

## The role of good faith in real estate transactions with an official document

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**Abstract:** Among the legal problems in the courts is the transaction of real estate with an official document. In such a way that the immovable property is transferred by a person other than the owner, with an official document, this transfer can be revoked and it does not matter whether this transfer was done in good faith and unknowingly or with malice and usurpation. And for example, if a few years ago, a property was transferred several times by a non-owner, with an official document, according to current regulations, it is possible to cancel the first transfer and all subsequent owners are considered usurpers and are the guarantor of the same interests to the owner. . To this end, in the present article, we intend to examine the current situation and the problems related to the official document, to examine the role of good faith in real estate transactions, and to see whether the person who owns it in good faith can have its property protected. As a result, it can be said that it is possible to protect the owner in good faith in real estate transactions with an official document, which also increases the validity and value of the official document.

**Keywords:** good faith, real estate, official document, transfer

### Introduction

The legal and economic importance of real estate and the fact that real estate is the subject of large and lengthy litigation in the judiciary, has led various legal systems to seek solutions to ensure the security of legal transactions regarding real estate and the establishment of legal order of this property (Tabatabai and Sadeghi Moghaddam, 1394: 678). For this purpose, the institution of real estate registration and registration of transactions has been created. One hundred years old (since 1299), the Registration Organization, as one of the governmental organizations, has the mission and mission of accrediting, establishing and protecting the legitimate property rights of the people, and by participating in the regulation of economic and social relations. Citizens have played a role in establishing and strengthening justice, economic security, social and legal relations of the country. Since the establishment of the registration organization, one of its most important tasks has been to delimit the lands and properties, which has played a very important role in establishing and securing the ownership of individuals (Alavi, 1390: 1). In the past, protection of personal property was done with very limited tools and traditionally, but with the development of urbanization and changes in social life, it is necessary and vital to pay attention to new sciences and the use of modern technology.

In fact, one of the goals of the registration system is to ensure the security of transactions by reducing asymmetric information between contractors and providing accurate information about the legal status of real estate. To achieve this goal, the registration system is an information system that focuses on three elements and informs individuals about them. These three elements are: the subject of the right (complete characteristics of the property), the nature of the right (right of ownership, right of usufruct, right of easement, etc.) and the holder of the right (Tabatabai and Sadeghi Moghaddam, 2015: 679). But in terms of transaction security, the recorded information should reduce the risks that the owner or third parties, such as the buyer or lender, may face.

Therefore, the information that is effective in managing and reducing the risk of transactions must be available in the registration system, and as a result, the existence of this information prevents the occurrence of many legal claims. Therefore, using an efficient and modern registration system to protect his property and guarantee his property rights, and at the same time the need to reassure third parties in good faith that their rights should be guaranteed, is one of the necessary and important issues that should be considered by the legislator. To take. Organizing the registration system, adopting a registration system in which the right of ownership of the land is very clear, and creating this system, which requires spending time and money, creates a reliable institution regarding real estate, and in the shadow of this trust and confidence, Planning and investments take place. In fact, it can be said that the purpose of the official registration of real estate transactions is that the buyer in good faith, without any conflict with the right of ownership, be protected from any claim to the property registered in his name (Karp, 2003: 412).

In the Roman-Germanic countries, possession in good faith is one of the means of possession, while in Islamic law, the possessor or the goodwill of the non-owner is considered a usurper (Jafari Langroudi, 2001: 150-154), but cannot be possessed with good The intention that in addition to the seizure, the ownership document was issued in his name? Really, shouldn't there be a difference between a person who owns in good faith and a sincere belief, and a person who appropriates other people's property by cheating on others?

### ***1) The concept of good faith***

Goodwill versus malice is a concept, basically moral, which has taken on a legal color today (Asghari and Abui, 1387: 3). Good faith in the contract means the honest speech and behavior of the parties before the conclusion of the contract until the end of it, and in contracts it is so important that it is considered as a general legal and strategic principle, along with and even replaces the principle of sovereignty. Good faith in contracts is discussed at the stage of concluding the contract and its implementation (Katozian and Abbaszadeh, 1392: 9) and requires that the parties be honest and avoid deception. In fact, good faith in support of the contractual intent includes an obligation that prevents the person from tampering, covering up the defect and inducing error in the addressee, and also requires that the contractual information be submitted to the addressee. In other words, the principle of good faith requires transparency and information in the pre-contractual period, and the acceptance of the principle of good faith in the pre-contractual period requires that the parties cooperate with each other in the preliminary talks to achieve a common goal, ultimately honesty, seriousness and transparency. To provide information (Bariklo and Khazaei, 1390: 1).

Goodwill has two mental and objective dimensions: In the mental dimension, the concept of goodwill is based on a person's belief in a legal phenomenon. In this sense, it is a person with good faith who believes that what he is doing is legal, appropriate and legitimate, while the reality is something else (Hajipour, 2016: 85). In the objective dimension of goodwill, attention is not paid to the real intention of the person, what one thinks of a legal phenomenon is not a matter of debate, but the person should pay attention to the rights and interests of others in his relations with others without any obligation to To protect those rights and interests (Yee, 2002: 135).

*Today, in many legal systems, the parties to the contract are explicitly obliged to observe the concept of good faith in accordance with the text of the laws of their countries. In fact, the obligation to observe good faith in concluding and implementing the contract is a clear and explicit obligation for all parties to the contract, and this rule is not limited to countries with written rights. Australian courts, for example, impose extensive liability on the parties to commercial good faith, as does the Supreme Court of Canada, which has recently taken on a*

*new duty in its customary law called honest practice Is known. However, in the legal system of a country, the interpretation of the principle of good faith is not the same and there are several interpretations of this principle.* In international trade, good faith is fairness, fair behavior, rationality and standard, standard criteria of fair behavior, honesty in action and reality, good behavior, moral conscience. Based on this principle, governments consider it their duty to prevent the unconventional profiteering of its bidders and to prevent suppliers from making comprehensive and efficient regulations guaranteeing proper performance, which includes the principle of good faith and fair and based conduct. The conscientious objectors can adjust the contract terms to their advantage and to the detriment of the other party by identifying their superior position on the one hand and the vulnerability of the demanders of goods or services on the other; Terms that are not usually included in the titles of reluctance, cheating and error in their common sense, but have detrimental consequences for customers, the commercial order of society and contract law (Alizadeh, 2005: 3).

### **2) Good faith as an information obligation to the other party to the contract**

In Iranian law, the acceptance of the principle of good faith in the pre-contractual period requires that the parties, by disclosing important information, provide the basis for concluding the contract with full knowledge and sound will. Information such as the subject of the transaction, the personality of the party to the transaction in cases where the personality of the party is the main reason for the contract and the declaration of uselessness or lack of enforceability of the contract that will be concluded can be considered important information (Issaei and Rahimnejad, 1394: 5). However, if a person does not have good faith in the sense of honest speech and behavior, the law protects the person in good faith with a guarantee of termination or invalidity. For example, if the seller defrauds in breach of the obligation of honesty or the seller is defective, the buyer has the right to cancel. Article 12 of the Insurance Law approved in 1316 requires the observance of good faith and forbids the insurer from making false statements, and guarantees the implementation of fraud and deception, the annulment of the insurance contract and the assignment of the insurance premium to the insurer. Although this concept is not explicitly mentioned in jurisprudence and civil law, but the advice of individuals to be honest, avoid fraud and deception, expresses the same concept of good faith in Iranian law. In fact, instead of emphasizing good faith, our law guarantees its implementation, that is, malice in the case of someone who does not behave and speak honestly. In jurisprudence, pretending, cheating and covering up a defect is considered malicious and the guarantee of its implementation is invalidation or creating the right of termination (Katozian and Abbaszadeh, 1392: 11). However, some countries have not always shown a willingness to accept the principle of good faith, but this does not mean that good faith has no place in the law of these countries. The rule of fairness, the theory of binding obligation and the existence of obligations in the insurance contract, can be justified only by the principle of good faith (Issaei and Rahimnejad, 1394: 6). On the other hand, the lack of a general rule of good faith means that the courts of these countries are not required to use it. However, EU regulations have consistently imposed such a duty on the parties to the contract, and in the process, customary law in general has imposed a duty of good faith in certain types of contracts.

### **3) Official document**

The official document is of great importance in the current legal systems of the world, so that the official document is necessarily used to conclude important contracts. In the meantime, the role of land and property registration from ancient times in different societies to suit the progress of civilizations in various ways and to ensure the rights of individuals, Regulation of legal relations between individuals and governments and the establishment of social order is

common. Is (Alavi, 1390: 2). The growing trend of cities and rising real estate prices in the country, the ambiguity of the approximate information of real estate affairs in determining the boundaries, has increased the scope of legal proceedings and civil disputes and has increased the volume of lawsuits in the courts. Competent authorities for buying, selling and changing real estate is a complex and formal matter that requires serious attention to the registration system and official documents.

It is important to what extent laws and regulations have been able to remove barriers to the protection of property rights. Failure to pay attention to the registration system and the need to register real estate documents (or valuable property such as cars) and transactions related to them, as well as accepting litigation for revocation of official documents in contrast to ordinary documents or testimony of witnesses, has caused many abuses in society. On the one hand, many people have fallen victim to the crime of transfer of property or aggressive possession and have lost their capital, and on the other hand, society has fallen victim to the crime of land grabbing and has lost its public wealth. Property in Iran has been weakened in two ways and should be protected. On the one hand, property is not covered by the registration system, and on the other hand, it is capable of objecting to ownership.

In Iran, most people own property, but do not have a process that shows their sovereignty and creates capital (Hossein Samadi, 1389: 242). They have houses but no property rights because most of the property rights of individuals are not covered by the formal system and most transactions are done informally by charter and affidavit. Although according to Article 22 of the Registration Law, after registering a property in the real estate office, the government recognizes only the person in whose name the property is registered in this office, but in practice owns many real estate based on documents. It is normal and has no registration records.

On the other hand, the inviolability and ability to object to this type of property (Salari, 1391: 191), has led to the fact that official documents are easily invalidated, despite the legislator's emphasis that the holder of an official document is the owner. , But still the official document cannot be trusted because if a lawsuit is filed against the official document, it is easily possible to cancel it, in other words, the official document has only a positive aspect and even in conflict with the testimony of two just people, it is invalid. Becomes.

#### ***4) Official registration of real estate***

Relying on official documents not only systematizes the legal relations of individuals, but also creates the ground for providing security and assurance for individuals in investing and creating the right economic cycle and regulating turnover and establishing economic welfare (Karbalaee Amini, 2014: 49). Existence of codified legal rules and regulations with adequate guarantee of implementation and finally, the existence of an accurate and regular system of document registration, causes the codification of legal and property relations of individuals and when by preparing an official document, the property rights of individuals are sufficiently protected. And to create the necessary security, the necessary ground will be provided for investment and increase in the transfer of property, and finally, the economic growth of a country.

An investor invests and circulates his capital when the risk does not threaten his capital. Therefore, when there is no obligation to prepare documents, especially regarding the transfer of real estate, due to the insecurity of the property relationship and the lack of sufficient legal protection, the trader will refuse to invest and move it to a safer area as much as possible. It avoids having uncertain and uncertain ownership, and sometimes high-risk and conflicting ones. Therefore, when in a society, the law obliges the preparation of such documents, not only will the transfer of property rights become legal, but it will also be more accessible and safer, and it will be a ground for attracting capital. Therefore, with the use of the official document, there will be an increase in investment, and with the increase in investment, the trade exchanges and

economic transfer will also increase, and finally, the society will face economic prosperity. The relationship between investing and securing property rights arising from property registration is fundamental, as property registration determines the nature and content of the rights contained in it and provides legal protections and guarantees for these rights. The owner of the land benefits from the certainty of ownership and, as a result, its ease of use or transfer and the necessary economic security, and this is an incentive to invest in the land (Tabatabai, 1391: 262)

Regarding property, it should be noted that identifying them by drawing its boundaries by creating a property registration system and using new maps and tools that play a key role in securing property rights. Lack of transparency of rules, documents and property maps that allow for errors, property disputes and sometimes fraud and abuse, so the conversion of traditional and old maps that position the land in the main license plate relative to an auxiliary point on nature. Show that it is necessary to maps with global geographical coordinates that show the position of lands with a global figure derived from the satellite system accurately and irreversibly (Salari, 1391: 193).

### **5) Property registration system**

Property registration systems were created with two functions: information and support or conflict resolution. Because many real estate transactions were conducted in secret and away from the eyes of "third parties", which raised the need to inform third parties about the legal status of the property subject to the transaction, and in addition, the need to "protect the property owner" , Proposed the existence of methods other than physical possession to guarantee the right of ownership to assure the owner that in the event of conflicting claims about the right to property, his right that takes precedence is protected (Tabatabai, 1394: 679).

There are two types of registration systems: document registration system and property registration system. The study of registration laws in Iran clearly shows that in Iranian law, the basis and criterion of registration has always been the right of ownership over land, not its owner (Tabatabai 1389: 232). In fact, the information that has always been focused on land registration in Iran is information related to property rights, and the registration system has sought to answer the question of what has been owned by whom? Thus, the existence of a new registration system has a serious impact on facilitating exchanges and also, by protecting property rights, provides strong incentives to work as a source of wealth generation (Bjørnskov, 2015: 251).

### **6)New official registration**

Old ownership documents often lacked the technical characteristics of the property, such as area and length, and the boundaries of the property were briefly defined, for example, to the adjacent property, to a mountain catchment, to a river, border or stream or rural road (Salari, 1391: 193). Old maps do not answer the ambiguity in determining the boundaries of real estate, and also in land documents and maps with various authorities that have the authority to comment on those lands and do not have access to each other's information to resolve conflicts and interference of maps, areas and information. . There are such damages in the field of real estate identification in Iranian law that the use of new registration methods will help to eliminate such damages.

After the annexation of Article 156 to the Registration Law on 10/18/1351 regarding the necessity of implementing the cadastre of the country at a long distance, the by-laws of the Cadastre and the subject of Note 3 of Article 156 of the Registration Law were approved on December 6, 2000. After that, on 11/29/1493, the comprehensive cadastral law of the country was approved. In addition to identifying and registering land combinations, the cadastral system creates the space for macroeconomic, social, legal and cultural planning and provides a platform

for stabilizing and guaranteeing private ownership and fair distribution of land and its resources (Hanifi, 2011: 2). ). The cadastral system, especially the multipurpose and digital (digital) cadastre, is our interdisciplinary branch between earth sciences, geography, registration law, and land law, which can also be called the "new registration law." This system seeks to monitor assetsImmovable property, especially in urban areas, aims to develop and control land capabilities. Identifying and identifying the land, adding to the managerial and policy power of governments, legal and economic development, and finally the efficiency of the registration system and the system of the judiciary are among the benefits of this system (ibid.).

Cadastre maps are used as the basis of information in the land management system or land information system in the environment of the spatial data system and the mechanism of completing, updating and correcting information in these systems is predicted and designed. By preparing a cadastre, which is a collection of information about land plots that includes land characteristics such as size, use, digital, registration or legal characteristics to a large-scale map (paragraph 1 of Article 1 of the Comprehensive Law of Landscape), which includes activities such as mapping Using land, sea, air, satellite photos and images, digital conversion of photos and images, land surveying operations, editing and completing land maps and matching the map with the real and existing status of the property and adding all registration information, Legal and descriptive and final control and updating it (paragraph 2 of Article 1 of the Comprehensive Law of Hadnagar) and its embedding in the spatial data system, which is actually a special computer database that contains the geographical coordinates and spatial identification of relevant information (Jalili, 2003: 65) Eliminates harms such as lack of transparency in ownership rules, documents, and plans that allow for errors, property disputes, and sometimes fraud and abuse.

The cadastre is a transparent and reliable information base for all stakeholders and is a tool to improve the quality and access to information and registration maps and prevent mistakes such as issuing conflicting documents. This system is a platform to increase productivity in the process of collecting statistical data and increase the speed of extraction of results due to the digital nature of data and save operating costs and can facilitate service to the people and meet the needs of various organizations in Country and ensuring people's confidence in real estate transactions and other land-related matters (Shahedi, 2017: 114) One of the most important functions of the cadastral plan is to stabilize land ownership and innovations, build trust in owner transfers, manage and make optimal use of Land and reduce land-related disputes and, of course, reduce the volume of property lawsuits and downsize government bodies registered after the cadastre and the implementation of organizational duties in the private sector, such as notaries, management and supervision of land market and transfers, use of documents And cadastral information in providing large-scale maps and other spatial information in the title deed, electronic response to judicial authorities and courts, notaries, recording and recording of transaction summaries electronically to notaries, arrest and removal of property arrests electronically , Issuance of all ownership documents, including Government, Mufroozi, Common, Cumulative, Separation, National Lands, Rural, etc., Separation and Separation, Electronic Integration, Electronic Communication with Authorities such as Registry, Municipalities, Housing Foundation, Housing and Urban Development Organization, Automatic Property Evaluation and Mechanized without going to the location of the property, preventing mistakes and preventing real estate conflict and issuing conflicting ownership documents, quick access to information, speeding up registration and transfer operations, preventing the exercise of taste in doing work, preventing forgery of ownership documents And reduce the risk of real estate transactions; Realization of public rights, increasing the legal security of owners and facilitating land transactions, etc. (Shahedi and Jalali, 2017: 114).

Despite the legislator's requirement to use cadastral maps, these maps have not yet been effectively recognized or encompassed as a registration reference. For this reason, the number of registration maps and the inclusion of all plots located in a main license plate on a single map, causes ambiguity in the position of each plot of land relative to the other. Digital cadastral maps, if used as a single map in these systems, eliminate ambiguities and property interactions. Digital cadastral maps will be very effective and useful if they are loaded, updated and used in the GIS environment (Salari, 2012: 52).

### **7) Attack on an official document**

Unfortunately, not paying attention to the reasons for the existence of the registration system and not paying attention to the mandatory registration in the field of real estate and objective rights regarding them in Iran, especially in the interpretation and implementation of regulations and not paying attention to the basic principles on which the registration system is based. Especially from the point of view of the Guardian Council and judicial procedure, has caused the registration to be considered as a branch of civil law and viewed with a view based on the rules and principles of civil law, which has led to the transformation of registration into a form Orientation is empty of content and purpose. On the other hand, if the existential philosophy of registration is understood as a necessity of current life, many of the current problems of society will certainly be solved.

Property registration systems are an important infrastructure that implements the principles, goals and policies pursued by property registration in both developed and developing countries. These systems are related to the social, legal, economic and technical frameworks and support the financial markets of the property, and at the same time are related to the management and development of natural resources, so these systems must be simple, safe, fast and appropriate in terms of Financial and in accordance with the needs of the society in which the registration takes place and in short are in accordance with the registration principles and are supported by the legislator and social institutions and have sufficient financial and human resources to maintain them (Tabatabai 1390: 112 ).

***However, the validity of the official document has been questioned in two ways:***

First, the theory of the Guardian Council, which considers the testimony valid in the conflict between the official document and the testimony of the Shari'a witness. And secondly, on the other hand, both the Guardian Council and the judicial procedure, if it proves the precedence of an ordinary document over an official document, prioritize the ordinary document and invalidate the official document, which, of course, has severely shaken transactions and invalidated the official document. Is.

Since we consider the official document valid and on the other hand, the law on registration of real estate transfer considers the official registration valid, so it should be considered that the only valid reason for owning real estate is the official document and a place for other Evidence does not remain in this area to conflict with the official document.

### **8) Conflict between an official document and testimony**

In order to prove the claim, valid and legal reasons are required. Sometimes there is a conflict between the reasons for proving a claim, including the conflict between an official document and a testimony. Article 1309 of the Civil Code stated that an official or valid document conflicts with testimony: "In the case of an official document or a document whose validity has been established in court, a lawsuit that is contrary to its provisions or contents shall

not be proved by testimony." , But the Guardian Council considered this article contrary to Islamic law and in practice caused It was annulled: "Article 1309 of the Civil Code, in that it considers the testimony of a religious witness to be invalid in the face of valid documents, is contrary to the Shari'a and is hereby annulled." / 8/1367). This theory of the jurists of the Guardian Council clarifies the point that from his point of view, "witness testimony" takes precedence over "official and valid documents" (Andalib, 2017: 15).

In 1982, the Legal and Judicial Commission of the Islamic Consultative Assembly made amendments to the Civil Code, including Articles 1306, 1307, 1308, 1310 and 1311. Article 1309 was retained in practice. In 1988, following an inquiry to the Supreme Judicial Council about the compliance of this article with Islamic law, the Guardian Council considered it contrary to Islamic law and announced the annulment of the article (Malekzadeh, 2013, p. 3). The issuance of this theory provoked pros and cons, and each addressed an aspect of the issue. However, in 1370, the Islamic Consultative Assembly abolished the above-mentioned cases and retained Article 1309 in practice. Judicial practice in this regard also fueled this dispute by issuing different opinions.

In this regard, it should be said that because official documents are prepared by government officials in accordance with the provisions of the law, the legislature gives them special credit and issues the principle of accuracy about them. The result of applying the principle of correctness is the necessity of following the provisions of official documents, however, these documents are valid as long as they are not proven to be contrary (Shahri, 1397: 254).

The validity of official documents is discussed from two points of view, one in terms of content and the second in terms of content (Safari, 2002: 100). The contents of the document mean the phrases, signatures and fingerprints and seals in which it is written and inserted, and their validity means that the phrases, signatures and fingerprints and seals in the document must be known from those persons. Which are attributed to them and the correctness of this attribution is also assumed. Therefore, no one can doubt or deny the attribution of the items mentioned in the document, which are attributed to certain persons, and can only claim forgery, whether the said persons are official agents or interlocutors. Therefore, if in the document of sale of regulated property in the notary office it is mentioned that the buyer has paid the price in cash to the seller, the payment by the buyer to the seller will be certain unless the seller claims forgery, ie he said he did not take the price and the notary contrary He has written the truth (spiritual forgery) or claims that the document was made and his signature was placed in it (material forgery) and he should prove his claim and prove it, otherwise his claim will have no effect. If the forgery is not proven, he must prove that the document is legally invalid (the latter part of Article 1292 of the Civil Code and Article 70 of the Law on Registration of Real Estate Deeds).

But what is meant by the contents of the document is the meaning of the expressions stated in the document, so the meaning of the validity of the contents of the document is that no one can deny their fulfillment unless he proves their non-fulfillment. Therefore, despite acknowledging the correctness of the attribution of the contents of the document, he may deny the truth of its contents, that is, say that the persons mentioned in the document have made statements to the agent, and the agent has impartially included them in the document. But their statements are untrue. Articles 70 and 73 of the Registration Law and Article 1305 of the Civil Code speak of the same validity. However, one can say that the acknowledgment of receipt or obligation to pay, which is mentioned in the official document, was against the document or remittance that was not received, and proving this does not conflict with the validity of the contents of the official documents, as The following note is specified in Article 70 of the Registration Law and Article 1277 of the Civil Code.



In view of the foregoing, it has been established that a lawsuit may be brought against the provisions (contents) or contents of an official document, although Article 1309 of the Civil Code and Article 1324 of the Civil Code limit the methods of proving the claim. Article 1309 does not consider testimony to be valid for proving such a claim, and Article 1324 also considers the UAE to be valid and citable if the original claim can be proved by the testimony of witnesses, and because Article 1309 does not consider such a claim to be provable by testimony, Therefore, the Judicial Emirates cannot be an independent evidence on the claim unless, according to the last part of Article 1324, the Judicial Emirates complements other reasons.

As a result, it should be said that the official document is one of the proofs of the lawsuit and the existence of the official document indicates the correctness of the attribution and the validity and validity of all signatures, expressions, fingerprints and contents of the document and one cannot doubt the attribution of contents. Either declare them false, or do not consider the expressions in the official document as their own, or consider the date of the document as unreal. Because the principle is that people have read each text before signing it and the text has been adjusted based on the request and consent of the person and the signature or fingerprint below the phrase indicates this issue. Due to the importance and respect that the law has for the official document and the competent person who regulates it, and according to the legislator's goal of establishing order in the arrangement of transactions (real estate), a lawsuit contrary to its provisions or contents can be testified. Does not know the proof (last part of Article 1309).

But what is the duty of the court that the official document is one of the proofs of the lawsuit and the court is faced with an official document in the lawsuit that claims a right and in return has a valid testimony against it? On the one hand, the court has the power to carry out any investigation and action necessary to discover the truth (Article 199 of the Code of Criminal Procedure), and on the other hand, only a forgery claim is accepted in front of an official document, if the official document is found to be forged. There will certainly be no right for the holder of a forged official document. However, it is not possible to prove the forgery of an official document by testimony, or if it is used as a complementary statistic for other reasons, only the forgery of the document can be proved and The court also decides on the reasons given in this case, but in order for the official document to be presented in court and to rely on the testimony that contradicts the claim of the document, the court must rely on the official document and pay attention to Do not testify.

### ***9) Validity of an ordinary document prior to an official document***

One of the most important issues related to proving litigation is examining the conflict between the arguments and finding a suitable solution to get rid of the conflict and determine the primary reason. In the precedence of the ordinary document over the official document, it should be said that on the one hand, according to Articles 46, 47 and 48 of the Registration Law, all transactions related to the registered object, interests and rights must be registered and ordinary documents will not be able to prove those issues. In other words, a right that has already been registered with the preparation of an official document, transfer and any transaction against it must be done with an official document, otherwise a document that is not registered will not be accepted in court according to Articles 48 and 22 of the Registration Law. Therefore, in these cases, the ordinary document directly lacks positive power and authority and therefore is not in conflict with the official document.

Unfortunately, the Guardian Council, in its objections to the bill on the permanent provisions of the country's development plans (Article 52) dated 6/20/1695, has re-emphasized the validity of ordinary documents over official documents. The reason for this is that according to Article 339 of the Civil Code, as soon as the parties agree on the seller and the price, the contract of sale

is required and accepted. Thus, the civil law stated the principle of consent of the contract of sale (which is formed only by agreement without the need for another element) as a legal rule. However, Articles 22, 46 and 48 of the Registration Law were passed and mentioned another rule in the field of immovable property. According to the explicit provision of this law, an official document must be prepared in the sale of real estate. There is no difference of opinion in this regard (necessity of preparing a document), but there is a difference of opinion regarding the consequences of not preparing a document and our events after it (Judiciary Research Institute, 2016, p. 126) and since security and economic order are required Immovable property transactions can be formalized, which can be attributed to the fact that at least in real estate transactions, the legislature intends to prepare an official document (although in other cases it has prescribed the preparation of an official document), but with The existence of this, we see the views of jurists and even the Guardian Council that validate real estate transactions with ordinary deed, is that even to this day, many immovable properties do not have an official deed. How can the general public, who need to transfer their property but have not yet been able to enforce official document rules and equip their property with a new registration system, be expected to turn to informal transactions (charters)? Therefore, in solving the current problem (validation of an ordinary document prior to an official document), one should first seek to document the immovable property so that in the next step, the registration rules will be implemented.

However, since the official document has a positive aspect in Iranian law, or in other words, in the registration system, it is called the confirmation system, the holder of an ordinary document can use various methods, for example, by proving the invalidity of the transaction in the official document. Which is available to a third party or the proof of the owner's commitment to perform the formal document preparation formalities, based on the ordinary document, the owner's obligation to prepare the official document (Imrani, 1387: 63) because in Iranian law, the principle is the satisfaction of contracts and The transfer of ownership takes place by demand and acceptance, and its registration is a formality to prove the transfer. However, an ordinary document, because it has been prepared in violation of the registration law approved by the Islamic Republic of Iran, should not be able to be cited in front of an official document and should not even be effective between the parties.

Although legal theorists try to consider an ordinary document as valid against an official document, although in relations between the parties (Khodabakhshi, 1389: 10), but it should be said that the official document is a kind of expression of will and we must believe that in property transactions Immovable expression of will is possible only with an official document and reliance on other means should not be accepted. Ordinary testimony and deed cannot have a place in real estate transactions, on the other hand, given the experience of other countries in relying on new methods of property registration and its many benefits, we must only validate the official deed.

I have to rule the official document in two ways. First, official registration has a creative aspect and real estate transactions are not possible except with an official document. This will prevent many lawsuits from being brought to justice, and we will not see the lawsuits of each other's relatives under ordinary documents. In other words, claims for the transfer of immovable property by ordinary deed should not be heard in the courts.

Secondly, in the protection of third parties in good faith, if a property is officially transferred and the person in whose name the document was issued, obtained it against the law and regulations, for example by forging an official document, it is not possible to revoke the official document. Require the owner to transfer the property to the real owner. This is in the validity of the official document and gives people the assurance that whoever has the document is the owner and no one will be subject to his property rights.

### **10) Support the buyer in good faith**

Is the registration of immovable property for the purpose of being a proof of ownership of that property? Why are real estate documents registered?

The answer to this question is called the "rule of protection of the buyer in good faith in return", which is a rule in common law. This rule states that any person who buys money in good faith in exchange for a valuable exchange, and this purchase is in the property without knowing the claim or benefit of another person, this buyer calls the buyer in good faith in exchange. And takes property outside the claims and interests of other people (Hinkel, 2012: 359).

The situation of the buyer in good faith is such that not only does he support the buyer in good faith, but he also supports the subsequent buyers who buy the property from the buyer in good faith. This protection also applies to the subsequent buyer, whether or not the subsequent buyer is aware of the previous adversarial claim or claim to the property. The main reason for this breadth of support is that the buyer is allowed in good faith to sell the property for full value (Hinkel, 2012: 360).

In Iranian law, the will of the parties creates the contract and the transfer of property takes place from the time of the will of the parties. In the field of property transfer, the will of the parties can be accepted, but the establishment effect of the registration can also be added to create an intermediate state and balance. But how can the registration effect be imposed on it?

This is done by performing "Goodwill" It is possible. In good faith, while preserving the nature of the effect of the declaration and the establishment of the contract, it connects the two. Good faith states that with a normal deed, a property can be purchased which For example, a property is transferred to a person with an ordinary document. Here I say that this person is the owner (declaration effect), but if the same property is transferred to another person by the seller with an official document, then the holder of the official document The owner will not be aware of the initial transaction, here we consider the establishment effect to be valid, provided that the second buyer is in good faith and is not aware of the initial transaction, and also replaces the property before knowing the previous situation. The original buyer with an ordinary document can oblige the owner (holder of the official document) to transfer the property to himself, but there is a possibility of revoking the official document. Does not have.

### **11) The effect of good faith in the transfer of real estate**

Good faith requires that the parties to the contract act in the manner expected of a reasonable person, and the parties to the contract do not want to achieve the result, in any form, but intend to produce a reasonable and normal result (Salehi Rad, 1378: 100) and must act in such a way that the subject of the contract is useful to the other party. As a result, it is a matter of good faith to provide the other party with contract information, and also to act in accordance with it after obtaining complete and useful information, and not to have malice in their work. Two basic roles for good faith have been identified: on the one hand, the misconception that is supported and on the other hand, honesty and integrity in legal actions (Jafari, 1394: 148). Therefore, a person to whom a property is transferred in this way must certainly be protected, a person who, without knowing that the property is entitled to the right of others or, in general, the transaction is invalid in violation of legal conditions, at the request of the owner and Or there is a risk of invalidating the transaction (Razi and Abdipour, 1397: 121).

The transfer of real estate requires official registration, one of the important benefits of which is to reassure buyers about the veracity of sellers' claims to ownership (Amini, 2009, p. 215). The registration system can determine the legal status of the title deed in such a way as to

establish security and stability of transactions in this area (Starck, 2000: 58). It can be said that this official registration has a direct relationship with good faith, because it brings security and stability to such transactions, and the result is the reassurance of the parties to the contract of trickery and abuse.

Recently, an amendment to Articles 323 and 325 of the Civil Code has been proposed, which is also in support of the official document and is in a way due to the effect of good faith in real estate transactions with the official document. According to Article 323 of the Civil Code: "If a person buys the confiscated property from the usurper, that person is also a guarantor and the owner can refer to each seller and customer in accordance with the provisions of the above articles and claim it in case of loss, such as the price of the property and its benefits".

*1 -The note is attached to Article 323 as follows.*

*Note: The transfer of confiscated property through the preparation of an official document is a loss and the owner can refer to the transferor, unless the transferee is aware of the usurpation, in which case the rules are followed.*

*2 .The phrase "(except in the case of the first part of Note 323,)" shall be added to the beginning of Article 325.*

The beginning of the note indicates that the official document prepared by the transferee in good faith is valid and supported by the legislator (emphasis on the official document), but at the end of the note indicates the role of good faith and the transferee Supports in good faith (emphasis on good faith). But the above note has a drawback and that if the transfer of property with an official document between the usurpers, there is still the possibility of revoking the official document.

*In fact, if the transferor is a usurper and the transferee in good faith and does not know that the property sold to him is usurped property, this property is a loss and the transferee cannot be required to return the property (protection of the person with Goodwill), but should refer to the usurper (transferor) for the like or its price. But if both the transferor and the transferee are aware of the usurpation of the property, the presumption is that the transfer is void and the result is the annulment of the official document, if we believe: However, the transferor and the transferee , Both worlds are usurped and there is no good faith, in which case the official document cannot be revoked, but we oblige the owner (transferee of the world to usurpation) to transfer the property to the original owner, without an official document , Cancel.*

## **Result**

In real estate transactions, which must be done with an official document, on the one hand, it is to protect the owner and protect his rights against third party attacks, and on the other hand, it is to inform third parties who are informed about the owner's rights. They do. In Iranian law, the official registration of real estate transactions is accepted, but at the same time it is not the only reason to prove ownership, and it is also possible to transfer the property by preparing an ordinary document, which can lead to the revocation of the official document. And at the same time, if a third party enters into a transaction in good faith and with honesty and without knowing the previous status of the property and that his current transaction is somehow void and does not meet the legal requirements, according to current law, he is considered a usurper. Whether the property is transferred to him by ordinary deed or formally. However, the buyer can be supported in good faith, and this should be done by arranging real estate transactions only with an official document, and on the other hand, the person who becomes the owner in good

faith, it is not possible to cancel his official document and he cannot even Required the transfer of ownership.

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