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Lectures on Real Estate Seizures

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Faculty of Law and Political Science
Special Department
Lectures on the topic of Property Seizures
For First-Year Master's Students in Property Law, Second Semester
Presented by Dr. Mansouri Noura

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Abstract:

The principle of executing obligations by the debtor is generally voluntary, meaning the debtor fulfills the obligation willingly, without the need for external intervention. However, when the debtor refuses to comply, the legal system provides for compulsory execution, targeting the debtor's assets or person. One of the main methods of compulsory execution is the seizure of real estate, a process that enables creditors to place properties—whether owned by the debtor or third parties—under the control of the court. These properties are then sold at a public auction, with the proceeds used to satisfy the debt.

For the execution of real estate seizures, the creditor must possess an enforceable title, which grants them the legal right to initiate the seizure. Additionally, the process of seizing real estate can only be undertaken after attempts to seize movable assets have been made, according to Article 721 of the Civil and Administrative Procedures Code. In most cases, real estate execution occurs when movable assets are insufficient to cover the debt or if there are no movable assets. However, an exception to this rule allows for real estate execution even in the presence of sufficient movable assets if the creditor holds a registered mortgage, pledge, or has a priority right over the property.

This framework ensures that creditors have a means of recovering debts through the sale of real property, while also providing safeguards against abuse. The system emphasizes fairness and the protection of the debtor's rights by ensuring that the execution process is carried out in a structured and legally regulated manner. The goal is to balance the interests of creditors with the protection of the debtor's property rights, providing a transparent process that can be followed to resolve disputes over unpaid debts.

Keywords:

1. Seizure of real estate
2. Compulsory execution
3. Precautionary seizure
4. Execution of seizure
5. Compulsory debt recovery

6. Public auction

Résumé :

Le principe de l'exécution des obligations par le débiteur est généralement volontaire, ce qui signifie que le débiteur s'acquitte de son obligation de manière volontaire, sans l'intervention d'une tierce partie. Cependant, lorsque le débiteur refuse d'exécuter son obligation, le système juridique prévoit l'exécution forcée, visant les biens ou la personne du débiteur. L'une des principales méthodes d'exécution forcée est le saisie des biens immobiliers, un processus qui permet aux créanciers de placer des propriétés, qu'elles soient détenues par le débiteur ou par des tiers, sous le contrôle du tribunal. Ces propriétés sont ensuite vendues aux enchères publiques, et le produit de la vente est utilisé pour satisfaire la créance.

Pour la saisie immobilière, le créancier doit disposer d'un titre exécutoire, qui lui confère le droit légal de procéder à la saisie. De plus, la procédure de saisie des biens immobiliers ne peut être engagée qu'après avoir tenté de saisir des biens mobiliers, conformément à l'article 721 du Code des procédures civiles et administratives. Dans la plupart des cas, l'exécution sur les biens immobiliers intervient lorsque les biens mobiliers sont insuffisants pour couvrir la créance ou lorsqu'aucun bien mobilier n'est disponible. Toutefois, une exception à cette règle permet l'exécution sur les biens immobiliers, même en présence de biens mobiliers suffisants, si le créancier détient un hypothèque inscrit, un gage, ou a un droit de priorité sur la propriété.

Ce cadre juridique garantit aux créanciers un moyen de recouvrer leurs créances par la vente de biens immobiliers, tout en offrant des garanties contre les abus. Le système met l'accent sur l'équité et la protection des droits du débiteur en veillant à ce que le processus d'exécution soit réalisé de manière structurée et régulée par la loi. L'objectif est de trouver un équilibre entre les intérêts des créanciers et la protection des droits de propriété du débiteur, en fournissant un processus transparent à suivre pour résoudre les litiges liés aux dettes impayées.

Mots-clés :

1. Saisie immobilière
2. Exécution forcée
3. Saisie conservatoire
4. Exécution de la saisie
5. Recouvrement forcé des créances
6. Vente aux enchères publiques

Introduction

Introduction

Civilized and developed societies abide by a fundamental principle: individuals may not enforce their rights by themselves. In modern times, this principle has become universal, applied across all nations. It means that a creditor holding an enforceable instrument must resort to public authority to compel the debtor to fulfill their obligation, thereby securing their right. Ideally, the creditor should accept this enforcement without objection.

The advantage of voluntary compliance lies in its speed, cost-effectiveness, and, most importantly, its preservation of cooperative ties between the parties, encouraging future transactions. In this context, judicial protection is achieved through two essential stages:

1. **First Stage**: Preparing the enforceable instrument sought by the creditor, particularly when it involves a court judgment issued in a legally filed lawsuit.
2. **Second Stage**: Enabling the holder of the enforceable instrument to forcibly recover their right from the debtor by seizing the debtor's assets, regardless of their nature.

Enforcement on these assets requires the creditor to follow legally prescribed procedures tailored to the asset type. Initially, enforcement targets the debtor's movable property. If none exists or it is insufficient, the creditor proceeds to immobilize real estate through what is termed **real estate seizure**, the focus of our study.

Real estate seizure is a compulsory enforcement measure allowing the creditor to place properties owned by the debtor—or a third party with traceable rights—under judicial custody for public auction, thereby recovering the debt from the proceeds.

Thus, real estate seizure is an exceptional procedure regulated by Algerian legislation under **Title V of the Civil and Administrative Procedures Code**. Enforcement is a legal act

with elements, parties, cause, and subject matter—it is the creditor's right over the debtor upon default. This is what we aim to explore in this research.

Reasons for Choosing the Topic

The topic was selected due to:

- Limited research on the subject.
- Its rare inclusion in academic forums, leading to marginalization of its procedures and ignorance of its rulings.
- Clarifying real estate seizure procedures under Algerian law.
- Personal interest in investigating the topic, its procedures, and legal effects.

Importance of the Topic

Real estate seizure holds significance for several reasons:

- It is among the most critical, complex, and procedurally intricate legal rules.
- It involves **immovable property**, the most valued asset, protected by modern legislation (including Algeria's) to guard against abuse by authorities or individuals.
  - The Algerian Constitution (1996) dedicates Articles 20–52 and 66 to property rights.
  - The Civil Code and special laws (e.g., National Property Law, Land Orientation Law, and Ordinance 74-75 on land surveying and cadaster) emphasize property rights, reflecting the societal importance of real estate.
- Due to this importance, legislators impose precise and complex procedures for property seizure, requiring registration with the land registry for enforcement actions (e.g., seizure orders or auction rulings).

Study Objectives

This study aims to:

1. Define real estate seizure broadly.
2. Clarify its procedural framework.

3. Highlight its legal effects.

Research Challenges

Difficulties include:

- Sparse legal coverage in Algerian law (few articles in the Civil and Administrative Procedures Code compared to other topics).
- Scarcity of specialized references; most are general.
- Time constraints and data collection hurdles due to the topic's complexity.

Research Question

The central question: *What constitutes real estate seizure, and how are its procedures manifested?*

Methodology

Given the practical nature of procedural law, an **analytical approach** was adopted to navigate the volume of legal texts and varying procedures for different seizure types. The study also employs **descriptive-analytical methods** to compile and present data from legal texts and literature.

To address the research question, the paper is divided into two chapters:

Chapter 1: Conceptual and Legal Framework of Real Estate Seizure

Chapter 2: Procedures for Executing Real Estate Seizure

Chapter One

Chapter One: The Conceptual and Legal Framework of Real Estate Seizure

Given the economic and social importance of real estate, the legislator has established precise procedural rules to govern its seizure. The primary objective is to avoid hastily selling the property, thereby preventing the debtor from losing ownership, while allowing them an opportunity to settle the debt before the seized property is auctioned.

Seizure involves placing the property under judicial custody to prevent the owner from performing any legal or physical act that might remove the property or its proceeds from the creditor's security.

This chapter will address:

Section One: The Nature of Real Estate Seizure

Section Two: The Legal Effects of Real Estate Seizure

Section One: The Nature of Real Estate Seizure

There are two types of seizure: **executory seizure** and **conservatory seizure**.

1. **Executory Seizure**

- Places the debtor's assets under judicial custody.
- Aims to enable the seizing creditor to recover their debt either through the assets themselves or from their sale proceeds.

2. **Conservatory Seizure**

- Only prevents the debtor from disposing of the seized asset in a way that harms creditors' rights.
- Does not directly lead to the sale of the debtor's assets (unlike executory seizure).
- Focuses on protective measures to safeguard the creditor and preserve the debtor's assets by placing them under judicial control.
- The law is less strict regarding its conditions and procedures compared to executory seizure.

Key Differences Between Conservatory and Executory Seizure

Aspect	Conservatory Seizure	Executory Seizure
Purpose	Preserves assets (no immediate sale)	Enforces debt recovery (may lead to sale)
Requirement	No enforceable instrument needed	Requires an enforceable instrument
Prior Notice	No prior notice (to prevent asset concealment)	Requires prior enforcement notices
Debt Certainty	Debt need not be fixed in amount (must be due and certain)	Debt must be fixed, due, and certain

Enforcement When Debt Matures

If the debtor refuses to pay upon maturity, the creditor must resort to **compulsory enforcement ,** using legal coercion to recover their right.

First Requirement: The Concept of Real Estate Seizure

This section examines the definition of real estate seizure in the first subsection, its nature and characteristics in the second, and the conditions for its application in the third.

First Subsection: Definition of Real Estate Seizure

Here, we first define enforcement seizure, followed by protective seizure.

1. Definition of Enforcement Seizure

Unlike other comparative legislations, Algerian law does not explicitly define this type of seizure, leading us to rely on doctrinal definitions.

- **Dr. Al-Sayed Sawy** defines it as:
  "The creditor placing a debtor-owned property under judicial custody for the purpose of selling it and recovering the debt from the proceeds. This procedure applies to both immovable properties by nature and those designated as such."
- Another definition describes it as:
  "A method of compulsory execution whereby a property owned by the debtor (or a third party subject to creditor claims) is placed under court control, stripped from the owner's disposal, and sold to settle the debt."

In essence, **real estate seizure** means subjecting a property to judicial authority to prevent the debtor from disposing of it in a way that harms creditors.

2. Definition of Protective Seizure

To define protective seizure, we must first clarify its linguistic meaning before addressing its legal and doctrinal interpretation (i.e., its technical definition).

First Subsection: Definition of Real Estate Seizure (Continued)

2. Definition of Protective Seizure

(1) Linguistic Meaning

The Arabic term "حجز" (hajz) fundamentally means to prevent or restrain. In Islamic jurisprudence, this concept appears in the Quranic verse: "وَجَعَلَ بَيْنَ الْبَحْرَيْنِ حَاجِزًا" (And He placed between the two seas a barrier). The root verb "حَجَزَ" carries meanings of prohibition, separation, and confinement.

Key linguistic aspects:

- "حَجَزَ المالَ" means to legally restrain property
- "المحاجزة" refers to mutual restraint or standoff
- "التحفظ" (protection) derives from "حفظ" (to preserve), implying safeguarding assets from damage or loss

(2) Legal Definition

(a) Statutory Definitions

Algerian law uniquely provides a statutory definition in Article 646 of the Civil and Administrative Procedures Code:

"Protective seizure involves placing the debtor's movable or immovable property under judicial supervision to prevent disposal, implemented at the creditor's initiative and risk."

Comparative definitions from international conventions:

- 1952 Brussels Convention (Maritime Law): "Any judicial order immobilizing a vessel to secure maritime claims"
- 1933 Rome Convention (Aviation): "Administrative or judicial measures suspending aircraft operations to protect private interests"

(b) Scholarly Definitions

Prominent legal scholars have proposed various definitions:

1. **Dr. Gera's Definition**:
   Focuses on asset preservation: "A procedure to physically secure assets under court control, preventing debtor dissipation"
2. **Dr. Al-Nadawi's View**:
   Emphasizes precautionary nature: "Interim protective measure requiring probable cause, potentially convertible to enforcement seizure"
3. **Justice Sulaiman's Perspective**:
   Highlights procedural aspects: "Extraordinary remedy available pre-judgment, restricting debtor's dominion without full execution rights"
4. **Prof. Bernard's Analysis**:
   Notes functional purpose: "Provisional mechanism creating judicial lien pending final determination of claims"

Core Characteristics

From these definitions emerge three essential features of protective seizure:

1. **Provisional Nature**: Temporary measure pending final judgment
2. **Asset Neutralization**: Removes property from debtor's unrestricted control
3. **Creditor Protection**: Creates preliminary security interest without immediate execution

This conceptual foundation informs our subsequent analysis of seizure procedures and effects in Algerian law.

Second Subsection: The Nature and Characteristics of Real Estate Seizure

We will first examine the nature and characteristics of **enforcement seizure**, followed by **protective seizure**.

1. Nature and Characteristics of Enforcement Seizure

(1) Legal Nature of Enforcement Seizure

The registration of a seizure order in the land registry is the formal act that places the property under judicial control. However, the **legal nature** of enforcement seizure remains a subject of doctrinal debate, with scholars attempting to classify it within existing legal frameworks.

Several theories have emerged:

- **Theory of Legal Possession**
  Some jurists argue that seizure creates a **legal possession right** for the creditor over the property.
  - If applied to movable property, this grants the creditor **priority rights**.
  - However, this theory is **criticized** because possession rules for movables (which serve as proof of ownership) do not apply to immovable property.
- **Theory of Legal Incapacity**
  Another view suggests that seizure renders the debtor **legally incapable** of managing the seized asset, with the court assuming control.
  - **Criticism**: This would invalidate the debtor's transactions, contrary to established law, which only voids acts against the seizing creditor.
  - Incapacity must be **explicitly declared by law**, which is not the case here.
- **Theory of Real Right**
  A third perspective treats seizure as creating a **real right (in rem)** for the creditor over the property.
  - This grants the creditor **priority and tracking rights** .

- Any post-seizure disposal by the debtor (e.g., sale, mortgage) is **ineffective against the creditor**.

Conclusion:
Enforcement seizure is a **unique legal mechanism** for compulsory execution. While it shares some features with other legal concepts, it remains distinct a **procedural attachment** that subjects the property to forced sale.

(2) Characteristics of Enforcement Seizure

This type of seizure involves **strict, complex, and costly procedures**, reflecting the **economic and social importance** of real estate.

Key features include:

- **Balancing Conflicting Interests**:
- **Creditor's interest**: Speedy execution.
- **Debtor's interest**: Protecting their property.
- **Third-party creditors**: Safeguarding registered rights (e.g., mortgages).
- **Modern Legislative Trends**:
- Simplifying procedures where possible.
- Encouraging **secured loans (e.g., mortgages)** to reduce disputes.

The **Algerian legislator** has sought to **strike a balance** between these competing interests under the new law.

Second: The Nature and Characteristics of Protective Seizure

1. The Legal Nature of Protective Seizure:
The legal nature of protective seizure appears in the fact that, like other precautionary measures, it represents a form of temporary protection of a right. It also constitutes an act of non-contentious jurisdiction, as the protective seizure is issued under the judge's non-contentious authority.

2. Protective Seizure as a Form of Temporary Protection of a Right:
In order to safeguard the creditor's rights and to protect them from the risk of the debtor hiding or transferring their assets—especially since the debtor has the freedom to dispose of their property—the Algerian legislator had to establish the system of protective seizure as a means of temporary protection. It is a legal measure requested by the creditor and taken by the judge according to the procedures set by law, in order to prevent the risk of delay in

protecting a right that is likely to exist, namely, the creditor's right against the debtor.
If the debtor hides or transfers assets, this constitutes a violation of a right that is likely to exist, and it results in permanent harm that cannot be reversed once it occurs. The risk of delay in protecting a probable right and the slowness of judicial protection can lead to its loss. Therefore, temporary protection, embodied in the system of protective seizure, is a rapid form of intervention to safeguard the right.

3. The Non-Contentious Authority in Implementing Protective Seizure:
Purely judicial acts are the core duties of judges, carried out exclusively by them without interference from other state authorities. These acts are distinct in that they involve a claim, an assessment, and a decision made by an independent body, with specific procedures guiding the process.
However, non-contentious acts are not part of the judge's original function and do not fall under their general judicial role. Instead, they are exercised under the judge's general authority as a public official. Decisions under non-contentious jurisdiction are issued in the form of orders on petitions and do not carry the authority of res judicata.
They are temporary and protective in nature, providing judicial safeguards when the law is ineffective due to time constraints or the nature of the dispute. They also provide practical measures taken before harm occurs to prevent it.
Precautionary measures, of which protective seizure is one of the most important, are thus forms of non-contentious actions. They are urgent, temporary procedures that do not affect the substance of the right but aim to counter the risk of delayed substantive protection when such delay could result in irreparable harm. They offer urgent protection to the person who, at first glance, appears to be entitled to the right.
Orders issued on petitions represent the ideal method and the standard form of judicial protective actions under non-contentious jurisdiction.

2- Characteristics of Protective Seizure:

Protective seizure has several characteristics that distinguish it from other types of seizures. These features emphasize its importance within the procedural legal system. Among these characteristics:

1. **Protective seizure is a preventive measure** intended to place the seized assets under judicial control without automatically leading to the sale of these assets for the creditor to recover their claim from the proceeds. This is confirmed by Article 646 of the Code of Civil and Administrative Procedure (CCAP).
2. **The seizure is a precautionary measure** taken by the creditor against the debtor. It can only occur if the creditor fears the reduction or loss of the general guarantee that secures their rights, due to possible actions by the debtor that could harm them. Therefore, the creditor must present evidence showing urgency or necessity, such as the risk of the debtor hiding assets before enforcement. The matter remains subject to the judge's discretion.
3. **The seizure is easy to implement**, as it is done through an order on a petition, whether the creditor holds a debt instrument or simply has apparent justifications suggesting the existence of the debt. This is affirmed by Articles 647 to 649 of the CCAP.
4. **Protective seizure applies to both movable and immovable property**, as stipulated in Article 646 of the CCAP, which states: "Protective seizure is the placing of the debtor's tangible movable and immovable property under judicial control, preventing

them from disposing of it. The seizure is carried out at the creditor's responsibility." Article 647 of the CCAP adds that a creditor with an established and due debt may request, through a reasoned, dated, and signed petition, a protective seizure order on the debtor's movable or immovable property if they hold a debt instrument or have apparent justifications for the debt and fear the loss of their guarantee.
The Algerian legislator's decision to allow protective seizure on real estate in addition to movable property is a new legal development introduced by Law No. 08-09 of February 25, 2008, which established the new Code of Civil and Administrative Procedure. The repealed civil procedure code had limited protective seizure to movable property only.
Overall, by allowing protective seizure on real estate, the Algerian legislator has followed the example of many legal systems that permit it, such as Lebanese, Syrian, and Tunisian law.

5. **Protective seizure applies only to tangible movable property**, as stated in Article 646 of the CCAP: "Protective seizure is the placing of the debtor's tangible movable property under judicial control..."
6. **The law does not require preliminary enforcement steps** to be taken when initiating protective seizure of the debtor's assets. Despite the close link between the principle of adversarial proceedings and the need for these steps, protective seizure occurs without them. This means that the creditor can surprise the debtor by initiating the seizure of their assets without prior notice.

Section Three: Conditions Related to the Application of Real Estate Seizure
This section addresses first the conditions related to **enforcement seizure**, then those related to **protective seizure**.

First: Conditions Related to Enforcement Seizure (Judicial Seizure)

1. Conditions Related to Enforcement:

- **The judgment must be mandatory (enforceable):**
  Legal scholars and courts agree that only **mandatory judgments** (i.e., judgments of obligation) can be enforced through coercive means.
  Declaratory or **constitutive judgments** are not subject to compulsory enforcement and are not considered enforceable instruments.
  - A **mandatory judgment** is one that establishes or confirms a right for one party and obliges the other party to perform a certain act.
    Example: a judgment requiring the debtor to pay a debt to the creditor, or a judgment ordering a tenant to return a rented property.
  - A **declaratory judgment** simply affirms an existing legal status or condition without imposing any obligation.
    Example: a judgment confirming the validity and enforceability of a contract of sale.
  - A **constitutive judgment** creates a new legal status or relationship that did not previously exist.
    Example: a judgment issued in a partition lawsuit.
  - If a judgment contains both a mandatory part and a declaratory or constitutive part, only the mandatory part can be executed by force.

Example: a judgment confirming a contract of sale and ordering the plaintiff to pay costs — only the cost payment can be enforced.

- **The judgment must be final (res judicata):**
  It must have acquired the force of res judicata, meaning it is no longer subject to opposition or appeal.
- **The judgment must be stamped with the enforceable formula (executory clause):**
  As stipulated by law for civil and administrative rulings, unless otherwise provided (e.g., certain administrative documents issued by the tax authority).

2. Conditions Related to Property Seizure (Real Estate):

Enforcement of a seizure on real property requires certain **formal** and **substantive** conditions:

a. Formal Conditions:

- A **complete enforcement file** must exist, as emphasized by Article 721 of the Algerian Civil and Administrative Procedure Code.
- The file must include all enforcement procedures carried out by the judicial officer and the results, including confirmation of lack or insufficiency of movable assets.
- The **debtor must be clearly identified** to avoid confusion or errors.
- According to Article 722, the **seizure request** must be submitted to the **judge of the court** with jurisdiction over the location of the property.
- **No other means of recovering the debt must exist**; if there is, it must be used before or alongside the seizure.

A. Substantive Conditions for Judicial Seizure:

- **Insufficiency of Movable Property:**
  Article 721 of the Algerian Code of Civil and Administrative Procedure provides that a creditor may seize the debtor's real estate and/or real rights—whether individually owned or held in common—**if** the creditor possesses an enforceable instrument **and** proves that the debtor's movable property is either insufficient or non-existent.

  A decision of the Supreme Court (Decision No. 149600 dated 10/12/1997 in the case of B.A vs. L.S) confirms that the expropriation of a debtor's real estate is not permitted **unless** the seized movable assets are insufficient to cover the debt.

- The **authorized enforcement officer** is responsible for executing and signing the real estate seizure **based on a legally served seizure order**.
- **The lack or insufficiency of movable assets** is a fundamental condition for proceeding with the seizure of the debtor's real estate.
  It is only permissible to seize real property when the debtor's movable property is clearly not enough to settle the debt.
- The **value of the property to be seized** must be sufficient—at the very least—to pay part of the debt and associated costs.
  If the value of the property does **not** cover the expenses, it cannot be seized. Logically, it must be worth at least enough to cover part of the debt.

Second: Conditions Related to Precautionary Seizure (Seizure for Safeguarding)

According to **Article 647** of the Code of Civil and Administrative Procedure,
"A creditor with a certain and due debt may, by a dated and reasoned petition signed by them or their representative, request an order for precautionary seizure of the debtor's movable or immovable property, if they hold a debt instrument or have clear justifications suggesting the existence of a debt and fear the loss of security for the debt."

Based on this article, the legislator requires specific substantive conditions related to the right for which the precautionary seizure is requested:

1. The Right Must Be Certain in Its Existence (Established):

- The **meaning of established right** differs between precautionary seizure and judicial seizure.
  In judicial seizure, the existence of the right must be proven by an **enforceable title**, leaving no doubt as to the existence of the right.
  The right must be **clear and precise**, identifying the creditor and the type and amount of the right with certainty.
- If the creditor **does not have an enforceable title**, they cannot pursue **judicial seizure**, but they **can request precautionary seizure** based on a **judge's authorization**.
- In this case, the **president of the court** does not decide on the substance of the right by a final judgment but rather examines whether the **documents presented make it likely** that the debt exists, to justify precautionary seizure.
- If a **serious dispute** is raised before the judge about the existence of the debt, the judge must **refuse** to authorize the seizure due to lack of sufficient certainty.
- If the dispute is **not serious**, the debt may be considered "certain in its existence" if the creditor presents clear preliminary evidence.

The existence of the right does **not** require the absence of any dispute.
Otherwise, a debtor could **always avoid seizure** by raising any form of dispute—even if unfounded.
However, if the documents indicate that the right is highly uncertain, seriously disputed, expired, or based on pure speculation, **the judge must refuse the seizure** request.

The judge's role in this case is **temporary and precautionary**, and does **not** extend to deciding the validity of the debt—that is left to the trial court.
Thus, "certainty of existence" does **not** mean the right is definitively proven—it simply means it is sufficiently likely to justify protection.

2. Substantive and Legal Conditions

A. Real Estate Seizure (Executive Attachment)

1. Insufficiency of Movable Assets

Article 721 of the Algerian Code of Civil and Administrative Procedure (CCAP) states that a creditor may seize the real estate property and/or real rights of their debtor—whether in entirety or shared—if they possess an enforceable title and can prove that the debtor's movable assets are insufficient or nonexistent.

The Algerian Supreme Court reaffirmed this principle in Decision No. 149600 dated 10/12/1997 in the case of (B.A.) v. (L.S.), stating that *the seizure of a debtor's real estate is only permissible if the seized movable assets are insufficient to cover the debt.*

2. Authority and Execution

The officer in charge of enforcement, who is legally authorized to carry out seizures, proceeds with the real estate seizure based on a legally served seizure order.

The **lack or insufficiency of the debtor's movable assets** is considered a **fundamental and crucial condition** for initiating real estate seizure. The seizure of real estate cannot proceed unless it is proven that the debtor's movable assets are inadequate to settle the debt.

Therefore, real estate seizure is only justified if the value of the property is sufficient to pay at least a part of the debt and related expenses. If the property intended for seizure is not valuable enough to cover these costs, the seizure cannot be authorized. This requirement is both legal and logical, ensuring that the property seized has a minimum value and contributes to fulfilling the creditor's claim.

B. Precautionary Seizure (Seizure Before Judgment)

According to **Article 647 of the CCAP**, a creditor holding a debt that is both **certain** and **due** may submit a **justified, dated, and signed petition**—either personally or through a representative—to obtain an order for precautionary seizure of the debtor's movable or immovable property. This is permitted if the creditor possesses a debt instrument or has **clear indications supporting the likelihood of a debt**, and **fears the loss of collateral securing the debt.**

1. Debt Must Be Certain (Existence of the Right)

The meaning of "certain" differs between **precautionary seizure** and **executive seizure**.

In executive seizure, certainty of the debt requires an **enforceable title** (like a final court judgment), which proves the existence of the debt beyond any doubt. This title must explicitly identify:

- The creditor (with full name and address),
- The nature of the debt,
- Its exact value.

Such certainty allows for immediate enforcement and, by extension, also supports precautionary seizure, since the right to execute includes the right to preventively protect it.

However, **if the creditor does not have an enforceable title**, they cannot initiate executive seizure but may request a precautionary seizure through **a judicial authorization**. In this case:

- The **President of the Court** does not rule definitively on the validity of the debt.
- Instead, the judge assesses whether there is **sufficient evidence** from submitted documents to justify the seizure.

If a **serious dispute** arises about the existence of the debt, the judge must **deny the request** for precautionary seizure. Conversely, if no serious objection is made and the creditor provides strong preliminary evidence of the debt, the judge may consider the debt **likely to exist** and grant the seizure.

Importantly, the mere **existence of a dispute** does not bar the seizure. A debtor cannot avoid seizure simply by creating a weak or fabricated dispute. But if the debt appears **highly doubtful**, **legitimately contested**, **expired**, or **based on mere speculation**, the judge must reject the request.

In short, **certainty of the debt** in this context **does not mean undisputed proof**. It simply means there's a **strong presumption** based on the submitted documents. The judge's role is temporary and precautionary, without ruling on the final merit of the case, which is left to the trial court.

Even if the **exact amount** of the debt is under dispute, the judge may still authorize the seizure by estimating a **temporary value** for it.

However, the order granting precautionary seizure **is not binding on the trial court** regarding the existence or certainty of the debt. It remains a **provisional order** issued under the judge's **ex parte (one-party) powers**.

2. The Debt Must Be Due (Payable)

The law also requires that the creditor's debt be **due for payment**, not just likely to exist. Article 646 of the CCAP clearly states that the debt must be *"currently payable."*

A debt is **payable** when:

- Its deadline has already passed,
- It was subject to a **condition precedent** that has now been fulfilled,
- Or a **deferred deadline** has arrived.

A debt that is **not yet due** cannot be claimed or enforced, and therefore cannot justify precautionary seizure. Enforcing such a debt would deprive the debtor of their legal grace period.

If the **payment term** is missed (e.g., due to default) or **waived by the creditor** (if the term was in the creditor's interest), then the debt becomes immediately payable and subject to seizure.

A debt is **not payable** if:

- It's conditional on a future event that hasn't occurred yet (per Article 206 of the Algerian Civil Code),
- It's deferred to a future date not yet reached (per Article 212 of the Civil Code), unless that deadline was for the creditor's benefit and the creditor decides to waive it.

Conversely, if the debt is subject to a **resolutory condition** (a condition that cancels the obligation in the future), the creditor can still enforce it, because the debt is currently active and payable.

Conclusion and Legal Policy Considerations

In conclusion, **two essential conditions** must be fulfilled to authorize a precautionary seizure:

1. The **debt must exist** (even if contested, provided the dispute is not serious),
2. The **debt must be due** (i.e., currently payable).

If either condition is missing, the request must be denied.

It's worth noting that by requiring the debt to be **currently payable**, the legislator **prioritized the debtor's interest**—protecting them from early payment enforcement. However, this puts the creditor at risk, especially when a debtor might hide or transfer assets during the waiting period before the debt becomes due.

For this reason, **legal scholar Dr. Nabila Aïssaoui** argues that Algerian law should allow precautionary seizure **even before the debt becomes due**, provided the creditor reasonably fears losing their security. This is particularly justifiable since the debtor already has the right to:

- Request the **lifting of an unjustified seizure**, and
- Claim **damages** for any harm caused by the seizure if the creditor's debt turns out to be unfounded.

FIRST CONDITION: THE CREDITOR MUST HAVE LEGAL STANDING TO INITIATE CONSERVATORY SEIZURE PROCEEDINGS

According to Article 647 of the Algerian Code of Civil and Administrative Procedure (CCAP), a creditor with a valid, due, and certain debt may request a conservatory seizure order by submitting a dated and signed petition stating the reasons. This means that any individual who is a creditor with a monetary right has the standing to ask the competent court president to authorize a conservatory seizure of their debtor's assets, provided that the other substantive conditions are met.

The creditor must prove this legal standing **at the time the seizure is executed**. If the creditor acquires this status only afterward, the seizure is considered **null and void**. Similarly, if the debt is extinguished before the seizure for **any reason** (such as payment, settlement, etc.), the condition fails, and the creditor no longer has the right to request the seizure.

The creditor may impose a conservatory seizure on **any of the debtor's assets**, even if those assets are encumbered by a mortgage or preferential right of another creditor. This applies whether the creditor is ordinary or privileged. Notably, privileged creditors rarely resort to conservatory seizure, since they are not usually concerned that the debtor will hide or transfer assets encumbered with a lien — they hold the **right to track** the mortgaged or preferential property in anyone’s possession and enforce it.

The creditor themselves initiates the seizure procedures. However, the right to do so may pass to a **universal** or **particular successor**, or someone legally representing the creditor. In all cases, the successor or representative must notify the debtor of their capacity as the creditor’s legal replacement when enforcing the seizure.

If the creditor appoints someone else to act on their behalf, the agent may undertake **all conservatory measures** to preserve the creditor's right. A special power of attorney is not required; a **general power of attorney** suffices because conservatory seizure is considered part of asset management. If there is no valid delegation, the procedures are void.

SECOND CONDITION: THE CREDITOR MUST HAVE A LEGAL INTEREST IN INITIATING SEIZURE

If the debtor satisfies the debt or for any other reason the creditor’s interest disappears, the seizure process must stop, and the seizure is lifted.

Conservatory seizure can be initiated **against the debtor**, but also **against their legal successor** (general or specific), or their legal representative. If the debtor dies before the seizure starts or during it, the creditor may proceed against the heirs and the **debtor’s estate**. If the presence of the debtor is required during the seizure and the heirs are unknown or their

residence is unknown, the creditor may request the court to **appoint a special agent** to represent the heirs (Article 618, para. 2 of the CCAP).

If the debtor loses legal capacity or their legal representative becomes disqualified before or during the seizure process, the seizure must be executed against the **new legal representative**. Preliminary enforcement is not required in this case, since conservatory seizure is conducted without it.

If the debtor **assigns the debt** before the conservatory seizure, the creditor can take action **against the assignee**, the new debtor.

THIRD CONDITION: THE SEIZED PARTY MUST OWN THE ASSETS SUBJECT TO SEIZURE

This is in line with Article 646 of the CCAP, which states:
"Conservatory seizure is the placement of the debtor's movable and immovable property under judicial control..."
and Article 647 adds:
"The creditor may obtain an order for conservatory seizure of the movable or immovable property of the debtor..."

However, by exception and when a legal provision allows, the creditor may seize **assets owned by someone other than the debtor**. For instance, a landlord may place a conservatory seizure on items located on the leased premises, even if owned by someone other than the tenant, **if the landlord has a preferential right over them**, even without knowledge of third-party ownership. This is confirmed by Article 653 of the CCAP.

FOURTH CONDITION: THE CREDITOR MUST HAVE A LEGAL INTEREST IN THE SEIZURE

The creditor must have a **legitimate legal interest** in initiating the conservatory seizure. This is both a **condition for filing a lawsuit** and a **requirement for seizure**. Their interest lies in **preventing the debtor from hiding or disposing of assets** in a way that harms the creditor’s rights.

Whenever the creditor fears losing their guarantee of repayment, they have a valid interest in applying for conservatory seizure. If there is no interest, the right to request the seizure **does not exist**.

FIFTH CONDITION: THE CREDITOR MUST HAVE LEGAL CAPACITY

The creditor must have the **legal capacity** to initiate conservatory seizure. If the creditor is legally incapacitated, the proceedings must be initiated by their legal representative (guardian, custodian, etc.), or the process is invalid.

Although legal capacity is a requirement for valid legal action, the majority of legal scholars argue that **urgent conservatory measures**, which do not touch on the essence of the legal right, do **not require the creditor to be of full legal age or to have full legal capacity**. It is sufficient that the action is **purely beneficial** to the creditor. Since conservatory seizure aims to **secure debt recovery**, it is classified as an **administrative act**, not a disposal act. Therefore, it suffices for the creditor to have the **capacity to manage their property**, like a minor with judicially authorized management rights.

ADDITIONAL CONDITIONS RELATED TO THE DEBTOR

1. The Debtor Must Have Legal Standing

The debtor must be **personally liable** for the debt, whether as a principal debtor, guarantor, or jointly liable party. This status must **persist throughout the seizure process**. If the obligation is extinguished, the seizure process can no longer proceed.

Condition 3: The Provisional Attachment Procedure on Property

In the context of executing a provisional attachment on property, it is crucial that the debtor possesses the necessary procedural capacity for the process to be valid. This means that the debtor must be able to undergo legal actions such as the seizure of assets, and such an ability is essential to ensure that the attachment is enforceable. However, it is important to clarify that the lack of procedural capacity in a debtor does not automatically negate their obligation to fulfill a debt. In other words, even though the debtor may lack the capacity required to engage in certain legal procedures, such incapacity is not a lawful reason to free them from paying their due obligations.

While the Algerian legislator has not explicitly outlined rules regarding the debtor's capacity to participate in the provisional attachment procedure within the Civil Procedure Code, the scholars and legal theorists have differing views on the type of capacity needed for a debtor to be subjected to such proceedings. These differing opinions highlight the complexities of determining the debtor's ability to handle legal and financial obligations, especially when dealing with enforcement actions like the provisional attachment of assets.

Section 2: Procedures for Property Seizure

This section aims to elaborate on the detailed processes involved in executing an attachment of property. The section is divided into two primary branches: one dealing with the procedures for enforcement seizure (also known as the forced sale of property), and the other explaining the procedures for provisional attachment. In the subsequent parts of this discussion, we will delve into the various elements involved in the enforcement and provisional attachment procedures, highlighting key actions, obligations, and legal nuances.

Subsection 1: Procedures for Enforcement Seizure

1. Attachment of the Debtor's Property

The process of attaching a debtor's property is considered legally valid and proper when certain essential conditions are met. One of the primary conditions for the attachment of property to be deemed valid is that a report should be submitted showing that the debtor’s movable assets are either insufficient or nonexistent. This is in accordance with the principle that real estate can only be seized when the debtor’s movable property is either insufficient to cover the debt or entirely absent. This provision is clearly outlined in Article 721/1 of the Civil Procedure Code, which specifies the requirements for the legitimate seizure of real estate as part of debt enforcement actions.

The requirement to ensure that movable property is inadequate or unavailable before proceeding with real estate seizure stems from the principle of fairness and the protection of property rights, which prevent hasty or unwarranted actions that could unduly affect the debtor’s ability to continue normal operations or life. The legislator has set clear conditions for when real estate can be seized, providing a safeguard against arbitrary or excessive enforcement.

2. Issuance of a Seizure Order

In the process of executing a property seizure, the creditor (or their legal representative) must submit a formal request to the court within the jurisdiction where the debtor’s property is located. This request must be made through a petition to the relevant court, and the court must issue an order for the seizure based on the submitted documentation. The seizure order is a critical step in the process, as it authorizes the official attachment of the property and sets the legal framework for subsequent actions.

The petition requesting the seizure must include certain critical information, such as:

- The full name, surname, and physical address of the creditor, as well as their legal or chosen address for correspondence within the court's jurisdiction.
- The full name, surname, and residence of the debtor.
- A clear and detailed description of the property to be seized, which includes its exact location and any other identifying details, as outlined in the property deed.

Additionally, the petition must be accompanied by several documents for it to be valid and processed. These documents include:

- A copy of the executive document that specifies the amount of the debt owed by the debtor.
- A copy of the notification and demand for payment that has been served on the debtor.
- A report confirming that the debtor's movable property is either insufficient or absent. This report is crucial for verifying that the real estate attachment is justified under the law.
- A certified document showing any liens or real estate guarantees that may be involved in the matter (in the case of creditors with real guarantees).
- A property certificate or deed, confirming the debtor’s ownership of the property in question.

Once all required documentation is submitted and verified, the court will issue an order to proceed with the attachment. However, if any of the documents are missing or incomplete, the petition can be rejected or returned with instructions to complete the necessary paperwork before a decision can be made.

3. Official Notification of the Seizure Order

Once the seizure order is issued by the court, the next critical step is to ensure that the debtor is officially notified of the order. This notification must be carried out by a legally authorized court bailiff who is responsible for delivering the order to the debtor. The bailiff’s role is crucial in ensuring that all procedural steps are followed correctly, and that the debtor is made fully aware of the legal actions being taken.

The notification document must contain specific details, including:

- Reference to the executive document and any relevant legal judgments related to the debt.
- Information about the debtor’s presence or absence during the seizure process.
- A clear warning to the debtor that failure to pay the debt immediately will result in the property being registered in the real estate registry, thus making the attachment order final and irreversible.

In the context of the new legal provisions, particularly under Article 725/2 of the Civil Procedure Code, the notification must also inform the debtor that if the debt is not settled within one month from the official notification date, the attached property will be sold or the real estate rights will be enforced. This represents a significant acceleration in the process, reducing the time allowed for the debtor to contest or settle the debt before the enforcement actions proceed.

4. Registration of the Seizure Order

The Civil and Administrative Procedures Code clearly stipulates that the seizure order, once issued and officially notified to the debtor, must be registered in the real estate registry to

become legally effective. This registration is a necessary procedural step, without which the attachment does not produce any real legal effect. According to Articles 728 to 736 of the Code, the property is not officially considered seized or placed under the control of the court until the order is recorded in the appropriate real estate registration office.

The registration of the seizure serves as a public declaration of the attachment, ensuring that all interested parties (such as other creditors or potential buyers) are made aware of the legal status of the property in question. This also establishes a formal, enforceable link between the debtor's real estate and the court's jurisdiction.

Article 725, Paragraph 3 of the Civil and Administrative Procedures Code states that the judicial officer must immediately, or at the latest on the following day after notification, submit the seizure order to the relevant land registry office for registration. The property is considered seized from the date of this registration.

It is important to note that the legislator in the current Civil and Administrative Procedures Code has mandated the judicial officer to deposit the seizure order for registration immediately after notifying the debtor. This contrasts with the previous law (Civil and Administrative Procedures Code), which allowed a period of one month to complete the process of submission. This change represents a reduction in the time frame for completing the registration.

The Registration Law also precisely outlines the procedures the judicial officer must follow and the documents they must submit, including the executive deed and the seizure order. The role of the relevant land registrar is also significant, as they have broad powers to accept or reject the submission. Even after the submission is accepted, the registrar has the authority to refuse the registration, though they must justify such a refusal. The new law does not explicitly state this in Article 728. Therefore, once the submission is accepted, the registrar cannot refuse the registration. If there is no justifiable reason to refuse, the Civil and Administrative Procedures Code mandates the registrar to proceed with the registration from the date of submission and issue a land certificate to the judicial officer within a maximum period of eight days. Failure to do so will result in disciplinary sanctions.

Article 729 of the Civil and Administrative Procedures Code details the actions of the land registrar when registering the seizure order. These actions include recording the date and time of the submission, noting it in the margin, and ordering the registration of each prior seizure order in the sequence it was submitted. The registrar must also include the names, titles, and addresses of all creditors involved and the judicial authority that issued the seizure order. Once the submission is accepted and the order is registered, it is considered an official real estate seizure under **Article 725** of the Code, and as per **Article 730**, the property seized, if in the debtor's possession, will be placed under guard until the sale is conducted.

Second: Enforcement Seizure on Property Belonging to a Third Party

Seizure can also be enforced on property owned by someone other than the debtor under two specific circumstances:

1. When the property is transferred to another person who becomes the holder of the property, burdened by a subsidiary real right that is enforceable against them, making their property subject to execution.
2. When the property is presented as collateral for the debtor's debt, in which case this property also becomes subject to execution.

In both cases, it is evident that the seizure can be executed on a third party's property, even though this third party is not personally liable for the debt and has no direct responsibility for it.

Thus, we will address the execution cases in relation to a holder of property and a collateral guarantor.

A. Seizure on Property Held by a Third Party

A person is considered a holder of property under **Article 911/2** of the Civil Code if they have acquired ownership of the property or any other real right that can be mortgaged, without being personally liable for the debt secured by the mortgage. Specifically, **Article 734/1** of the Civil and Administrative Procedures Code outlines the holder of the property against whom enforcement procedures can be carried out. This holder must have acquired the property through a notarized contract registered before the seizure order is recorded.

Therefore, to be considered a holder of the property, the following conditions must be met:

1. The person must have acquired ownership of the property, burdened by a registered subsidiary real right, or any real right that allows for its seizure.
2. The ownership must have been transferred to them after the subsidiary real right was registered but before the seizure order is recorded.
3. The third party must not be personally liable for the debt being executed.

If these conditions are met, the creditor who holds a registered real right on the property, which was registered before the debtor’s transfer of ownership to the holder, can proceed with enforcement actions on the holder’s property, as they have the right to follow the property.

To protect third parties who might deal with the holder of this property, the legislator has required that the seizure be registered against both the debtor and the holder, meaning that the holder is involved as a passive party alongside the debtor.

In accordance with the general rules on property seizure, the process for seizing property held by a third party begins with notifying the debtor of the seizure order and registering this seizure. The holder is then warned, and this warning is registered. The procedure follows as outlined in the Civil and Administrative Procedures Code.

Official Notification of Seizure Order to the Possessor of Mortgaged Property:

The official notification of the seizure order to the possessor of mortgaged property aims to inform the possessor either to pay the debt or to vacate the property. This is regulated by **Article 923 of the Civil Code** and **Articles 726 and 734 of the Civil Procedures Code (CPC)**. The judicial officer must include the following details in the notification:

- A statement of the enforcement title and the subsequent procedures.
- A statement of the seizure order and its registration date.
- A warning to the possessor to pay the debt within one month from the date of the official notification or risk having the property sold involuntarily.

Timing for Notifying the Possessor: The possessor can be notified in two ways:

1. After the debtor has been notified of the seizure order but before it has been registered.
2. After the debtor has been notified and the order is registered at the real estate registry. The second option is generally preferred to protect the interests of the seizing creditor.

The goal of this notification is to ensure that the possessor knows which property is subject to enforcement and the amount of debt they are required to pay, giving them the option to either pay the debt or vacate the property.

Seizure of the Property of the Guarantor:

A **real estate guarantor** is someone who mortgages their property to secure the payment of another's debt. While the guarantor is not personally responsible for the debt, similar to the possessor, they voluntarily provide their property as security for the creditor's benefit.

To seize the property of the guarantor, the following procedures are required:

- Execution steps must first be taken against the original debtor, including notifying them of the enforcement title and demanding payment.
- Then, an official notification of the seizure order must be issued to the guarantor, who will be given the option to pay the debt, vacate the property, or accept the seizure and sale procedures.
- Once the order is issued, it must be registered with the real estate registry office in the name of the guarantor.

Protection for Those Dealing with the Guarantor: By registering the seizure order under the guarantor's name, anyone dealing with the property after the seizure is protected, as they will be made aware of the existing seizure.

Procedures for Provisional Seizure:

- **Formal Reason for Imposing Provisional Seizure:** The law requires the creditor wishing to seize the debtor's property (whether movable or immovable) to first obtain a court order, as stipulated in **Article 647 of the Civil Procedures Code (CPC)**. Obtaining this court order is mandatory for anyone wishing to implement provisional

seizure. Without the order, the seizure is considered invalid. The law treats creditors equally, whether or not they hold an enforcement title, which differs from the practices in some other legal systems, such as Egypt.

- **Provisional Seizure Procedures After Court Approval:** Once the court order is granted, the creditor must follow the necessary legal steps to carry out the provisional seizure. This ensures that provisional seizure is not misused by creditors making unjust claims of non-existent debts, protecting the debtor from wrongful seizure actions.

A. **The Competent Court to Issue a Seizure Order:**

- **01. Regional Jurisdiction:** According to Article 40 of the Algerian Code of Civil and Administrative Procedure (CPC), the court competent to grant permission for any type of seizure is the court within whose jurisdiction the seizure takes place. This is typically the court of the location of the assets to be seized or the court within whose jurisdiction the debtor's domicile is located. This is also confirmed in the first paragraph of Article 649 of the CPC, which explicitly addresses the jurisdiction of the court for issuing a precautionary seizure order, stating that the seizure is carried out by an order on petition from the president of the court within whose jurisdiction the debtor's domicile or the location of the assets to be seized is situated.

The Algerian legislator, in Article 648 of the CPC, also provides for the possibility of a creditor securing a precautionary seizure of the debtor's assets during a claim for debt recognition before the trial judge. The claim may concern the merits of the case, and the creditor (plaintiff) may not have initially requested the seizure either due to the debtor's solvency or a lack of fear of the debtor fleeing with the assets. However, if the situation changes and the creditor fears losing the collateral for the debt, they are entitled to request the seizure.

- **02. The Creditor's Request for Seizure:** The request for permission to impose a precautionary seizure and the procedure for issuing it are subject to the specific rules for obtaining orders on petition as set out in the CPC. The creditor submits the request to the president of the court within whose jurisdiction the debtor's domicile or the location of the assets to be seized is situated. This request is based on a substantiated, dated, and signed petition by the creditor or their representative, with two identical copies, including specific information, most notably the following:
    - The name, surname, and domicile of the creditor, and if the creditor is a legal entity, their name, nature, registered office, and the capacity of their legal or contractual representative.
    - The name, surname, and domicile of the debtor, and if the debtor is a legal entity, their name, nature, registered office, and the capacity of their legal or contractual representative.
    - The identification of the court to which the request for permission to seize the debtor's assets is directed.
    - A brief presentation of the facts that led to the creation of the debt relationship, specifying the source of the debt.
    - The reasons the creditor relies upon to request the precautionary seizure of the debtor's assets.
- **03. The Competent Court to Issue a Precautionary Seizure During a Debt Recognition Lawsuit:** The president of the court that is regionally competent is also

the court competent to issue a precautionary seizure order by an order on petition, provided that the legal conditions for such an action are met, in accordance with Article 649 of the CPC, which states that "precautionary seizure is carried out by an order on petition from the president of the court." However, the Supreme Court has allowed for the issuance of a seizure order through urgent proceedings in its decision No. 31624, issued on 27/04/1983, where it stated that as long as the text of Article 345 of the current Civil Procedure Code (corresponding to Article 649 of the CPC) specifies that a precautionary seizure is carried out by an order on petition, it is legally permissible to issue such an order through urgent proceedings, as there is no legal provision prohibiting this, provided the debtor's right to defense is guaranteed. Since this procedure in both cases is temporary in nature, the objection to the decision based on a breach of substantial procedures is unfounded and should be rejected.

It is established in the present case that the judges in urgent proceedings upheld an urgent order for the precautionary seizure of two cars whose ownership was disputed. By their decision, they adhered to the application of the law. Based on this decision, many legal scholars believe that creditors can follow the urgent procedure to impose a precautionary seizure on the debtor's assets instead of obtaining an order on petition.

- **04. The Court Competent to Impose a Precautionary Seizure During a Debt Recognition Lawsuit:** This title refers to the situation where the creditor seeks to impose a precautionary seizure on the debtor's assets while a claim for debt recognition is still pending. The court with jurisdiction to make such an order is the same court competent to handle the underlying dispute regarding the debt itself.

B. Legal Basis for the Existence of Debt or Apparent Justifications Supporting Its Existence in the Absence of Supporting Documents

- **Specifying the Debt Amount:** The creditor must mention the value of the debt if it is clearly defined in a document. If not, the approximate amount should be provided, along with the date of its inception.
- **Preliminary Identification of Assets to Be Seized:** In the case of movable assets, the creditor must specifically identify them to avoid ambiguity. The creditor's request at the end of the petition should be directed to the president of the court to issue an order for the precautionary seizure of the debtor's assets, whether movable or immovable.
- **Date of Submission and Creditor's Signature:** The petition should also specify the date of submission and include the creditor's signature at the end of the document.

C. Issuing a Precautionary Seizure Order

Once the creditor has prepared the file, including the petition and supporting documents, it is submitted to the court's registry, along with the payment of the legal fees. The registrar then forwards the file to the president of the court, who is required by law to rule on the seizure request within a maximum of five days from the date of submission, according to Article 649 of the Algerian Code of Civil and Administrative Procedure (CPC). However, the law does not specify any legal consequence for failing to meet this deadline.

- **01. Acceptance of the Seizure Request:** If the president of the court accepts the creditor's request, they issue an order for the precautionary seizure. The registry retains one copy, provides one copy to the creditor, and records the precautionary seizure order in the seizure register maintained by the court's registry. The order is also registered in the public registry, as it is a judicial act subject to registration fees and state taxes. This order becomes an enforceable title, and its non-execution within three months of its issuance leads to its lapse and the cessation of its legal effects.
- **02. Rejection of the Seizure Request:** While the president of the court has discretionary power to accept or reject the request, they can reject it based on valid reasons, such as the absence of any indication of risk that the debtor might flee with the assets or the lack of evidence for the existence of the debt. In this case, the president must justify the decision to reject the request by stating the reasons, allowing the creditor to challenge the rejection by appealing or resubmitting the request with the necessary corrections, such as submitting missing documents, providing signatures, or including required details.

Chapter II: Effects of Real Estate Seizure and Its Scope

To understand the effects and scope of real estate seizure, it is important to first identify the property subject to seizure. The first section discusses the effects of enforcement seizure, while the second section deals with the effects of precautionary seizure.

- **Section One: Effects of Enforcement Seizure**

The procedures for enforcement seizure vary depending on whether the property is registered or not. However, the effects of enforcement seizure do not change, even if the property owner is a debtor, possessor, or a guarantor. The effects of enforcement seizure occur as soon as the seizure order is recorded in the real estate registry, assuming the property is owned by the debtor. For properties owned by a possessor or a guarantor, the seizure becomes effective from the date the notice is sent to them.

As a result, this procedure produces significant legal effects, both for the debtor and for the creditor, which will be discussed in detail in the following sub-sections.

- **Section Two: Effects of Enforcement Seizure on the Debtor**

The effects of the enforcement seizure on real estate or property rights go beyond limiting the debtor's control over the property; they also create effects that benefit the debtor. Most notably, the debtor retains ownership of the seized property and the statute of limitations is suspended. This will be explored in detail in this section.

- **First: Retaining Ownership of the Seized Property**

The aim of the seizure is not to transfer ownership of the property from the debtor to the court, but rather to maintain the debtor's ownership of the property until it is sold at public auction, where ownership is transferred to the highest bidder. This is the final phase of the enforcement seizure on real estate, which will be further detailed when discussing the public

auction process. The same principle applies to the mortgaged property or the property of the guarantor, where the ownership remains with the debtor or guarantor despite the seizure.

I. The Obligations of the Debtor Regarding the Seized Property

On the other hand, as long as the property remains owned by the debtor under seizure, the latter is obligated to preserve the seized property. This includes taking all necessary legal and material measures to maintain it. The debtor may also pursue all legally permitted actions to protect it, specifically referring to the **three possessory actions** (*dawā al-hayāzah al-thalāth*).

However, if the seized property is destroyed, the **loss falls upon the debtor under seizure** if the property perishes while still under their ownership—regardless of the cause of destruction, whether due to *force majeure* or their own fault. Under no circumstances can the seizing creditor be held responsible for the loss, and there is no basis to discuss any case of **debt extinction** in this context.

II. Interruption of the Prescription Period

In general, **seizure**—whether provisional or executory, and whether applied to movable or immovable property—**interrupts the statute of limitations (prescription period)**. However, the **starting point** of this interruption varies depending on the nature of the seized asset:

- **For movable property**, the prescription period begins from the date of drafting the **inventory report** (*mahdar al-jard*) and appointing a **custodian** for the seized asset.
- **For immovable property**, the interruption of prescription takes effect from the date of **issuing the seizure order** (*amr al-hajz*) and its **notification to the debtor**. This means that **actual physical seizure** is not required for the interruption to take effect—it does not wait for the seizure order to be registered in the **land registry** (*al-muhafaza al-'iqariyya*).

This principle is confirmed by **Article 317 of the Algerian Civil Code**, which states:

"Prescription is interrupted by a judicial claim, even if the lawsuit is brought before an incompetent court, or by seizure..."

The **Egyptian Court of Cassation** has upheld this interpretation in several rulings, including its decision dated **November 22, 1966**, which stated:

"While the creditor's act of notification (al-tanbīh) or seizure (al-hajz) on the debtor's property is in itself an act that interrupts the prescription period—thereby restarting the statute of limitations—a subsequent judgment ***canceling the sale conditions*** *due to the invalidity of the enforcement instrument or the seizing creditor's right to execute renders the prior notification void, as it was issued without a valid legal basis. Consequently, such notification* ***has no effect*** *in interrupting prescription."*

Subsection 2: Effects on the Debtor Under Seizure

The primary objective of imposing a seizure—whether provisional or executory, and regardless of its type—is to **restrict the debtor's authority** over the seized property. This measure aims to **protect creditors** by preserving the debtor's financial standing and preventing any actions that might diminish the value of the seized asset or undermine the creditors' **general lien** (*haqq al-daman al-'ām*) on the debtor's property. These restrictions remain in place until the property and/or real right under seizure are sold at a **public auction**, with the proceeds used to settle outstanding debts and associated costs.

I. Ineffectiveness of Dispositions

As previously noted, **seizure does not transfer ownership** of the property; the debtor retains ownership until the auction sale. However, the seizure **prohibits the debtor** from disposing of the seized asset in any way that conflicts with or harms the seizing creditor's security rights.

Article 735 of the Algerian Civil Procedure Code states:

"Once a seizure order is registered in the land registry, the debtor under seizure, the property holder, or the guarantor may not transfer ownership of the seized property or real right, nor establish any in rem security interests (e.g., mortgages, liens) thereon. Any such disposition shall be voidable."

Thus, **any post-seizure disposition**—such as sales, gifts, exchanges, endowments (*waqf*), or the creation of security interests—by the debtor, holder, or guarantor is **voidable at the creditor's request**. These acts are deemed detrimental as they could reduce the property's value or deter potential buyers.

However, these dispositions are **not inherently null and void** (*bāṭil*), nor strictly "voidable" (*qābil lil-ibṭāl*). Since the debtor remains the legal owner, the dispositions are **valid between the transacting parties** but are **ineffective against the seizing creditor**, privileged creditors, and the auctioneer from the date of the seizure order's registration.

Key Legal Distinction:

- **Not "voidable"** (which implies a defect in the act itself).
- **But "ineffective"** (*'adam nufūdh*) against the seizing creditor—meaning the acts are valid inter partes but unenforceable against the creditor.

II. Exceptions to the Rule of Ineffectiveness

While post-seizure dispositions are generally ineffective, exceptions exist for certain parties who may **register their rights** even after the seizure order:

1. **The seller of the seized property** (*bā'i' al-'aqār*) who financed its purchase.
2. **The co-owner in a partition** (*al-sharīk al-muqāsim*).

These parties retain the right to **register their preferential rights** (*ḥuqūq imtiyāziyya*) within **two months** of the property's ownership contract being recorded (per **Articles 999–1001 of the Civil Code**). Failure to register within this period nullifies their exception, rendering their dispositions voidable.

Summary of Effects:

- **Debtor's ownership persists** until auction.
- **Dispositions are prohibited** post-seizure registration but remain valid between parties.
- **Creditors may challenge** dispositions as ineffective against their claims.
- **Exceptions allow limited rights** for sellers and co-owners if timely registered.
    - However, it may happen that the property is leased before the registration of the seizure order, provided that this lease is dated, in accordance with the provisions of Articles 896 and 897 of the Civil Code and Article 731 of the C.C.P.A. This seizure applies to the creditors who have seized and to the creditors whose rights were registered before the order was filed. The lease also applies to the person who purchased the property at auction because, by implication, transactions against them are only valid to the extent that they apply to creditors who have seized or are considered parties in the proceedings. Therefore, this contract is enforceable against

them. On the other hand, the rent owed is considered seized in the hands of the tenant once the tenant has been notified of the seizure order and warned not to release it or give it to the debtor or any other party.

- In this case, the tenant's assets are considered seized, and the seizure proceedings are applied regarding the rent. This is stipulated in Articles 667 and following of the C.C.P.A., and the tenant is prohibited from paying the property owner. If they do, the payment does not apply to the creditor.
- However, if the rent is prepaid, and the tenant has paid it to the debtor before the seizure order is registered, the debtor is held accountable as the holder of the rent.
- Nevertheless, if it is proven that the lease concluded before the registration of the seizure order, even if dated, was made in collusion with the tenant, the court may, upon the creditor's request, annul the lease based on fraud according to the principle "fraud nullifies everything," as stated in Article 731 of the C.C.P.A.
- Although the debtor is prohibited from leasing the property after the seizure order and such transactions do not bind the creditor, there is an exception. This is provided for in **Article 896** of the **Civil Code**, which states that leases made after the registration of the seizure order, where the rent is not prepaid, are not enforceable against the creditor, unless they are considered proper management acts, meaning they do not decrease the value of the property.
- Additionally, the debtor may enter into lease contracts after the registration of the seizure order if authorized by the court, provided it increases the property's income and does not harm the interests of the parties to the seizure, as stated in **Article 731(2)** of the **C.C.P.A.**
- Regarding leases that must be registered, as mentioned in the above article, they are those that the law requires to be formalized by special texts and which, according to the legislator, are based on a time criterion, i.e., the duration of the lease, whether long or short. The legislator did not address the duration of the lease within the Civil and Administrative Procedures Code, unlike what is stated in the Civil Code concerning encumbered property, where **Article 896** specifies that "a lease made before registration for a period exceeding nine years does not apply to the secured creditor beyond this period unless registered before the mortgage is recorded."
- Referring to **Order 74-75** dated 12/11/1975 concerning the preparation of general surveys and the establishment of land registers in **Article 17**, leases made for 12 years do not have any effect on the parties or third parties if not registered in the property card registry.
- Therefore, ordinary creditors may invoke this provision to invalidate leases lasting this long or longer if not registered. Additionally, to validate a lease contract against the creditor or the purchaser at auction, the **Decree No. 93-03** dated 01/03/1993, concerning real estate activity and amended by **Law 07-205** dated 13/05/2007 amending the Civil Code, requires that the lease contract be written and dated in accordance with the standard contract model prescribed in **Decree 94-86099495** of 03/03/1994 for it to be enforceable against third parties.
- Thus, creditors or purchasers at auction can argue that leases made before the registration are not valid if they do not comply with the prescribed model contract.

Third: Fruits

This effect means that all fruits produced by the property, whether natural, artificial, or civil, fall within the scope of the seizure and are considered attached to the original property, i.e., the seized property. However, in many cases, the fruits may be seized before the registration of the seizure order, and then the property containing the fruits

is seized and the order is registered. In this case, there may be a conflict between the rights of the seizing parties. How is this resolved? Do the fruits attach to the seized property or not?

- It can be said that the fruits owed to the debtor for the period prior to the registration of the seizure order do not attach to the property, even if their price has not been collected by the debtor. The determining factor is the day they were separated from the property. If they were separated before the registration of the seizure, they do not attach to the property because they no longer retain the characteristics of the property and become movable items, subject to the procedures for seizing movable property.

Section 1: Seizure of Fruits

Since the fruits of a property are considered seized along with the property from the moment of seizure, even though they are considered movable property in terms of their nature, the law allows the sale of fruits attached to the property as part of the debtor's ordinary management activities. All proceeds and revenues are deposited with the court clerk to be added to the value of the seizure.

As for agricultural crops, they can be sold through auction or by an intermediary, such as wholesale markets or any method that guarantees a better price, after obtaining an order from the court president. The proceeds are deposited with the court clerk and added to the value of the seizure, as stipulated in Article 732 of the Civil and Administrative Procedures Code.

To punish the debtor or property possessor or the collateral guarantor who causes the misappropriation of the fruits or revenues attached to the property, the legislator in Article 733 of the Civil and Administrative Procedures Code imposes civil liability for compensation and criminal responsibility for embezzling seized property, in accordance with Article 364 of the Penal Code.

Section 2: Effects of Provisional Seizure and Ways to Mitigate It

The provisional seizure of the debtor’s assets places them under judicial control, preventing the debtor from dealing with them to the detriment of creditors, in addition to other legal consequences.

Another consequence of the provisional seizure is the application of a special legal regime to the seized assets. The seizure, particularly provisional seizure, isolates the seized assets and their attachments from the debtor's other assets, creating a distinct set subject to a special legal regime designed to achieve the goal of the seizure, which is to prepare for satisfying the creditor's claim.

This special legal regime includes elements such as the retention of the seized property within the debtor's ownership, the preservation of the seized property for enforcement, placing it under custody, and restricting the debtor’s authority to use it. These elements will be explained further.

Branch 1: Consequences of Provisional Seizure

The general principle of seizure is that the seized property does not leave the ownership of its owner, whether the seizure is provisional or executive. The aim of the seizure is to prepare for satisfying the creditor’s claim.

First: How the seized property remains in the debtor's financial possession

The provisional seizure serves a protective function, restricting the debtor's authority over the seized property to protect the creditor's rights. As a legal action, it does not transfer ownership of the seized assets but the sale through public auction is the legal means to transfer ownership to the highest bidder, once the provisional seizure becomes an executive seizure.
Thus, the general rule is that provisional seizure does not remove the seized property from the owner's possession and does not immediately lead to the sale of the assets or create a real right for the creditor over the seized property. The goal is merely to protect the debtor's assets under judicial control while retaining ownership throughout the seizure period.

If the seized property is destroyed by force majeure, the loss is borne by the person whose property was seized, as they are considered the owner. However, the creditor's right does not expire due to this destruction, and they are not responsible for the loss. The creditor may seize other assets of the debtor that were not previously seized.

A- The Ineffectiveness of Transactions by the Seized Party Regarding Their Seized Assets:
Seizure does not invalidate legal transactions; it does not diminish or negate the seized party's capacity to act. Since the seized property remains the property of its owner, who retains the right to dispose of it, transactions by the seized party are generally valid and produce legal effects. However, to preserve the legal value of the seizure and its role in protecting creditors, transactions by the seized party on the seized assets are ineffective from the moment of the seizure. This is stated in Article 661 of the Civil and Administrative Procedures Code, which confirms that "any legal act by the debtor concerning the seized property is not enforceable."

First: Scope of Ineffectiveness Regarding Transactions
The rule is that any legal act performed by the seized party on the seized property is ineffective against the creditor if it harms them, such as preventing the execution of the seizure or diminishing the value of the property (whether movable or immovable). Therefore, the following transactions are covered by this ineffectiveness:

1. **Transactions that remove the seized property from the debtor's ownership**: These are transactions that transfer ownership of the seized property, whether for compensation or not. Recognizing such a transfer would invalidate the seizure because the property must remain owned by the debtor. However, an exception exists for the rule of possession in good faith for movable property.
2. **Transactions that reduce the value of the seized property**: This includes transactions that burden the property with additional rights, such as usufruct or easements, or those that waive rights benefiting the debtor, such as relinquishing an easement on the seized property. These acts reduce the value of the property, thus harming the creditor's ability to recover their debt.
3. **Transactions that affect the creditor's position**: These are transactions that delay the creditor's rank, even if they are a regular creditor, and allow others to take priority in recovering their debt from the proceeds of the sale, such as transactions that create secondary real rights on the property.

B- Scope of Ineffectiveness Regarding Persons
The ineffectiveness of transactions concerning the seized property is relative: while the transaction is valid and produces legal effects for the parties involved, it is not enforceable against certain persons. It is enforceable against those who are not involved in the execution

proceedings, such as a regular creditor who has not seized the property. However, it is not enforceable against:

1. **The Seizing Creditor**: The creditor who has obtained an order for the provisional seizure of the debtor's property, whether a regular creditor or one with special security. In fact, regular creditors are entitled to more protection than creditors with special rights. The sale of the seized property does not prevent a creditor with a special right from pursuing their claim through the right of follow-up.
2. **Creditors with Special Rights on Seized Property**: These are creditors who have security rights on the property before the provisional seizure. For movable property, the law distinguishes between creditors with real rights on seized immovable property, who, when considered parties to the proceedings, cannot have the transaction enforced against them. Nevertheless, the right of follow-up allows them to execute their claim, even if the transaction is enforceable before their involvement.

C- Restriction on the Seized Party's Authority to Use and Exploit the Seized Property
Although ownership confers the right to use and exploit the property, the provisional seizure, while not removing the seized property from the owner's control, restricts their authority to use and exploit it.

First: Restriction on the Seized Party's Authority to Use the Seized Property
If the seized property remains in the possession of the seized party at the time of the provisional seizure, they are considered its possessor and act as a judicial guardian. This status continues until the seizure is confirmed or lifted, unless otherwise ordered by the court. If a creditor, for example, obtains an order from the court president to remove the debtor from their position as judicial guardian and appoint a new guardian due to negligence in maintaining the property, the debtor may be removed. If the seized party is the judicial guardian of the seized property, they can use it without damaging it or reducing its value, and they have the right to enjoy its fruits, maintaining it as a responsible head of household (Article 660, Civil and Administrative Procedures Code).

Second: Restricting the Authority of the Garnishee in Utilizing the Seized Property

Although the right of ownership grants the garnishee the authority to utilize their property, this authority is subject to two restrictions when the property is seized:

1. The seized property must be inherently suitable for utilization.
2. Such utilization must not cause damage or diminish its value.

Leasing the seized property and collecting its civil fruits are forms of utilization explicitly addressed in **Article 661** of the Algerian Code of Civil and Administrative Procedures (CCAP), which states:
"However, the debtor may lease the seized assets with the authorization of the court president who ordered the seizure, by an order issued upon petition."

Under this provision, the garnishee is prohibited from leasing the seized assets unless they obtain permission from the court president who issued the seizure order. If the garnishee leased the property **before** the seizure, the lease contract remains valid and legally binding on the parties and third parties, including the seizing creditor.

After a **precautionary seizure** is imposed, any legal disposition by the debtor concerning the seized assets—including leasing—becomes unenforceable. However, Algerian legislators introduced an exception to this rule by allowing the garnishee to lease the seized assets **after obtaining authorization** from the competent court president.

Subsection Two: Measures to Limit the Effects of Precautionary Seizure

The Algerian legislator established rules to mitigate the broad effects of the general lien right, ensuring the debtor's interest in smoother execution. Two key mechanisms were introduced to prevent potential harm to the garnishee from the principle of the seizure's comprehensive effect:

1. **The Deposit and Allocation System**
2. **The Limitation of Seizure System**

These are regulated under **Articles 640, 641, and 642** of the CCAP (included in Section Two of Chapter One on special and common seizure provisions), meaning they apply to **all types of seizures**, including precautionary ones.

Additionally, the legislator granted the garnishee the right to file a lawsuit not only to **limit the effects** of the precautionary seizure but also to **annul its procedures** and eliminate its consequences—specifically, the **action to lift the seizure**.

Thus, this subsection will address:

1. Measures to limit the comprehensive effect of seizure.
2. The lawsuit to lift the seizure, which—if accepted—terminates these effects.

First: Deposit and Allocation

The Algerian legislator provided the garnishee a means to avoid the consequences of the general lien right granted to the creditor, which allows the creditor to freely select assets for

seizure without adhering to a specific order or proportionality between the asset's value and the debt.

The garnishee may **lift the seizure** by depositing a **cash amount** with the court clerk or judicial officer, allocated to satisfy the seizing creditor's claim. This amount must, in principle, equal the seized debt plus expenses.

Types of Deposit and Allocation:

Under the law, deposit and allocation can occur in two forms:

1. **Deposit and Allocation Without a Court Order** (Voluntary Substitution)
   - Governed by **Article 640 CCAP**, this allows the garnishee (or their representative) to deposit a sum equal to the seized debt and expenses at any stage—**before or during the sale**, but before the auction's finalization.
   - The deposit is made with the court clerk or judicial officer, who issues a receipt.
   - This action **releases the seized assets**, transferring the lien to the deposited amount, which is reserved exclusively for the seizing creditor. Subsequent seizures on the debtor's assets do not affect this allocated amount (**Article 640, paras. 3–4 CCAP**).
2. **Deposit and Allocation by Court Order**
   - While voluntary deposit is simpler (as it avoids litigation), it may not always be feasible. For instance:
     - The garnishee must deposit the **full disputed debt amount plus expenses**, even if the debt's existence or value is contested.
     - Difficulty in determining expense amounts may compel the garnishee to file a **lawsuit for deposit and allocation**.

Deposit and Allocation by Judicial Order (Judicial Substitution or Emergency Deposit)

If the debtor is unable to determine an amount equal to the seized debt plus expenses as stipulated in **Article 640 CCAP**, the law permits them—under **Article 641 CCAP**—to seek judicial intervention. The legislator recognized that the **voluntary deposit system (Article 640)** could burden the debtor, especially when the debt's value is disputed. Thus, **Article 641** provides an alternative:

"The garnishee may, at any stage of the proceedings, file an emergency petition requesting the court to determine a monetary amount (or equivalent) to be deposited with the court registry, allocated exclusively to the seizing creditor..."

Key Features:

1. **Exclusive Right of the Garnishee**
   - Only the **debtor** (not the creditor) may file this emergency petition.
   - The creditor cannot use this mechanism to gain priority over other creditors.
2. **Judicial Determination**
   - The emergency judge assesses a sufficient amount to cover the debt and expenses.
   - The debtor deposits this court-determined sum, lifting the seizure from the original assets.

Legal Effects of Deposit and Allocation

1. Substitution of the Seized Property

- The deposit **replaces** the original seized assets.
- The lien **transfers** from the physical assets to the deposited funds, maintaining its legal effects but altering its subject.
- The original assets are **released from seizure**, while the deposited amount becomes encumbered.
- If the original seizure was **precautionary**, the transferred lien retains this character.

2. Removal of the Seizure from the Original Assets

- The garnishee regains full rights over the previously seized property.
- All restrictions on utilization or disposition are lifted.

3. Allocation of Deposited Funds

- The deposited amount is **reserved exclusively** for the seizing creditor (covering both debt and expenses).
- Subsequent seizures by other creditors **cannot** attach to these funds.

Limitation of Seizure System

This system aims to **prevent abuse** by creditors who seize excessive assets for minor or disputed debts, disproportionately harming the debtor.

Conditions for Application:

- The garnishee **lacks sufficient funds** for voluntary deposit (Article 640).
- The **value of seized assets far exceeds** the debt.
- The garnishee requests **limitation via emergency petition** (Article 642 CCAP).

Article 642 CCAP Text:

"A creditor may seize all the debtor's assets to preserve their general lien. However, if the seized assets' value is disproportionate to the debt, the debtor may petition the court to limit the seizure to specific assets sufficient to cover the debt and expenses. The creditor benefiting from this limitation gains priority over others when recovering from the limited assets."

Procedural Requirements:

1. **Exclusive to the Debtor**: Only the garnishee may file the petition.
2. **Emergency Jurisdiction**: The urgent matters judge rules on the request.
3. **Notice to Creditors**: The order is enforceable only against properly notified seizing creditors.

Legal Effects of Limitation of Seizure

1. Restriction of Seizure to Specific Assets

- The seizure **narrows** to designated assets (sufficient to cover the debt + expenses).
- The remaining assets are **fully released**, restoring the debtor's rights.

2. Priority for the Seizing Creditor

- The creditor who requested the original seizure retains **priority** over the limited assets.
- Other creditors may only claim against **non-limited assets**.

Limitation of Seizure to Specific Assets

This means **restricting the seizure to only a portion of the garnished assets**, while maintaining its full legal effects on those selected assets. The court determines this portion based on an amount sufficient to cover the debt being enforced, along with associated expenses. Only this designated portion remains subject to seizure, while the excess is **released**.

3. Priority of the Seizing Creditor Before Limitation

The law grants the seizing creditor—for whose benefit the limitation was ordered—**priority over other creditors** when recovering their claim from the limited assets. This is explicitly confirmed by **Paragraph 3 of Article 642 CCAP**, which states:

"The creditor for whom the seizure was limited shall have priority over other creditors when recovering their claim from the assets subject to the limited seizure."

Legal Implications:

- **Subsequent Seizures**: If new seizures are imposed on the same assets **after** the limitation, they remain **valid** but are **subordinate** to the original seizing creditor's claim.
- **Recovery Order**: Other creditors can only recover their claims **after** the prioritized creditor has been fully satisfied.
- **Legislative Intent**: This priority prevents **new creditors** from interfering with or diluting the original creditor's rights post-limitation.

Key Takeaway

The limitation mechanism ensures:

1. **Proportionality** – The debtor's assets are not excessively frozen.
2. **Creditor Protection** – The seizing creditor retains **first-right recovery** on the limited assets.
3. **Judicial Oversight** – Courts assess fairness in balancing debtor and creditor interests.

Chapter Two

Chapter Two: Procedures for Executing Real Estate Seizure

The registration of the seizure order marks the actual commencement of the seizure process, placing the property under judicial custody. After filing the real estate seizure dossier with the Land Registry Office, the land registrar must:

1. **Register the seizure order** within **8 days** (per **Article 728** of the Code of Civil and Administrative Procedures, CCAP).
2. Issue a **real estate certificate** to the bailiff or the seizing creditor.

Once the seizure is enforced on the property, the **preparation phase for public auction** begins. The legislator mandates several preparatory steps to facilitate the sale, including:

- Drafting and depositing the **terms of sale** with the court registry.
- Notifying interested parties to review the terms, allowing them to:
  - **Object** by submitting remarks.
  - **File legally specified claims**.

Structure of This Chapter

Section One: Preparing the Property for Sale
Section Two: Sale of the Seized Property

Section One: Preparing the Property for Sale

1. **Deposit of Sale Terms**
   - The creditor must file a detailed list of sale conditions with the court, including:
     - Property description.
     - Minimum bid price.
     - Payment deadlines.
   - The court reviews and approves these terms.
2. **Notification to Stakeholders**
   - The bailiff notifies all parties with registered rights (e.g., mortgage holders, tenants) to:
     - **Inspect the terms** at the court registry.
     - **Raise objections** within 15 days (per **Article 730 CCAP**).
3. **Judicial Oversight**
   - The court resolves disputes over sale terms.
   - If no objections are filed, the sale proceeds to auction.

Section Two: Sale of the Seized Property

1. **Auction Announcement**
   - The sale is publicly advertised for **30 days** (newspapers, court notices).
   - The announcement includes:
     - Property details.
     - Auction date/location.
     - Deposit requirements for bidders.
2. **Auction Process**
   - Conducted by the court or a licensed auctioneer.
   - The highest bidder wins, subject to:
     - **Court confirmation** (to ensure fairness).
     - **Payment of the bid price** within 30 days.
3. **Post-Sale Procedures**
   - Funds are distributed in this order:

1. **Court costs and auction expenses**.
2. **Secured creditors** (e.g., mortgage holders).
3. **The seizing creditor**.
   - Any surplus is returned to the debtor.

Section One: Preparing the Seized Property for Public Auction

After the seizure is enforced on the property and placed under judicial custody, the preparatory phase for the public auction begins. The Algerian legislator outlined these procedures in **Articles 737 to 741** of the Code of Civil and Administrative Procedures (CCAP). The process starts with the **preparation of the sale terms** by the bailiff, who must:

1. **Draft the terms**.
2. **Deposit them** with the court registry.
3. **Notify stakeholders** of the deposit.

This section is divided into two subsections:

1. **Drafting the sale terms and setting the reserve price**.
2. **Depositing and notifying the terms**.

Subsection One: Preparatory Steps for the Sale

Under **Article 737 CCAP**, if the debtor fails to settle the debt within **30 days** of receiving the seizure order, the bailiff must:

1. **Prepare a report** containing the sale terms.
2. **Set a reserve price** through an expert appraisal.

This subsection addresses:

- **Drafting the sale terms** (First Part).

- **Depositing and notifying the terms** (Second Part).

First Part: Drafting the Sale Terms

1. Legal Nature of the Sale Terms

French legal doctrine views the sale terms as:

- A **unilateral draft contract** before objections are resolved.
- A **final, binding document** after objections are adjudicated.

Criticism: This approach conflates **voluntary sales** (based on consent) with **forced auctions** (based on legal procedure). Under Algerian law (**Article 737 CCAP**), the sale terms serve as:

- A **provisional document** subject to modifications (additions, deletions, or amendments) after stakeholder objections.
- A **finalized framework** once objections are resolved.

2. Mandatory Content of the Sale Terms

Article 737 CCAP requires the following **mandatory details**:

- **Parties**:
  - Names, surnames, and addresses of:
    - Registered creditors.
    - Seizing creditor.
    - Debtor.
- **Legal Basis**:
  - The enforceable instrument authorizing the seizure.
  - Debt amount.
- **Seizure Details**:
  - Seizure order, its notification date, and land registry registration.
  - Notice to the property holder or guarantor (if applicable).

- **Property Description**:
  - Precise identification: location, boundaries, type, components, area, and land parcel number.
  - Indication of whether the property is:
    - Undivided or co-owned
    - A building (street name, number, and subdivisions).
- **Occupancy Status**:
  - Current occupant (if any), their legal status (e.g., tenant), or if vacant.
  - Ensures clarity on possession transfer post-auction.
- **Sale Conditions**:
  - Reserve price.
  - Expenses.
  - Compliance with **public order and morals** (e.g., no illegal conditions).

Penalty for Omission

Failure to include mandatory details may:

- **Invalidate the sale terms**.
- **Delay the auction** until corrections are made.

Subdivision of the Property

- **Permissible Cases**: The property may be divided into lots **if it increases sale potential**, provided:
  - A **separate reserve price** is set for each lot.
  - The sale sequence is clearly specified (if sold progressively).
- **Prohibited Cases**: Subdivision is **banned** if the property is:
  - An **integrated economic unit** (e.g., factory, business complex).
  - An **agricultural estate** (farmland with interdependent assets).
- **Jurisdiction**: The terms must identify the **court supervising the auction**.

Legal Consequences of Incomplete Sale Terms

Under **Article 737(5) CCAP**, omissions trigger:

1. **Challenge Rights**:
   - Any interested party may request **annulment of the sale terms**.
   - The challenge must be filed **before the objections hearing closes**.
2. **Effects of Annulment**:
   - Only the sale terms are voided—**underlying seizure remains valid**.
   - The bailiff must **reissue corrected terms at their own expense**.

Example: If the reserve price is omitted, creditors can demand annulment during the objections period.

Mandatory Supporting Documents

Article 738 CCAP requires these attachments to the sale terms:

1. **Enforcement Order** authorizing the seizure.
2. **Seizure Ruling** from the court.
3. **Proof of Service** on the debtor/occupant.
4. **Property Certificate** listing all registered liens.
5. **Current Tax Assessment** for the property.

Rationale for Documentation*:*

- **Transparency**: Allows stakeholders to verify procedural compliance.
- **Due Process**: Ensures creditors/debtors can identify errors or irregularities.
- **Efficiency**: Streamlines objections by centralizing key records.

Special Rules for Unregistered Properties

For **non-registered properties**, **Article 770(1) CCAP** cross-references:

- **Article 737**: Same sale terms drafting rules apply.
- **Article 776**: Additional documents (e.g., ownership proofs) must be attached.

Key Difference: Unregistered properties require **extra evidentiary submissions** to compensate for the lack of land registry data.

Section 2: Submission of the Sale Conditions List

The judicial officer submits the list of sale conditions to the court's registry in the jurisdiction where the seized property is located after preparing it.

1. Responsibility for submitting the sale conditions list

If the debtor does not settle within 30 days from the official notification of the seizure order, the judicial officer will submit the list to the court's registry where the seized property is located. This is stipulated in Article 737 of the Civil and Administrative Procedures Code, which states: "If the debtor fails to settle within 30 days from the official notification of the seizure order, the judicial officer prepares the list of sale conditions and submits it to the court registry where the seized property is located."

In comparison, the Egyptian legislator, in Article 414 of the Civil Procedure Code, requires the creditor to prepare and submit the list to the execution court's registry.

2. Deadline for submitting the sale conditions list

According to Article 737 of the Civil and Administrative Procedures Code, the judicial officer must prepare the sale conditions list within 30 days from the official notification of the seizure order if the debtor fails to pay.

It is important to note that the Algerian legislator did not specify a penalty if the officer fails to meet the deadline for submitting the sale conditions list, nor does it provide for any legal consequences for exceeding this deadline, unlike some other legislations. For example, the Egyptian Civil Procedure Code stipulates that the list must be submitted within 90 days from the registration of the eviction notice. If this deadline is not met, the registration of the eviction notice is considered void, although the notice itself remains valid. Similarly, the Lebanese legislation requires the list to be submitted within eight days from the property description report, though it does not specify any legal consequences for not meeting this deadline.

3. Court responsible for submitting the sale conditions list

The judicial officer prepares the sale conditions list and submits it to the court's registry in the jurisdiction where the seized property is located. If multiple properties are seized and located in the jurisdiction of different courts, the list is submitted to the registry of one of the courts where a property is located, as per Article 737 of the Civil and Administrative Procedures Code.

After submitting the sale conditions list, the judicial officer must also announce the deposit. There are two types of announcements: a private one, through official notification to the concerned parties, and a public one, through publication and posting.

4. Private announcement of the deposit

The judicial officer must notify the relevant persons officially within 15 days after submitting the list. The notification must comply with the provisions of Articles 406 to 416 of the Civil and Administrative Procedures Code. The concerned parties, as defined in Article 740 of the Civil Procedures Code, include:

- The debtor.
- The guarantor or holder of the property and/or real rights, if any.
- Co-owners, if the property and/or real rights are shared.
- Creditors with registered rights, such as liens, privileges, or hypothecs, before the seizure order was registered.
- The seller of the property or the lender of its price, or the co-owner or exchange partner, if applicable.

In case of death of any of these persons, the notification is sent to their heirs collectively at their address. If the heirs' address is unknown, the notification is sent to the deceased's address.

It should be noted that the Algerian legislator does not specify any penalty for failing to notify any of the persons listed in Article 740. Legal commentators argue that there is no annulment for failing to notify the list within the deadline specified in Article 740. However, the penalty is that the actions cannot be enforced against those who were not notified. These parties can present their objections to the sale before the judge without being bound by the 3-day deadline set by Article 742 of the Civil and Administrative Procedures Code before the objection session

The judicial officer deposits the sale terms list at the registry of the court within the jurisdiction where the seized property is located, after it has been drafted.

First: The Responsible Party for Depositing the Sale Terms List
If the debtor fails to pay within thirty (30) days from the official notification of the seizure order, the judicial officer deposits the list at the court's registry within the jurisdiction where the property is seized. This is stipulated in Article 737, paragraph 1 of the Civil Procedure Code (CPC), which states: "If the debtor fails to pay within thirty (30) days from the official

notification of the seizure order, the judicial officer drafts the sale terms list and deposits it at the registry of the court where the seized property is located."

In comparison, the Egyptian legislator in Article 414 of the Civil Procedures Law stipulates that the creditor directly handles the procedures to prepare and deposit the sale terms list at the registry of the relevant enforcement court.

Second: Deadline for Depositing the Sale Terms List
According to Article 737 of the CPC, the judicial officer prepares the sale terms list within thirty (30) days from the official notification of the seizure order if the debtor has not paid.

It is noteworthy that the Algerian legislator does not specify a penalty for the judicial officer if they fail to respect the deadline for depositing the sale terms list, and no legal consequences such as nullification are specified if the deadline is exceeded.

In contrast, some other legislations, such as the Egyptian law, require the sale terms list to be deposited within ninety (90) days from the registration of the attachment notice. Failure to meet this deadline renders the attachment notice null, although the notice itself remains valid. Similarly, the Lebanese legislation specifies eight (8) days for the deposition, without specifying penalties for non-compliance, with some considering it a relative nullity.

Third: Court Competence for Depositing the Sale Terms List
The judicial officer prepares and deposits the sale terms list at the registry of the court within the jurisdiction where the seized property is located. If there are multiple properties seized across different court jurisdictions, the list is deposited at the registry of the court where one of the properties is located.

This document is deposited at the registry of the court where the property is located, and is accompanied by documents as specified in Article 738 of the CPC. After depositing the list, the judicial officer is also required to announce the deposit.

First: Specific Announcement of the Deposit
The judicial officer must, within fifteen (15) days from the deposit of the sale terms list, officially notify the concerned parties about the deposit, adhering to the notification procedures outlined in Articles 406 to 416 of the CPC. These parties are specified in Article 740 of the CPC, including the debtor, the guarantor, the property holder, and creditors with registered rights.

Second: Public Announcement of the Deposit
The legislator also mandates a public announcement, which is done through publication and posting. The judicial officer must, within eight (8) days after the last official notification, publish an extract of the sale terms list in a national daily newspaper, and display it on the court's notice board. A copy of the publication is then attached to the enforcement file.

The aim of this public announcement is to allow anyone with a legal interest to access the sale terms list and express any objections they may have. This is in accordance with Article 748 of the CPC.

Finally, the provisions for official notification of the sale terms list for non-public properties apply similarly to those for publicly recorded properties as indicated in Article 770 of the CPC.

Subsection Two: Subordinate Disputes in Real Estate Execution
Like other types of judicial seizures, real estate seizures may face legal challenges. Before proceeding with the sale of seized property, any issues must be resolved. The legislator has provided a legal procedure to resolve disputes related to the seized property, such as objections to the sale terms list or claims of ownership disputes, which will be discussed in the following section.

Subsection One: Objections to the Sale Terms List
Objections to the list refer to disputes regarding the execution on the property, where interested parties raise concerns. These objections may be based on procedural or substantive defects in the execution or objections to changes in the sale terms. The objection to the sale terms list is considered a legal dispute subject to specific timelines and rules.

1. Procedural Rules for Objections
Objections to the sale terms list are submitted to the competent court registry, and only specific persons are allowed to file objections within legally defined time limits.

First: Persons Entitled to File Objections
The legislator has specified who can file objections. These are the parties listed in Article 740 of the CPC, including the debtor, the property holder, the guarantor, registered creditors, joint owners if the property is undivided, the seller, the lender, or the party involved in the property exchange. If any of these individuals pass away, their heirs may submit objections.

Persons who are legally required to be notified about the sale terms list, or their heirs, are allowed to file objections. According to Article 742, paragraph 1 of the CPC, objections must be filed with the court at least three days before the objection session, or the right to object is forfeited.

Additionally, any person with a legal interest, such as those holding rights to the property, including tenants or individuals with usufruct or easement rights, may file an objection. However, merely having an economic interest in the property is not sufficient grounds to object. Therefore, a person with no direct connection to the seized property cannot file an objection based solely on an interest in modifying the sale terms.

According to Article 742 of the Civil Procedure Code, an objection must be presented to the head of the court to be recorded in a special register after the payment of fees. An objections hearing is held in the consultation room, with the objector, the creditor, and the judicial officer present. The head of the court decides on the objections within a maximum of 8 days by an order that cannot be appealed. If no objection is made during the session, the court clerk records it in the special register, and the judicial officer begins the process of announcing the public auction.

Effect of Objection
Submitting an objection to the list of sale conditions, concerning the validity or invalidity of the procedures, halts the sale until all objections are decided by enforceable rulings. The sale procedures are suspended only if the objection is raised within the legal time frame and meets

the required legal form. The session for the sale, as specified in the sale conditions, is canceled. If the ruling allows the execution process to proceed, the suspension effect is removed, and if the ruling modifies the list or rejects the objection, concerned parties may request the setting of a sale session. The session is scheduled after resolving all objections within the stipulated time.

Substantive Grounds for Objection

The grounds for objection are broad and cannot be exhaustively listed. The legislator has provided the right to object to the list of sale conditions but did not specify detailed provisions for reasons to object. Objections can take the following forms:

1. **Observations on the Sale Conditions List**
   These include requests from any interested party (debtor, possessor, creditor, tenant, usufruct holder, or easement right holder) aiming to modify the sale conditions in their favor. These observations can include removing clauses that violate public order and morals (e.g., removing usurious interest, a clause that denies refund in case of property disputes, or clauses that unjustly exclude some from bidding). Additional conditions may be requested, such as adding a clause to maintain an existing lease agreement or increasing the base price.
2. **Grounds for Invalidity**
   Invalidity refers to any formal or substantive defect in the procedures leading to a lack of legal effect. This includes procedural flaws such as improper notification or missing information in the sale conditions list. Objections can also raise substantive issues, such as executing the sale of property not owned by the debtor, executing on an unqualified debt, or when the execution is based on a fraudulent official document.

Invalidity Procedures

Algerian law does not explicitly state that invalidity is a reason for objection to the sale conditions list, unlike other laws that allow objections based on formal or substantive invalidities. If a procedural error is found, an interested party may request immediate annulment within one month of the action. If the court finds that the annulment request is frivolous, it can impose a civil fine of at least 20,000 Algerian dinars.

Exceptions are made for missing mandatory information in the sale conditions list, which can be annulled upon request before the objections session, or the right to object is forfeited if not requested in time.

Third: Requests Related to Execution

The legislator specified certain cases in which the objection is taken as a means to express some requests for the suspension of execution on the property, and these cases are:

A- Requests for the suspension of execution on some temporarily seized properties:

Any of the debtor, the possessor, or the surety may request through objection to the list of sale conditions according to the execution procedures on one or more of the properties specified in the notice, by means of an urgent lawsuit, provided that the debtor proves that the value of the property for which the procedures continue is sufficient to satisfy the rights of the seizing creditors and all creditors who have become parties in the procedures. The ruling issued in this objection specifies the properties for which the procedures are temporarily suspended. The issuance of a ruling to suspend the execution procedures on some properties does not result in the removal of the seizure on them; rather, the seizure remains in effect and produces

its effects until the properties on which the ruling to limit execution was issued are sold. If the proceeds from the sale of the properties that were executed upon are not sufficient to satisfy the rights of the creditors, then any creditor after the auction is concluded may proceed with the execution on the properties for which execution was suspended without the need to re-notify the expropriation and register it. However, if the proceeds from the sale are sufficient to satisfy all creditors, the seizure is lifted concerning the properties whose sale was suspended.

Request for Postponement of Sale: A Comprehensive English Translation

Article 744, in its first paragraph of the Civil and Administrative Procedures Code, authorizes the seized debtor, possessor, or in-kind guarantor to request, by way of objection to the terms and conditions list, the postponement of procedures for selling the executed real estate property. This is done through filing an urgent action with the aim of postponing the property sale, provided that they prove the annual revenues of this property or real estate right for one year are sufficient to fulfill the debts of all creditors who have become parties to the proceedings.

It is evident from the above that to rule for postponing the sale, the expected revenue from the debtor's assets must be sufficient to satisfy the rights of all creditors. It is also required that this revenue be adequate from what is collected within a maximum period of one year.

The order deciding on the postponement of sale determines the deadline at which sale procedures will resume in case of non-payment, taking into consideration the necessary time for the debtor to be able to fulfill these debts, provided that it does not exceed a period of one year, according to the provisions of Article 744 in its second paragraph.

Request to Suspend Proceedings for Filing a Rescission Action

We previously explained that after the judicial bailiff deposits the terms and conditions list for the sale, they must, within fifteen (15) days following this deposit, send official notification to the persons referred to in Article 740 of the Civil and Administrative Procedures Code. Among these persons are the seller of the property, the person who exchanged it, or the dividing partner, if any. According to the provisions of Article 745 of the Civil and Administrative Procedures Code, the notice is directed to these persons, namely the seller of the property, the person who exchanged it, or the dividing partner. In case they do not initiate a rescission action for non-payment of the property price or non-payment of the difference, or do not submit a request for resale through public auction within the specified period, which is at least three (3) days before the session scheduled for objections, their right to do so lapses.

It is clear from the text of the article that the legislator addressed a situation where there is a sales contract between the executed debtor and another person, who is the seller. It is assumed that the debtor purchased a property and did not pay its price, then one of his creditors took measures of compulsory execution on the property as it is owned by that debtor, and the seller of the property filed a lawsuit against the debtor to rescind the sale for non-payment of the price. The same assumption applies to exchange, as there is a contract between the executed debtor and another person who is the exchanger, and the debtor has not paid the exchange difference.

The rescission action is filed through the normal way of filing lawsuits before the competent court for selling the property. This action is not filed by way of objection to the terms and conditions list for the sale, as stipulated in Article 746 of the Civil and Administrative Procedures Code, which states: "The rescission action is filed according to normal procedures before the court competent for selling the real estate and/or the real estate right."

If filed within the specified period, this must be recorded at the bottom of the terms and conditions list for the sale by the judicial bailiff. The consequence of recording what indicates the filing of a rescission action at the bottom of the terms and conditions list—where the judicial bailiff notes this in the list—results in the same effects as other objections in terms of suspending execution. The purpose of this recording is to suspend execution until the rescission action is decided upon. The execution judge is not competent to consider the rescission request; rather, the court competent for rescission, before which the rescission action was filed, is competent to consider it, as it is not among the disputes related to execution.

Final Note and Subsidiary Claim Action for Seized Property: A Comprehensive English Translation

It should be noted finally that objections to the terms and conditions list for the sale of unregistered real estate follow the same provisions related to registered real estate, in accordance with Article 770 of the Civil and Administrative Procedures Code, which refers us to Article 742 of the same law.

Second Branch: Subsidiary Claim Action for Seized Property

Referring to the previous Civil Procedures Code, the legislator did not address the subsidiary claim action for seized real estate nor regulate its provisions. However, this legal gap was remedied, as the new Civil and Administrative Procedures Code included legal texts regulating the provisions of the subsidiary claim action for real estate, organizing this action in Articles 772 to 774.

It should be noted that the claim action is limited to real estate seizure placed on unregistered property, because it is inconceivable that this action would apply to registered properties, considering that the enforcement file includes the registered title deed and real estate certificate. If it appeared in any of these documents that the seized person is not the owner of the property, the seizure request would be immediately rejected without reaching the stage of filing a claim action for the seized property.

First: Definition of the Subsidiary Claim Action

The legislator did not define this action in the Civil and Administrative Procedures Code, leaving that to jurists. The subsidiary claim action is the action filed by a third party who is not considered a party to the enforcement proceedings, claiming ownership of the property that is being enforced upon, to demand proof of ownership and invalidate the enforcement proceedings against it, because the enforcement was carried out on property not owned by the seized debtor. This term is only applied to the in-rem action in which ownership is claimed; therefore, it does not apply to personal actions. This action also applies to in-rem actions in

which the plaintiff claims another real right other than ownership, such as usufruct or easement rights.

This action is termed a "subsidiary claim action" despite being original, because it is filed within the framework of real estate enforcement and not after the completion of enforcement procedures. This action aims to request ownership of the property subject to enforcement, in whole or in part, so it is described as subsidiary considering it is branched from the enforcement and its procedures.

The legislative purpose of creating this action is to achieve balance between two matters: considering the interest of third parties so they are not left without protection until enforcement procedures are completed, and protecting enforcement procedures so they are not left pending if filing a claim action during enforcement is permitted until it is decided upon.

Second: Parties to the Subsidiary Claim Action

The Plaintiff in this Action:

The plaintiff in the subsidiary claim action must be a third party, meaning someone who is not a party to the enforcement proceedings, because those who are considered parties to the proceedings can assert ownership by way of objection to the terms and conditions list for the sale, or else their right to do so lapses. It should be noted that a person may be considered a party to the enforcement in one capacity and a third party in another capacity, and then they would have the right, in their second capacity, to file a subsidiary claim action, such as the seized person claiming in their capacity as an heir that the property is owned by them and is not included in the estate of the original debtor ancestor.

The Defendant in this Action: A Comprehensive English Translation

All of the following must be included as defendants in this action: the creditor initiating the proceedings, the seized debtor or the in-kind guarantor or possessor, and the registered creditors. The reason for the necessity of including all of these parties is that the action includes two requests:

- The first request: The plaintiff claims ownership of the seized property, and the opponent in this request is the debtor, possessor, or in-kind guarantor.
- The second request: It includes invalidating the enforcement procedures, and the opponents in this are the creditor initiating the proceedings and the registered creditors, because they are legally considered parties to the enforcement.

According to Article 772 of the Civil and Administrative Procedures Code, the legislator limited it to the creditor initiating the proceedings without the registered creditors, possibly because the former is the primary interested party. However, this does not prevent registered creditors from intervening in the action to defend their interests. The legislator also did not

impose any penalty for not including any of the persons whom the law required to be included.

Third: Conditions of the Subsidiary Claim Action

From the provided definition, for an action to be considered a subsidiary claim action, the following conditions must be met:

A. The Action Must Be Filed by a Third Party:

The subsidiary claim action must be filed by a third party, who is a person not considered a party to the real estate enforcement proceedings. Persons who are parties to the enforcement proceedings have the right to present their requests and observations by way of objection to the terms and conditions list for the sale. Once third-party status is established, they may file a subsidiary claim action.

B. The Action Must Be Filed During Enforcement Proceedings:

The person claiming ownership of the property must file their action in the period between the announcement of the expropriation notice and before the sale takes place. It may be filed at any time during this stage without being bound by a specific deadline, meaning it is filed during enforcement proceedings and before the issuance of the judgment confirming the auction. If the action is filed after the start of enforcement proceedings and before their completion, that is, before the issuance of the judgment confirming the auction, it remains a subsidiary claim action. However, if it is filed before the start of enforcement proceedings or after their completion, the action becomes an original claim action.

C. Its Subject Must Be Property Ownership and Nullity of Enforcement Procedures:

The subject of the subsidiary claim action filed by a third party during enforcement proceedings must be a request for ownership of the property subject to enforcement. It is equal whether the plaintiff requests ownership of the entire property or part of it, whether segregated or common. The filer may not request the establishment of another right other than ownership, such as usufruct or easement, because this request would be through objection to the terms and conditions list for the sale, not through a subsidiary claim action, and it does not affect the course of enforcement nor prevent the sale of the property. Also, a subsidiary claim action cannot be filed by someone claiming ownership contingent on a suspensive condition until that condition is fulfilled.

In addition to requesting property ownership, the plaintiff must request that enforcement procedures on the claimed property be invalidated. However, if they request claim of property ownership without requesting invalidation of enforcement procedures, this action is not considered a subsidiary claim action but is transformed into an original claim action, meaning the "subsidiary" characteristic is removed.

Fourth: Procedures for Filing the Subsidiary Claim Action and Its Effects

The subsidiary claim action is subject to the usual procedures for filing lawsuits, by means of an introductory petition for the action that is deposited with the clerk of the enforcement court. Failure to respect the statements of the introductory petition for the action results in nullity.

1. Court Competent to Decide on the Action:

According to Article 772 of the Civil and Administrative Procedures Code, the subsidiary claim action is filed by means of an urgent action. The legislator gave jurisdiction to the urgent matters judge to consider the claim action for the seized property. The president of the court decides on the urgent action, despite the fact that the action is a substantive action in which ownership is decided and evidence and proof documents are discussed. This is in order to achieve effectiveness and speed in this type of enforcement-related dispute. The action is filed against the seizing creditor and the seized debtor in the presence of the judicial bailiff.

Deadline for Ruling on the Case:

The court president must rule on the urgent case within a maximum period of thirty (30) days from the date of case registration. If the date for the public auction of the property arrives and the court president has not yet ruled on the case, the plaintiff may submit a request to suspend the sale through a petition to the court president at least three (3) days before the auction session. This requires depositing a security bond determined by the court president by order on petition to cover expenses for republication and re-announcement of the public auction if the plaintiff loses the case.

The purpose of this security is to guarantee payment of these amounts, ensure the seriousness of the claim, and guarantee the implementation of pre-sale procedures that fall upon the losing party since they requested the suspension. All this applies if the subsidiary claim of entitlement is rejected.

Effects of Filing a Subsidiary Claim of Entitlement:

If the case meets the aforementioned conditions and the judge verifies them, they must issue a judgment either suspending the sale procedures or continuing enforcement procedures on the property.

A. Ruling to Suspend the Sale:

Filing a subsidiary claim of entitlement may result in suspending enforcement procedures on the claimed property. However, this effect does not occur automatically but requires a ruling to suspend the sale procedures. For the enforcement judge to temporarily suspend enforcement as a result of filing a subsidiary claim of entitlement, the law requires verification that all conditions for filing the case have been met. If the judge confirms these conditions, they rule for suspension in the first hearing until the case is decided. If the subsidiary claim of entitlement is limited to only part of the seized properties, the sale of the remaining parts will not be suspended according to Article 773 of the Civil and

Administrative Procedures Code, which states: "If the urgent case is limited to part of the seized properties, the sale regarding the other parts shall not be suspended."

If the judge erroneously rules to refuse enforcement despite meeting suspension conditions, their judgment is subject to appeal. Some argue that even if legal conditions for suspension are not met, the judge has discretionary power to suspend enforcement, and this urgent order would be appealable under general rules.

A ruling to suspend the sale does not prevent taking judicial and precautionary measures such as appointing a judicial custodian for the seized property, provided this does not conflict with maintaining the seizure or discontinuing sale procedures.

B. Ruling to Continue Sale Procedures:

If a ruling to suspend sale procedures has been issued, a new ruling must be issued to resume them. Thus, if the subsidiary claim of entitlement is deemed inadmissible, the judge's ruling to suspend the sale must be removed, as the temporary ruling that suspended the sale procedures was based on circumstances and reasons that no longer exist. Therefore, a ruling to continue sale procedures must be obtained.

In other words, the authority of the temporary ruling to suspend sale procedures can only be overturned by a temporary ruling ordering continuation of sale procedures. Therefore, when claiming termination of litigation without a ruling on its subject regarding a subsidiary claim of entitlement, it is also advisable to claim resumption of sale procedures accordingly.

Second Section: Sale of the Seized Property

Given the importance of real estate for growth and prosperity in society, disputes concerning it are numerous and diverse, especially when the legal provisions governing it are imprecise and scattered across various texts, as is the case in Algeria. Enforcement disputes generally are disputes related to compulsory enforcement. If compulsory enforcement is imposed on property not owned by the debtor, the owner can request its recovery by filing an entitlement claim against anyone who challenges their ownership.

After completing sale procedures, issuing the auction award judgment, and resolving all disputes, all that remains is distributing the enforcement proceeds to satisfy all creditors' rights, which is the purpose of enforcement and considered the final procedure in the enforcement process.

First Requirement: Public Auction Procedures and Auction Award Judgment

First: Public Auction Procedures

After the enforcement judge verifies that all legally prescribed procedures have been observed, they announce the commencement of the bidding process. This is stipulated in Article 754 of the Civil and Administrative Procedures Code, which states in its second paragraph that if these procedures are valid, the judge shall order the opening of the public auction, announce the conditions of sale, the type of property and/or real right offered for sale, the basic price, fees and expenses, then determine the bidding increment according to the

importance of the property or real right, which in all cases shall not be less than ten thousand dinars per offer.

Immediately afterward, bidding begins, and the auction may result in one of two outcomes:

Either the quorum of bidders (minimum of 3 people) is not met, or the offers are insufficient (less than the basic auction price), or no one makes any offer within 15 minutes of the auction opening. In this case, the session president does not award the sale but postpones it to another session after recording this in the session register. The postponement must be to a date not less than thirty days and not more than forty-five days from the postponement date, maintaining the same basic price.

According to Article 753 of the Civil and Administrative Procedures Code, the sale may be postponed at the request of one of the parties if there are serious reasons for postponement, particularly the scarcity of bidders and weakness of offers. The seriousness of the reason is left to the judge's discretionary authority. If this reason is justified, a new auction session date must be set and repeated until the sale is completed. There is nothing to prevent repeated postponement when justified.

We also note that the absence of bidders may relate to all seized properties or just some of them. If there are multiple seized properties offered for sale, bidders might appear at the first auction for some properties but not others, resulting in the sale of only some seized properties. In this case, as when no bidders appear for any property, the session president sets a date for an auction to sell the property or properties that were not sold in the first auction session.

Postponement and Auction Procedures

The postponement must be by written order specifying a subsequent sale session within a period not less than thirty (30) days and not exceeding forty-five (45) days from the postponement date. The postponement requires republication and posting of the sale in the manner prescribed in Articles 749 and 750 of the Civil and Administrative Procedures Code, with publication and posting procedures repeated at the expense of the party requesting postponement.

If someone outbids the previous offer within three minutes, the previous bid is dropped. A higher bid automatically cancels the previous one upon submission, even if later ruled invalid. Each bid is independent from others; the highest bidder cannot claim that their bid is invalid based on the invalidity of a previous bid. Each bid is considered valid even if the preceding one was invalid.

In the new session (second session) scheduled after postponing the first session for any reason, the session president verifies the completion and validity of all procedures according to Article 754, meaning the president prepares a report including the previously mentioned items.

In this session, the legislature has relaxed some conditions and no longer requires a minimum number of bidders. Even if bidders don't reach the quorum of three (3) people as required in the first paragraph of Article 753, regardless of the number of bidders, if offers are less than the basic price or insufficient to cover the debt and expenses, the president decides to

postpone the sale and reduce the basic price by one-tenth. The rationale for reducing the basic price is clearly to encourage potential bidders and sell the property at the highest possible price, achieving the desired purpose of the seizure. When postponement is decided, posting and publication procedures are repeated according to Article 750, as stated in the fourth paragraph of Article 754.

The postponement order must specify a subsequent sale date within a period not less than thirty (30) days and not exceeding forty-five (45) days from the postponement date.

In subsequent sessions (third and beyond) scheduled after postponing the second session due to offers below the basic price that were insufficient to cover the debt and expenses, offers may continue to be less than the basic price despite the one-tenth reduction.

The sale session cannot be postponed indefinitely. On this basis, the Algerian legislature decided to further relax some sale conditions. In addition to allowing fewer bidders and reducing the price by one-tenth, it decided that the property should be sold to whoever makes the highest offer, even if less than the basic price.

However, if the seizing creditor or intervening creditors in the seizure accept receiving the debt in kind through the property at the determined basic price, this takes precedence.

According to the final paragraph of Article 754: "In subsequent sessions, the real estate or real right is sold to whoever makes the highest offer, even if less than the basic price, unless the seizing creditor or one of the intervening creditors in the seizure accepts receiving the debt in kind through the property and/or real right at the determined basic price."

As can be understood from Article 756, when multiple properties are seized, the sale method must be sequential, prohibiting the bulk sale of seized properties. If the sale involves several properties or real rights located in different court jurisdictions, the sale proceeds according to the sequence of seizure registration provided for in Article 724.

However, if the price resulting from selling one property and/or one or more real rights is sufficient to satisfy the principal debt and judicial expenses, the session president orders the suspension of selling the remaining seized properties and/or real rights and automatically lifts the seizure without requiring a request from the parties, as the purpose of the seizure has been achieved.

Second: Award of the Auction

The sale in auctions is only completed when the auction is awarded to a specific person, usually the one who makes the highest offer. One or more buyers may submit a bid to purchase the property, and the session president approves the bid in the session to whoever makes the highest offer, as any person's bid is canceled by the submission of a higher bid.

After offers stop, the session president intervenes and immediately calls out this bid to continue the auction, then waits one minute. If no other bidder submits a higher bid, the president calls out that bid a second time and waits another minute. If no bidder makes a higher offer, the president does the same thing, calling the bid for the last time, and the auction is awarded to whoever made the highest offer and was the last bidder. This is according to the first paragraph of Article 757, which states: "The auction is awarded to the

bidder who submitted the highest offer and was the last bidder. The president approves the offer that is not increased after calling it three consecutive times, with one minute between each call."

The winning bidder is obligated to pay one-fifth of the price plus expenses and fees immediately during the auction session to be eligible to participate in the bidding. After winning the auction, they must pay the remaining amount within a maximum period of eight days to the court registry. If they fail to deposit the full remaining price within this period, they will be given notice to pay within five days, otherwise the property will be resold at public auction at their expense.

Second Branch: Judgment of Public Auction Award for Real Estate

The auction award judgment is not a judgment in the precise sense but rather a jurisdictional order. The judge conducts the sale by approving the highest bid submitted by one of the bidders; this approval is considered acceptance of the offer made by the bidder. This means that the sale of the seized property occurs through the buyer's will, as in an ordinary sale, but not through the owner's will (the person whose property was seized). This is because the enforcement judge, as a representative of the enforcement authority, is the one who conducts the sale, not the owner. Therefore, the sale of seized property at auction is called a forced sale since it occurs without the owner's consent.

Consequently, the effects of the auction award judgment do not significantly differ from those of a voluntary sale and its registration, except for exceptions specified by the legislature due to the nature of forced sales at public auction and their special procedures. Among the effects of the auction award judgment is the transfer of ownership, which only occurs through registration of the judgment as mentioned earlier. Through this transfer, the auction winner obtains rights in exchange for fulfilling obligations. Therefore, the auction award judgment produces several effects, which we'll address in three elements: transfer of ownership, purging of the property, and the rights and obligations of the property buyer.

First: Transfer of Ownership

The fundamental effect of selling seized property is transferring ownership from the debtor to the auction winner. As previously mentioned, real estate ownership only transfers through registration, regardless of whether the sale was forced or voluntary. The essential effect in both forced and voluntary sales is the transfer of ownership. Therefore, ownership doesn't transfer merely by issuing the auction award judgment but requires registration at the real estate registry within two months. Through registration, real estate ownership is established and finalized for its owners by tracking and recording any changes in the property registry. For the ownership of the sold property to transfer to the auction buyer, the enforcement judgment must be registered at the relevant real estate registry.

Registration generally involves recording and/or registering official contracts that transfer, declare, or establish property rights at the real estate registry, whether these contracts were drafted by notaries, court bailiffs, or judges. Since the auction award judgment is such a document, its registration is legally required.

The auction award judgment has no effect until after its registration, after which it can be invoked against the debtor or third parties. Therefore, the judicial bailiff conducting the enforcement procedures must register the auction award judgment and announce it at the real estate registry for ownership to transfer to the auction winner. The sale judgment is considered proof of ownership for the auction winner after registration. Ownership in forced sales doesn't differ from that in voluntary sales; the registered judgment only transfers to the buyer whatever rights the debtor, possessor, or in-kind guarantor had in the sold property. This rule applies naturally because the buyer receives ownership of the property in the condition it was in with the previous owner, as a person cannot transfer more rights to their successor than they possessed, applying the principle that one cannot give what one does not have. The buyer doesn't acquire better ownership than the debtor and no one can transfer rights they don't possess or more rights than they have. The auction buyer becomes a special successor to the debtor, succeeding them positively and negatively, just like a buyer in a voluntary sale.

Applications of this rule include: if the sold property is encumbered with original real rights such as easements or usufruct rights, or was leased, ownership transfers to the auction buyer encumbered with these rights. This was confirmed by Article 762, paragraph 1 of the Civil and Administrative Procedures Code, which states: "All rights of the seized debtor in the properties and/or real rights sold at public auction, as well as all related easements, transfer to the auction winner, and the auction award is considered the title deed."

Additionally, claims for rescission, invalidation, and entitlement that could have been filed against the debtor or were actually filed can be filed or continued against the auction buyer. Even judgments issued in these cases against the debtor can be invoked against the auction buyer as a successor to the debtor. The buyer is simultaneously considered a successor to all creditor parties in the enforcement dispute, unlike a buyer in a voluntary sale who derives their position only from the seller. However, there is an exception in Article 745 of the Civil and Administrative Procedures Code: the auction winner cannot be challenged with rescission by the property seller due to non-payment of all or part of the price if a notice of the rescission claim was not recorded at the bottom of the list of sale conditions during the objection period. This serves as a guarantee for the auction winner, aiming to stabilize the sale.

Second: Purging the Property

We've seen that the legislature intended to grant the auction buyer the same ownership that the debtor predecessor had, considering that a person cannot transfer more rights to their successor than they possessed. Following this rule, the property transfers to the buyer encumbered with all rights enforceable against the seizing creditors or creditors considered parties to the proceedings.

The legislature established an exception to these rules through Article 764, paragraph 2 of the Civil and Administrative Procedures Code, which states: "Registration of the auction award judgment at the real estate registry results in purging the property and/or real right of all in-kind securities." This was confirmed by Article 936 of the Civil Code, which states: "If a mortgaged property is forcibly sold at public auction, whether in the presence of the property owner, possessor, or guardian to whom the property was delivered upon abandonment, the mortgage rights on this property are extinguished by depositing the auction price or by paying it to the registered creditors whose ranks allow them to satisfy their rights from this price."

These two articles show that selling seized property leads to purging it of accessory real rights. The legislature terminates mortgage rights, specialization rights, and privileges encumbering the property through the auction award judgment. Property ownership transfers free from these rights upon registration of the auction award judgment. The property is legally purged of all registered accessory real rights, which are extinguished along with their effects that would allow their holders to pursue the property from the auction buyer. This extinction occurs by operation of law, without the buyer's involvement, unlike the purging sought by the property possessor under the rules specified in the Civil Code in Article 715 and beyond. Without this legal purging, the auction buyer would have to either pay creditors their full debts or seek to purge the property by offering its value to them, giving them the option to either accept the offered price or request the property be auctioned again.

Second: Purification of the Property

It becomes evident that the legislator intended to grant the buyer, through the auction process, ownership of the property that was previously held by their debtor predecessor. This is based on the principle that a person cannot transfer more rights to their successor than they themselves possess. In line with this principle, the property is transferred to the buyer encumbered by all the rights that are enforceable against the creditors who have initiated the seizure or are considered parties to the proceedings.

The legislator has seen fit to establish an exception to the aforementioned rules through Article 764, paragraph two, of the Civil and Administrative Procedures Law. This article states: "The registration of the auction judgment in the real estate registry results in the purification of the property and/or the real property right from all encumbrances." This provision is further reinforced by Article 936 of the Civil Code, which states, "If the mortgaged property is sold through a public auction, whether this occurs against the owner of the property, the possessor, or the custodian to whom the property was delivered upon eviction, the mortgage rights on this property expire upon the deposit of the price for which the auction was concluded or upon payment to the registered creditors whose rank allows them to satisfy their rights from this price."

Through these two articles, it becomes clear that the sale of seized property leads to its purification from subsidiary real rights. The legislator effectively sets a boundary for mortgage rights, privileges, and encumbrances attached to the property through the auction judgment. The ownership of the property is transferred free from these rights upon the registration of the auction judgment, and the property is legally purified from all subsidiary real rights encumbering it. Consequently, these rights expire, and their effects, which grant their holders the right to pursue the property from the hands of the auction buyer, cease to exist. This expiration occurs by operation of law, without requiring the buyer's consent, contrasting with the purification process pursued by the possessor of the property under the rules stipulated in the Civil Code, Article 715 and subsequent articles.

Without this legal purification, the auction buyer would be required to purify their property by either paying off the creditors' debts in full or seeking purification by offering its value to them. This would either result in the creditors accepting the offered price or requesting the sale of the property through auction once again.

Purification of the Property

The purification process frees the property from all mortgages and subsidiary real rights, as mentioned. It effectively removes all rights, restrictions, and burdens encumbering the property, ensuring that the property is transferred to the auction buyer free from any real rights that were registered before the issuance of the seizure order. However, any such rights registered after the registration of the seizure order are considered null and void from the outset. Therefore, the purpose of property purification is to cleanse the property of subsidiary real rights registered before the registration of the notice of expropriation.

This means that creditors holding these rights lose their ability to pursue the property in the hands of the buyer or their successor. Their only recourse is the priority right to the price at which the sale was concluded.

Scope of Purification

Purification does not apply to original real rights, such as the right of usufruct or easement. The property is transferred to the auction buyer encumbered by these rights. The rights from which the property is purified are limited to subsidiary real rights registered before the registration of the seizure order, regardless of their source. This includes rights originating from the law, such as privileges, from judicial decisions, such as the right of attachment, or from agreements, such as formal mortgage and possessory mortgage.

Rationale for Purification

The justification for purification is multifaceted. Firstly, it increases the property's value. Purification attracts a larger number of individuals to participate in the purchase, leading to an increase in the property's price. Undoubtedly, the acquisition of such property by these individuals, free from encumbrances, would encourage them to participate in the auction. Therefore, it was necessary to provide them with the assurance that they would acquire the property unencumbered by these securities.

Secondly, it protects the rights of creditors holding subsidiary real rights. These creditors have been involved in the enforcement proceedings, notified of the list of sale conditions, and informed of the sale date. They are aware of the procedures designed to protect their interests and have been given the opportunity to monitor these procedures. Allowing these creditors to exercise their right of pursuit against the auction buyer would essentially restart the enforcement proceedings in the buyer's hands, an unnecessary duplication.

Thirdly, purification does not result in the sacrifice of creditors' rights. After the completion of the enforcement process, these creditors are not harmed by the purification. Their rights are preserved; they are merely transferred to the sale price, over which they retain priority.

Second Requirement: Resale of the Property and Distribution of the Execution Proceeds

We address through this requirement the resale of the property in the first branch and the distribution of the execution proceeds in the second branch.

First Branch: Resale by Public Auction

We previously stated that the bidder whose bid is accepted during the auction session is required to pay one-fifth of the price, along with the expenses and fees due, within a maximum period of eight days from the date of the auction conclusion. However, in some cases, the highest bidder may refrain from paying the price within the stipulated period. In such instances, a formal notice must be directed to them, demanding payment of the price within a maximum of five days from the date of the notice. If they still fail to make the payment, the property is resold at their expense.

In this scenario, the highest bidder might commit to paying the amount, and the session president would then rule in favor of the auction being concluded in their name. Conversely, if they continue to refuse, the property would be resold at their expense. Furthermore, if the property is sold for a lower price than the initial amount, a request for the resale of the property may be submitted.

First: Resale at the Expense of the Highest Bidder

If the highest bidder fails to pay the remaining amount of the price within eight days from the date of the auction judgment, they are formally notified to pay the full remaining price within a five-day period. This notification takes the form of a non-judicial document served by a judicial officer. If the bidder still fails to pay, the property is resold by public auction at their expense.

This is stipulated in the last paragraph of Article 757 of the Civil and Administrative Procedures Law, which states: "If the highest bidder does not deposit the full remaining price within the specified period mentioned in the paragraph above, they are notified to pay within five days, failing which the property is resold by public auction at their expense."

This implies that if the bidder whose bid was accepted fails to pay the full price or pays an amount less than one-fifth of the price, the auction is repeated at their expense. This means the property could be sold at a lower price, in which case the defaulting bidder is obligated to pay the difference in price and interest. The judgment concluding the sale serves as an enforceable document against them.

Conversely, if the property is sold for a higher price than previously determined, the defaulting bidder is not entitled to this increase since they are not the owner of the property. The increase benefits the debtor, possessor, or real guarantor, as they are the original owners and do not lose ownership except by a judgment concluding the sale.

Article 758 of the Civil and Administrative Procedures Law provides that the highest bidder who defaults on paying the price within the eight-day period specified in Article 757 is liable for the price difference if the property is resold for a lower amount. They are not entitled to any increase if the property is sold for a higher price. In such cases, the judgment concluding the second sale must include the obligation of the defaulting bidder to pay the price difference, if any.

Second: Resale for an Increase of One-Sixth

After the issuance of the auction judgment and the conclusion of the public auction process, a person may offer a higher price than the one concluded in the auction. This leads to the resale of the property. The law allows, after the auction judgment, for another opportunity to sell the property to increase its price.

Any person meeting the purchasing requirements and not prohibited from participating in auctions can submit a request to the court executing the judgment, expressing their desire to buy the property at a price higher than the one concluded in the auction. This is done by filing a signed petition with the court registry, requesting the resale by public auction. This submission enables the possibility of opening a new auction.

This process is known as resale for an increase of one-sixth, provided the following conditions are met:

- The petitioner must have purchasing capacity.
- The petitioner must not be prohibited from participating in auctions.
- The property or real property right being auctioned must have been sold for less than its basic price as specified in the list of sale conditions.
- The petitioner must commit to increasing the price by at least one-sixth (1/6) of the auction-concluded price.
- The petitioner must deposit the full price with the judicial expenses and fees due, in exchange for a receipt, with the court registry.
- The petitioner must bear all costs related to the resale by public auction.
- The request must be submitted within eight days following the date of the auction conclusion.

This is provided for in Article 760, which states: "If the property and/or real property right is sold for a price less than the basic price specified in the list of sale conditions, any person may, within eight days following the date of the auction judgment, submit a signed petition requesting the resale by public auction. In this case, the new bidder undertakes to increase the price by one-sixth over the auction-concluded price, along with depositing the full price with the judicial expenses and fees due, in exchange for a receipt. The resale by public auction is conducted in the same manner as specified in Articles 749 to 757 above, and the person requesting the resale by public auction bears all costs."

We note that the Civil and Administrative Procedures Law does not stipulate the notification of the aforementioned petition. However, we believe that notification procedures should be carried out to inform the highest bidder, creditor, debtor, and all creditors who have become parties to the proceedings.

The increase by one-sixth is one of the means provided by law to reach the highest possible price for the expropriated property, allowing anyone who could not participate in the auction to have an opportunity to bid, thereby increasing the property's price. This serves the interest of the debtor in selling their property for the best price and the interest of the creditor in fully recovering their right from the property's price.

The purpose of setting an eight-day period for renewing the sale process is to stabilize transactions and instill confidence and security in the minds of those wishing to participate in the auction. After this period expires, the judgment becomes final.

If these conditions are met by any person wishing to renew the auction and resell the property, the court orders a new session for the resale of the property at the expense of this person. The court also orders the republication and re-posting of the auction in the same manner as the first sale, in accordance with the provisions of Articles 749 to 757 of the Civil and Administrative Procedures Law.

The first highest bidder, creditor, debtor, and other creditors who have become parties to these proceedings have the right to object and raise grounds for nullity according to the prescribed procedures. The second auction proceeds in the same manner as the first, and any qualified person not prohibited from bidding can participate.

The auction bid is submitted during the session, and the law does not specify a particular form for it. Therefore, it must be submitted orally, considering it a bid in an auction and applying the principle of orality in procedures. The bidding starts based on the increased price, following the rules previously stated regarding the auction before the bid is accepted.

In this auction, a bid from bidders in the session is only accepted if accompanied by the full price offered. When a bid remains without being surpassed by another within three minutes, the judge does not decide to accept the bid but instead directly rules to conclude the sale. The condition for concluding the sale is the prior payment of the full price.

If the bidder who increased the price fails to attend the auction session, and no one submits a higher offer, or if no bidders attend, the law does not specify the consequences of such scenarios. However, it seems that the absence of the bidder who increased the price or the lack of a sufficient number of bidders is not considered, as the law does not prescribe any effect for this. Therefore, the auction is considered concluded in favor of the person who declared their intention to buy with an increase of one-sixth.

There is also no need for the bid acceptance phase here since the bidder has already deposited the offered price in advance. This implies that in the scenario of a one-sixth increase, the new session always concludes with a judgment to finalize the sale. There is no room for a new postponement or for the auction to be repeated at the expense of a defaulting bidder.

The new auction results in the judgment concluding the auction having retroactive effect, thereby nullifying the first auction judgment and releasing all obligations of the first bidder. This is similar to the case of a bidder defaulting on paying the price within the specified period. In the same context, the amount from the first sale is returned to its owner, along with all expenses incurred during the purchase of the property.

A new bidder may withdraw their bid and request to halt the resale before the judgment on the new auction's conclusion, provided the following conditions are met:

- The withdrawal and request must be made before the sale is completed and the auction judgment is issued.
- The additional costs resulting from the withdrawal must be deposited with the court’s registry.

- The request must be submitted in the form of a petition attached with the deposit receipt.
- The matter is decided by the court president with an order that cannot be appealed. According to Article 761, it states: "The new bidder may request to halt the resale before the judgment on the new auction's conclusion, provided the additional costs from their withdrawal are deposited with the court's registry. The request for halting resale is submitted in the form of a petition, attached with the receipt of the additional costs deposit to the court president, who issues a decision that cannot be appealed."

Section 2: Distribution of Proceeds from Public Auction Sales

The goal of resorting to enforcement measures is to allow the creditor to obtain their rights after all amicable efforts have failed. The forced execution through attachment and public auction is not an end in itself but a means to collect outstanding debts. The execution item is converted from the debtor's movable or immovable property into a sum of money after its sale at auction, which is then used to satisfy the creditor's claim.

The proceeds of execution refer to the money obtained through the enforcement process, and the division of this money among the creditors occurs. From this, two main points can be deduced:

- The first is that this matter of distributing execution proceeds is within the scope of execution through attachment only, as it represents the final stage of this type of execution, fulfilling its intended goal of satisfying the creditor's rights.
- The second point concerns the requirements for the distribution, namely the two elements necessary for the execution authority to distribute the proceeds:
    - First, the existence of execution proceeds, meaning the money obtained through the enforcement process from the sale of attached movable or immovable property.
    - Second, the existence of creditors, because distribution involves multiple parties. If there is only one creditor, they receive the full amount of proceeds, whether it matches or is less than their entitlement. If it exceeds their entitlement, they receive only their share.

The potential issue arises when there are multiple attaching creditors and the funds from the public auction sale are insufficient to cover all debts. In this case, the legislator addresses this by applying the established distribution rules, requiring creditors to share in the loss of some of their rights proportionally, according to the amount owed to each. Priority creditors, such as those holding secured interests or liens, are paid first, in the order of priority of their claims. The remaining funds are divided among ordinary creditors equally.

Creditors may agree with the debtor on the method of distribution, either through a proportional share or a partition among creditors. If no agreement is reached, any interested creditor may request the distribution to begin by submitting a petition to the court registry where the debtor resides. The creditor must provide documents to enable the judge to prepare a draft distribution list, which becomes final unless any creditor objects. If there is an objection, the judge will decide the matter through a judgment that can be appealed within 15 days of notification. The funds are only released from the court's registry if the judgment has become final.

The distribution can be done in one of two ways:

- **Partition among creditors**, or proportional division, where each creditor receives their share of the proceeds in proportion to their debt, with no priority between creditors. If the proceeds are insufficient, each creditor bears a proportional loss.
- **Priority distribution**, which occurs when creditors with priority claims, such as secured creditors, participate in the distribution. The proceeds are divided according to their priority, with the remainder distributed among ordinary creditors on an equal basis.

The distribution is usually handled by the person in charge of the execution, whether it is the judicial officer or the auction supervisor, in the normal course when there are sufficient funds from the debtor's assets or the proceeds from the public auction.

Case of a Single Creditor
When execution is for the benefit of a single creditor, the collection process is simple since no other party is involved. The person holding the funds collected from the execution, whether the judicial officer or auction supervisor, is required to pay the creditor their due directly. This is stated in Article 790 of the Civil and Administrative Procedures Code: "If funds are seized from the debtor or the seized property is sold, the creditor receives the proceeds directly from the judicial officer or auction supervisor."

The person holding the execution proceeds before payment to the creditor must ensure that the creditor meets the conditions for receiving the payment. In the case of a single creditor, there is no difficulty in distributing the execution proceeds, as mentioned, because if there is only one creditor, they will receive the execution proceeds regardless of whether the amount is sufficient to cover their debt. In the latter case, the creditor can continue the execution process using their claim on other assets of the debtor to recover the remaining balance of their debt.

Second: Case of Multiple Creditors
If there are multiple creditors and the amounts collected from the execution are sufficient to cover the rights of all these creditors, whether the attaching creditors or those intervening in the attachment, the process is also straightforward. In this case, the judicial officer or auction supervisor, or whoever holds these amounts, must pay each creditor their debt after presenting their execution title. If the creditor does not have an execution title but only regular documents such as a private contract or an invoice, payment can only be made with the debtor's written consent. In this case, the payment is optional and must be agreed upon by the debtor.

It is evident that any remaining execution proceeds after fulfilling all the rights of the attaching creditors and the necessary expenses belong to the debtor. The debtor has the right to claim these remaining funds from the person holding the execution proceeds. This is stipulated in Article 791 of the Civil and Administrative Procedures Code, which states: "In the case of multiple creditors, if the amounts obtained from the execution are sufficient to satisfy the rights of all the attaching creditors and intervening creditors, the judicial officer or auction supervisor, or whoever holds these funds, must pay each creditor their debt upon presenting their execution title."

Payment can also be made to creditors who do not have execution titles upon written consent from the debtor. The remaining funds are returned to the debtor after the payment of debts and expenses. In both cases, whether there is one creditor or multiple creditors, the distribution

procedure prescribed by the law does not need to be followed, as there is no difficulty requiring judicial intervention. The payment directly to creditors, as described above, occurs when all creditors are ordinary creditors or if there are privileged creditors, as long as the amount obtained is sufficient to settle their rights. In such cases, the priority of one creditor over another is not important.

There are two situations where the rights cannot be settled directly by the person responsible for execution, due to the possibility of disputes. The law requires that the amounts obtained from the execution be deposited in the court's registry under the supervision of the court president. These situations are:

- When the funds obtained from execution are insufficient to cover the rights of all creditors.
- When there are multiple attachments on the debtor's assets in front of different judicial authorities.

Third: Multiple Creditors with Insufficient Funds

The issue of multiple creditors arises when the funds obtained from the public auction are less than the debts owed. In this case, Article 792 of the Civil Procedures Law contradicts Article 791. If multiple creditors are involved and the funds obtained are insufficient to cover all the creditors' rights, it is not possible to divide the execution proceeds. The judicial officer or auction supervisor, or anyone holding the funds, cannot distribute them to the creditors but is required to deposit them with the court's registry. A list of the attached assets and the auction report should be submitted. The registry president will notify the court president in writing for the distribution of the funds.

This is outlined in Article 792 of the Civil and Administrative Procedures Law, which states: "If the funds obtained from execution are insufficient to cover the rights of all attaching creditors and intervening creditors, the judicial officer or auction supervisor, or anyone holding the funds, must deposit them with the court's registry with a list of the attached assets and the auction report."

In this case, the registry president will notify the court president in writing to proceed with the distribution of the execution proceeds.

From this article, it is evident that the distribution of the execution proceeds moves from the jurisdiction of the judicial officer or auction supervisor to the court president. The court president is then responsible for preparing a draft distribution list within 15 days of receiving the notification, in accordance with Article 794 of the Civil and Administrative Procedures Law.

Furthermore, unlike Article 472 of the Egyptian Civil Procedure Code, this article does not address the scenario where the party responsible for depositing the funds fails to do so. The Egyptian legislator allows the interested party to urgently request the competent judge to compel the responsible party to deposit the funds by a set deadline. If the deposit is not made within the deadline, enforcement measures may be applied to the defaulter's personal assets.

The purpose of depositing the execution proceeds in the court's registry is to prevent the funds from being misused or put at risk due to the insolvency or bankruptcy of the person holding them. This ensures that the distribution procedures are not rendered futile.

Fourth: Multiple Attachments on the Same Debtor's Property
Article 793 of the Civil and Administrative Procedures Law states:
"In the case of multiple attachments on the assets of the same debtor before different judicial authorities, the judicial officers or auction supervisors, and anyone holding the funds obtained from the execution, must deposit them with the court’s registry in the jurisdiction where the first attachment or sale of the attached assets took place."

This provision complements Article 792. The scenario described in Article 793 involves multiple creditors with multiple attachments on the same debtor's assets, but before different judicial authorities. In this case, the person responsible for the execution—whether a judicial officer or auction supervisor—must deposit the obtained funds in the court’s registry in the jurisdiction where the first attachment or sale occurred. This ensures that the distribution process can proceed smoothly

Conclusion

Conclusion

The state that exemplifies the rule of law is one that ensures the protection and preservation of rights through tangible mechanisms. One such mechanism is the real estate seizure process, which enables the state, through its appointed officers, and at the request of the rightful parties, to intervene and restore rights to their rightful owners. This prevents individuals from resorting to self-help measures to recover their debts or rights.

Real estate seizure is a legal procedure where the debtor's real property is taken out of their possession and ownership, placing it under the control of the judiciary. This process may serve to merely preserve the property or to prevent the debtor from disposing of it, as specified in Articles 646 and 652 of the Civil and Administrative Procedures Law. By doing so, it ensures that the property remains under judicial oversight until the legal process of recovery or settlement of debts is completed.

Several important findings were reached in this study:

1. **Exceptional Nature of Real Estate Seizure**: The executive seizure of real estate and its subsequent sale by public auction, as outlined in Articles 721 to 799 of the Civil and Administrative Procedures Law, is an exceptional means of debt recovery. However, this method can only be valid if a set of legal conditions are met. If any of these conditions are not fulfilled, the procedure becomes invalid, which can lead to the annulment of the seizure and sale process.
2. **Consequences of Seizure and Sale**: The real estate seizure process leads to various legal and practical consequences related to the management of the seized property. This includes the sale of the property, its leasing, or the distribution of its revenue. The seized property is no longer under the control of the debtor, and the creditor is granted the legal right to recover their owed amount.
3. **The Auction Process**: The sale of the seized property through public auction requires the preparation of a list of terms and conditions of the sale. These terms, along with relevant documents and records, must be submitted to the court's custody within the required deadlines. Once these documents are filed, the public auction process can commence. The auction begins once the date and location are determined, and all concerned parties are notified. The auction is then publicly announced through various sessions to ensure transparency and equal access. Afterward, a judgment is issued to

confirm the auction, known as the "auction award," which enables the recovery of the debt and ensures the distribution of the sale proceeds in accordance with legal requirements.

From this analysis, it is evident that the Algerian legislator has made significant efforts to create new legal provisions for real estate seizure, providing clear and structured procedures to address previous gaps. These efforts include addressing issues related to unregistered properties, sales involving individuals with limited legal capacity, and properties held in joint ownership. Through these reforms, the legislator has corrected earlier deficiencies, broadened the scope of applicable procedures, and adapted the process to meet current economic and social realities. These changes are clearly embodied in Law 13-22, which governs civil and administrative procedures.

Recommendations

1. **Strengthening Legal Provisions for Unregistered Properties**: It is essential to continue and further improve the legal provisions that govern the seizure and sale of unregistered properties. Alongside this, the process of registering all properties across the country should be expedited. This would help to ensure the stability and reliability of real estate transactions, reducing the risk of legal disputes and promoting transparency in property ownership.
2. **Clarification of Postponement Provisions**: Article 753 of the Civil and Administrative Procedures Law outlines the procedures before the auction begins, requiring the enforcement judge to confirm that all necessary parties are present to start the bidding process. However, the second paragraph of the same article mentions the possibility of postponing the auction due to weak bids, even if the auction has not yet started. This provision could be better placed in Article 754 to make the procedure more coherent and logically structured, thereby avoiding confusion and ensuring smoother legal proceedings.
3. **Timely Settlement Meetings**: The legislator should have placed greater emphasis on the timing of settlement meetings, ensuring that they are held promptly to facilitate the swift resolution of disputes. This would improve the efficiency of the judicial process, benefiting both creditors and debtors by avoiding unnecessary delays. The law should require creditors (both seizing and intervening creditors) to attend the settlement meeting as soon as possible to ensure that the proceedings are carried out in a timely and orderly manner, thus improving the overall functioning of the justice system and maintaining public trust in its processes.
4. **Legal Framework for Property Preservation**: A significant aspect of real estate seizure is the protection of the debtor’s property rights. The legislator should further enhance provisions that provide the debtor with guarantees to preserve their property rights throughout the process. While the creditor’s right to recover their debt is paramount, the preservation of property rights is equally important. This balance is crucial for fostering fairness and preventing abuse of the seizure process.

Final Remarks

Through this examination, it becomes clear that the Algerian legislator has demonstrated a strong commitment to regulating the sale of seized real estate through public auction. This

reflects a broader effort to establish a comprehensive legal framework that facilitates the efficient recovery of debts within a reasonable period while also protecting the rights of the debtor. The legislator's efforts to introduce new legal provisions and refine existing ones have made a significant impact on the legal landscape, addressing both practical concerns and ensuring that the system remains adaptable to evolving economic and social conditions. By continuing to refine these laws, Algeria can further strengthen its legal system and provide greater security and stability for both creditors and debtors. This would lead to a more equitable and efficient process for resolving disputes and protecting property rights in the country.

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