars such as Ayatollah Khoei and opinion of legal scholars such as Imam doctor and doctor consistory compatible. While members of the commission present at all on the rights of the mortgagee have focused their comments, Regarding the questions addressed in this case the assumption is permitte. The second part of the question (jaw mortgage lawsuit claim with the requirement to set up a formal document is necessary?), Two were expressed in terms of the majority members of the Commission present at the meeting said, "Because your mortgage jaw to jaw mortgage is a binding dispute led to the dissolution mortgage contract is a legal relationship that it is necessary to set requirements for the latter offer document, as the case maxillary second mortgages wants, but the minority believed that the mortgage jaw recoupment account, as well as for municipality tax RunIn this regard, it is not. " Another current practice in some of our Courts (Procedure IV) is that the claim required to set up an official document of the mortgaged property absolutely inadmissible in court because mortgage introduction jaw set official document, so if the buyer, the seller with case of having to set up an official document, the parties, the inclusion of the principle of the obligation to object, its parts and jaw commitment to the introduction of mandatory mortgage should be done if someone convicted of having to adjust to civilian official document that the mortgage, the seller is committed, is required to mortgage the property from the outside, (to eliminate) the deed in the name of the buyer. In fact the duty to obtain recoupment tax, pay tax, property ... all of the arrangements set up separate official document important loss, does not separate lawsuit. The legal and contractual obligations jaw mortgage seller of the property (mortgagor) require independent claim (jaw mortgage) do not. It seems that this legal opinion is helpful.

The second paragraph of the General Board of the Supreme Court precedent problems

A lack of interest for (Bank Saderat) in the case of nullity of the sale of mortgaged property

As is clear from the nature of the sale of mortgaged but also mortgaged mortgaged foreign trade and the role of the transaction and the transaction is not interactive. Or stipulation or condition is not against it. The basic question is whether the mortgagee may demand the invalidation of trade between the mortgagor (seller) and the buyer property mortgage is concluded to be useful? In other words interest in litigation or not?

Perhaps in response to demand mortgaged nullity if he does not then how it is possible to compensate for losses. Monitoring how they sell their property mortgages and mortgaged, while waiting to come out of his hand, but no right to claim invalidity of the transaction have not.

The answer is that the transaction concluded between the mortgagor and the mortgagee is detrimental to customers principally can not be on the same objective as the mortgagee the right to mortgage property and no transfer without permission or authorization, he may not.

B) his plan for what to petition for their rights?

The point is that the export of Caspian Bank claimed the interests of the shops, the same component is mortgaged by the mortgagor with a normal document and to capture buyer has been sold. Here, the bank wants to have only the right to petition the proof of mortgage interest and append it to be presented in full property mortgaged to the mortgage proved completely shops (both field and Lords and interests) and recording in the document, mortgage Avla- allowed Any transfer of non-formal and impossible and irrelevant. Sanya- is cited in claims and potential claims. But Bank of exports (demand) in the case Manhnh Fihe the one hand begging their dispute with the genuine interests of the mortgagor to the mortgagee join Goods (arena and objects) are considered proven, and on the other hand, financial transaction which basically been disputed as invalid

C) the competence of the General Board of the Supreme Court precedent

According to Article 270 of the Criminal Procedure Court in Criminal Matters, the mission of the General Board of the Supreme Court in the settlement of disputes between the branches of the Supreme Court or the courts, not only on general propositions in cases and cases minor premise. Verdict No. 620 is the most important forms of differences in the perception or the difference premise entry has two, while delegations Court has no jurisdiction in a case. The difference between the branches 14 and 21 of the Supreme Court regarding the implications of Article 793 of the Civil Code but rather different branches of the Court was that the branch 21 primarily include mortgage contract only arena and upscale No. No. 4413 sub King Mohammed Fathi considered not goodwill and therefore seized the mortgagor (owner) on the sale of goodwill is not mortgaged issues and thus inconsistent with the right to have the case dismissed, but the Branch 14 of the Supreme Court of mortgage contracts, including well known shops, so as considerable goodwill

The differences but also differences in the Cobras case has been subject premise that basically Court panel did not have the right to enter into this field. D) Conflict-Sadr and following precedent No. 620

Other forms of poetry is that despite the precedent has topped the ratings with the sale of goodwill mortgaged to a third party without permission of the mortgagee of mortgaged Tsrfaty that right and shall not prejudice, the following ratings were assigned: "So vote Branch 14 court (the sale of the mortgaged property as invalid), confirmed "In other words Sadr and following precedent in stark contrast with each other. Or if debt mortgagor mortgaged property by the mortgagee release is still valid or binding. The transaction does not affect its previous rejection or waive their right to be mortgaged and the mortgage signs deal here, despite the previous rejection mortgaged, proper enforcement and elderly, so it can be seen blunt in Article 793 of the Civil Code, the basic difference is blunt and not meddle in business and language scholars in order to blunt the transaction mortgaged property, the mortgagee has the right to the mortgaged Mraa It is their desire for that death can not use the same mortgaged. And above all, if the same non- financial mortgagor mortgaged property buyer can legally be mortgaged other property of the promises he later ascended and commitment to tackle its commitment to the object sought to be mortgaged his mortgage and jaw. In case the buyer buys the property mortgaged

to the mortgagor, the right to set the official document against him. If the seller who should regulate and provide official documents as if the tax and does not pay tax or separation action, and others do not, the buyer has the right to require the seller of the obligation to object bound to the parts of the object and the introduction of obligatory it is necessary, in our case the buyer may in the vendor shall fulfill the commitment arrangements. The third paragraph second interpretation is not binding precedent and it A second interpretation precedent: Although interpretation of the law interpretation of common law and judicial precedent, such as the interpretation of regulation unpredictable in that it seems that this legal vacuum should be restored, but with dimensional views of esteemed judges of the Court of the General Board insistence of the vote, be a kind of interpretation the precedent in question concluded. As stated earlier, was, unfortunately, after the issuance of precedent lyrics, former differences and the perceptions did not subside different from above continued to vote, so that some court, the case requiring a formal document setting mortgaged property with the argument that contradict the right not mortgaged agreed The first decision dated 12.12.1376 No. 21 General Staff insist legal branch of the Supreme Court "Since the initial petition as called for in addition to requiring the defendants to adjust the official document transfer, requiring them to carry a letter dated 28/12/73 and discharge and delivery conditions about cancel case has provided sales and Whereas as Article 5 of the implicit transaction conditions, seller pay all debts prior to the transaction to natural and legal persons, as well as the preparation of documents necessary to adjust the transfer certificate has committed.

The third paragraph of execution If the court ruled that the requirement to set up an official document issued after the finality of judgments and mortgaged property on the executive with regard to the adjustment of the official document is subject to the solvency and jaw mortgage jaw mortgage religion and not to pay if sentenced Venture issuance What is the ruling? In response should be the same as that for the obligation to set enforcement official document is expected to supplies and preparations for the execution of mortgaged property, the mortgage part of its jaw is conceivable that if the convict against the attempt to seal in accordance with Article 47 of the execution the mortgage does not

Objections that may be imported to the latter method is that the former 729 copies .d.m not law so convicted documentation requirement against this provision does not exist.

In answer to this objection is to say, according to Article 47 Q.a.a.m that stipulates "... in accordance with Article 729 of Civil Procedure will be done." It is as yet under Article 729 of Law Enforcement Appendix civil and inserted, so copies of the above article in the Civil Procedure Code, any interruption to the authenticity of the text, which is supported by Article 47 Q.a.a.m executive power, do not enter. As a result, the content of Article 729 as the execution has maintained its legal validity.

Like the former BC in Article 948 stated that in case of refusal to pay the heirs of the buildings and trees to the wife, Alyha participation could also immovable, the vindication of their rights. That the judgment will be executed first circle with the appropriate deadline for payment to the heirs upscale warning in case of non-payment of money from the heirs of the deadline, run of the circle would be to sell it inheritance apply wife .

Also ask about paying your mortgage judgment (property buyer) would pay first and then the property of the mortgagor's religion or because of the fulfillment of the covenant, committed itself obliged to sell other property and the value of the mortgaged religion mortgage to pay and then the jaw.

#### Conclusion

Although the transaction invalid mortgaged property by the mortgagee after rejecting the opinion of jurists but also owner of logical analysis mortgagor is mortgaged so the belief in the invalidity of the transaction, is not correct. Nullity where the seller (nosy) no property owner is denied a deal. While in the case of in, mortgaged rejected as alien is no effect except that the mortgagee has the right to pay whenever that his religion is pending, Conclusion

The same mortgaged for vindication of their religion, advantage. Trying to Tfisyrsfat of Article 793 of the Civil Code's non-harmful, although the mortgagor and the mortgagee is laudable Equities Iran's rights but the rights of Egypt and France this interpretation sell mortgaged property, the mortgagee does not have any effect on the right, in the sense that without the consent of the mortgagee to the mortgagor as true and definitive sales contract and at the same time, the mortgage contract will be considered, contrary to the article 793 BC and Shia are not compatible with the rights. It seems that the only solution is to blunt the interpretation of Article 793 BC, to observe the right to treat certain mortgage mortgaged property without transfer or know basically wrong. Consequently, the General Board of the Supreme Court precedent No. 620, and citing its criticism not only to vote but also to be given further emphasis of similarity precedent with claims relating to the obligation to adjust the document official (transactions mortgage ), should not be invoked in such cases in the final conclusions should be mortgaged to the lack of nullity of the same transaction, the transaction is rejected by the mortgagee believed to be interested, to the right of the mortgagee and the mortgagor reserved reign lose their property and foundations and legal preserved,

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