

Real Rights Code, Law No. 39-08

Reference: Dahir No. 1-11-178 of 25 Hijja 1432 (22 November 2011) promulgating Law No. 39-08 on the Real Rights Code; to be read together with the Dahir of 12 August 1913 on land registration as amended by Law No. 14-07

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Practice areas: Real estate and land law, Civil law

The Real Rights Code unifies the law of real property in Morocco: ownership, dismemberments of ownership (usufruct, easements, emphyteutic lease, surface right), real rights of Islamic origin (zina, guelsa, habous), security interests (mortgage, pledge) and formal requirements for deeds relating to real property.

Form of deeds

- Deeds transferring ownership, creating real rights or modifying them must, on pain of nullity, be drawn up as an authentic deed or as a deed with a certain date drafted by a lawyer authorised to practise before the Court of Cassation (Art. 4).
- The deed must be signed and initialled by the parties and the drafter, with the signatures certified.

Registration and effects

- Real rights over registered property exist with respect to third parties only through their entry on the land title (Arts. 65 and 66 of the 1913 Dahir).
- The land title is final and unassailable; the registered owner is protected against claims (Art. 2 of Law 39-08 and Art. 62 of the 1913 Dahir).
- A provisional entry (prénotation) (Art. 85 of the 1913 Dahir) makes it possible to preserve a right pending the outcome of a dispute or the completion of a formality.

Ownership and joint ownership

- Ownership confers the right to use, enjoy and dispose of the property (Art. 14).
- Partition of jointly owned property may be requested at any time; sale by auction where partition in kind is impossible (Art. 313 et seq. of the Code of Civil Procedure).

Security interests

- Contractual, statutory or judicial mortgage (Art. 165 et seq.); entry on the land title is mandatory.
- Ranking is determined by the date of entry.

Key articles

ART. 4

All deeds relating to the transfer of ownership or to the creation, transfer, modification or extinction of other real rights must, on pain of nullity, be drawn up as an authentic deed or as a deed with a certain date drafted by a lawyer authorised to practise before the Court of Cassation, unless a special law provides otherwise.

ART. 14

Ownership of real property confers on its holder the exclusive right to use it, exploit it and dispose of it, within the limits laid down by laws and regulations.

Points to watch

- Never pay a deposit without a written preliminary sale agreement drafted by a professional and without a same-day certificate of ownership.
- Check that the surface area on the title matches reality, and check the easements and charges entered on it.
- For unregistered property (moulkia), prior registration or a registration application secures the purchase.

Sheet prepared by Maître Mouad Lahfaia, lawyer at the Rabat Bar. 69 Rue Tansift, Apt 6, Agdal, Rabat 10090, Morocco · +212 808-507367 · cabinetlahfaia@gmail.com

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