

The problems of proving the status of the possessor according to the possession certificate



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Abstract

Possession is a factual condition that is difficult to prove, especially since written evidence is not required for its proof. Therefore, the possession certificate was introduced as a means to accelerate the process of land organization. It serves as a legal possession document on which the holder relies to prove their status and to use possession as a means to acquire ownership. The certificate produces its legal effect and does not require other evidence to prove its validity, placing the holder in a privileged legal position. However, the certificate only confirms the possession of its holder at the date of its issuance. Possession may be interrupted, or the certificate may be revoked, especially since it remains subject to cancellation without a specific time limit. This raises issues concerning the legal effects that the possession certificate may have established, such as the possibility of obtaining a building permit or arranging a mortgage. Thus, legislative intervention is required to address the imbalances in the real estate system.

Keywords

Possession Certificate;
Real Estate System;
Legal Document;
Mortgage;
Building Permit.

الكلمات المفتاحية

شهادة الحيازة؛
المنظومة العقارية؛
سند قانوني؛
الرهن؛
رخصة البناء.

إشكالات إثبات صفة الحائز بموجب شهادة الحيازة

ملخص

الحيازة واقعة مادية يصعب إثباتها لاسيما وأنها لا يشترط فيها الدليل الكتابي للإثبات، لذا تم إستخدام شهادة الحيازة كوسيلة تused إلى تسريع عملية التنظيم العقاري والتي تعد سند قانوني حيازي يستند عليه الحائز لإثبات صفةه وإلعام الحيازة كطريق لإنكاب الملكية، فهي منتجة لأثرها ولا تحتاج في وجودها إلى دليل آخر لإثبات صحتها إذ تجعل من حاملها في مركز قانوني مميز.

لكنها لا تفيid سوى تحقق واقعة الحيازة لصاحبها في تاريخ إصدارها فقد يحدث وأن تقطع حيازة صاحب شهادة الحيازة أو يتم إلغائها خاصة وأنها تظل عرضة للإلغاء دون تحديد أجل لذلك، مما يسبب إشكالات حول ما رتبته شهادة الحيازة من أثار قانونية كإمكانية إستصدار رخصة البناء وترتيب رهن، فيستوجب ذلك تصدي المشرع لها للحد من الإختلالات في المنظومة العقارية.

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I- Introduction:

The economic and political reforms undertaken by the Algerian state in the 1990s reflected the state's efforts to open the real estate market by promoting investment and restoring the lost status of real estate ownership, particularly after its legal situation had worsened due to historical and political developments in the country.

The state aimed to regulate real estate ownership by purging its legal status, introducing legal mechanisms to manage the occupation of real estate, especially as many occupants were unable to prove their ownership. This led to the activation of possession rules, given their role in solidifying property rights through the establishment of the possession certificate as a preferential means of real estate regulation.

In addition to subjecting possession to the general rules of evidence, possession, as a distinct condition, has led the law to adopt mechanisms that contribute to proving possession and grant the possessor a legal status concerning the property they have actual, genuine control over. The possession certificate serves as a tool for this purpose.

The importance of the Algerian legislator's introduction of the possession certificate can be summarized in two main points:

- The possession certificate serves as a mechanism to protect the apparent status of the property holder. It aims to facilitate the creation of a database by the municipality, which includes a municipal real estate index, by inventorying real estate assets within its jurisdiction. The possession certificate enables the municipality to count the real estate properties under actual possession and monitor their status development.
- Achieving comprehensive development by supporting investment and creating a favorable environment for investors to implement their projects. This is done by resolving disputes that frequently arise regarding the legal status of the land designated for investment, which often hinders project continuity. Furthermore, it offers facilitations to investors, enabling them to obtain building permits and bank loans that assist in completing their investment projects under optimal conditions.

Given that numerous studies have addressed the regulatory and procedural framework of the possession certificate, we have decided to delve into these issues by examining in detail the main legal and practical challenges posed by the possession certificate system.

Study Problem:

The problem of this study can be formulated in the following main question:

What are the challenges posed by the possession certificate as an official document proving the possessor's actual control over the property, which is associated with a legitimate cause for ownership?

To answer this question, we divide our study into two sections. The first section addresses the challenges raised regarding the legal regulation of the possession certificate, discussing the legal basis on which the possession certificate is established (first sub-section), along with issues related to the property subject to possession (second sub-section). The second section addresses issues related to property, focusing on challenges concerning permits and certificates issued based on the possession certificate (first sub-section), and the challenges of mortgaging property subject to the possession certificate (second sub-section).

I. 1. Issues Raised Regarding the Legal Framework of the Possession Certificate:

According to Article 39 of the Land Orientation Law, any person who exercises possession under its legal conditions over private ownership lands for which no contracts have been drawn up can obtain a possession title, represented by a possession certificate. The issuance of this certificate is subject to registration and publication procedures. The Algerian legislator did not define the possession certificate nor determine its legal nature. However, by interpreting the articles governing the possession certificate under the Land Orientation Law and the decree outlining the procedures for its preparation ([Executive Decree No. 91-254, 1991, p. 1365](#)), it becomes clear that it is an official document issued by a person entrusted with a public service, represented by the president of the municipal council, in accordance with Article 324 of the Civil Code. This document takes the form of an administrative certificate ([Ben Adida, 2018., p. 11](#)), declaring an apparent situation, which is the actual possession by its holder of a plot of land for which no contracts have been drawn up and which has not been subject to general land surveying procedures.

The possession certificate is not a means of proving ownership, nor, as some suggest, equivalent to a title deed ([Lahlou, 2004, p. 162](#)). Instead, it is a legal possession document on which the holder relies to use possession as a method

of acquiring ownership. It is not granted to the owner of a property who exercises ownership rights over it, contrary to what the Algerian legislator implied by using the term “ownership” in the text of Article 39. In this context, the term “ownership” was meant to refer to “possession” or “apparent ownership.” An owner cannot prove ownership through a possession certificate, as possession is independent of ownership. Ownership is proven through methods of proving real estate ownership, which differ from those used to prove possession.

The possession certificate is a personal official document; hence, the request to obtain it can only be submitted by the possessor themselves. Its use as a means to prove the status of the possessor is exclusively reserved for the beneficiary, a concept referred to as the personal nature of the possession certificate (Mahmoudi, 2007, p. 220). It cannot be transferred by sale, and in the event of the holder's death, it expires one year from their death unless their heirs assert their right to it within that period. It is transferred to the general heirs, provided they submit a request for it within the year following the death of their predecessor; otherwise, the possession certificate is automatically canceled by law (Article 42 of Law No. 90-25, 1990).

I. 1.1 Issues Related to the Legal Basis of the Possession Certificate:

In introducing the possession certificate, Article 39 of the Land Orientation Law refers to Article 823 of the Civil Code when declaring the possibility of obtaining a possession certificate. Upon examining Article 823, it establishes a legal presumption, specifically the presumption of possession indicating ownership, wherein the possessor of a property is presumed to be its owner until proven otherwise. This reference by the legislator is ambiguous because it does not contain the foundational elements of the possession certificate, making it difficult to justify its existence at this level. The possession certificate does not prove ownership; rather, it proves the actual, correct possession of the property. The legal presumption of possession indicating ownership can only be invoked when establishing ownership, not when proving possession. It would have been more appropriate for the legislator to directly refer to the Civil Code provisions governing possession. However, the legislator's reliance on Article 823 may be attributed to the objective of the possession certificate, which is to regularize real estate ownership, given that many property owners have been unable to prove their ownership. In such cases, they can use the possession certificate to assert their position, especially when possession is recognized as a method of acquiring ownership.

This, in turn, has influenced the judiciary's approach. The Supreme Court, in one of its rulings, considered (Supreme Court Decision No. 1022612, 2017, p. 122) that a lawsuit based on a possession certificate is a lawsuit for ownership, not a lawsuit for possession. The court reasoned that the possession certificate is issued and registered to enable its holder to act as the owner of the property, which is a mistaken approach. The possession certificate is a document for proving possession, not ownership, and it does not grant the legal authority to the possessor to dispose of the property, which is the primary right distinguishing the owner from other right holders or property occupants. This principle cannot be generalized, as it depends on the subject matter of the lawsuit in which the possession certificate is relied upon. For instance, the possession certificate may be used to prove the status of the possessor in a lawsuit aimed at protecting possession. The Supreme Court previously ruled that the possession certificate constitutes a legal document justifying possession, and thus, the lawsuit is a possession claim aimed at lifting the hand off the land (Supreme Court Decision No. 288085, 2005, p. 239). However, the lawsuit becomes an ownership claim if the possession certificate is used to invoke acquisitive prescription, where its role is not to prove ownership but to demonstrate the existence of possession as a method for acquiring real estate ownership. The Supreme Court also affirmed this in a previous decision, stating that using acquisitive prescription as a means to prove the right, along with presenting the possession certificate to prove possession, does not amount to a possession claim (Supreme Court Decision No. 200373, 2004, p. 347). What is observed is the Supreme Court's inconsistency in its approach.

I. 1.1.1 The Possession Certificate is Not Mandatory to Prove the Status of the Property Holder:

Regarding the mandatory nature of obtaining a possession certificate, if the reason for introducing the possession certificate was the difficulty in proving ownership due to the lack of supporting documents for many owners (Ben Adida, 2018., p. 09), which could be proven by recognizing possession as a method of acquiring ownership, then possession itself is difficult to prove, especially since it is a factual situation that does not require written evidence. Thus, the legislator has obligated every lawful possessor or occupant of a property—an incidental possessor—to hold a legal document justifying their possession or occupation of the property, as stipulated in Article 30 of the Land Orientation Law. This was intended to put an end to illegal encroachment and exploitation of properties, as well as to resolve the difficulty of proving possession, while simultaneously facilitating the proof of real estate ownership established through acquisitive prescription.

The legal document referred to by the legislator is any document upon which the possessor relies to demonstrate their control over the property and to prove their legal possession. This does not solely pertain to the possession certificate, considered an official possession document; it could also be an informal contract, a judicial ruling issued in a possession protection case, or an administrative decision creating a temporary situation, such as a temporary numbering certificate,

as will be explained later. It is not related to ownership deeds such as a sale contract, a notoriety act, a division contract, or a notarized certificate, as these are documents proving ownership, not possession. Additionally, it does not involve documents that merely grant physical possession, such as a lease contract or an exploitation license issued by the administration, as these pertain to the incidental occupant of the property, who only has incidental physical possession. Rather, the legal document in question is any document that forms the basis of the possessor's legal control over the property, allowing them to protect their apparent status and formalize their legal situation.

This interpretation can be inferred from the wording in Article 39 of the Land Orientation Law: "Any person... can obtain a possession certificate⁽¹⁾" The legislator thus recognized the optional nature of the possession certificate, not its mandatory nature. Many mistakenly interpret the nature of the possession certificate, treating it as mandatory, and therefore disregarding possession in its absence, either because they rely on Article 30, which requires the availability of a document to justify possession, or because they believe that an official document is necessary to prove real estate possession.

The Supreme Court overturned a decision issued by the Court of Appeals, which had rejected a claim due to the absence of a possession certificate, based on the assumption that possession could only be proven with a document issued by the municipality. In justifying the annulment of the decision, the court ruled that proving possession is a matter of fact subject to general evidentiary rules. Therefore, the appellate judges should have undertaken investigative measures to verify the validity of the claim to possession in the absence of this document ([Supreme Court Decision No. 223939, 2003, p. 322](#)).

In another ruling ([Supreme Court Decision No. 386808, 2007, p. 435](#)), the court rejected an appeal against a decision issued by the Court of Appeals in a claim to prevent interference with possession. The appellant argued that any transaction related to a property must be formalized under the threat of invalidity, and therefore, possession cannot be proven through witness testimony or a residence declaration card, but rather through a properly registered legal document. The court ruled that this argument was unfounded and rejected the appeal, stating that while the legislator referred to the possession certificate in Article 30, it did not make it a prerequisite for filing possession claims.

Indeed, the possession certificate is not a condition for filing possession claims, but it is also not mandatory for initiating legal possession, as the Supreme Court concluded in its previous decision. The legal document mentioned in Article 30 is not limited to the possession certificate, which remains optional. The failure to obtain it does not invalidate possession, which is a factual situation that can be proven by all means of evidence, unlike legal real estate transactions.

I. 1.1.2 The Possession Certificate as a Means of Future Ownership through Possession and Acquisitive Prescription:

While Article 43 of the Land Orientation Law states that the possession certificate does not alter the legal status of the property, Article 47 of the same law allows for the regularization of the legal status of properties covered by possession certificates during general land surveying operations. Additionally, Article 14 of Executive Decree 91-254 permits the invocation of acquisitive prescription after the required time period has been reached.

Contrary to the view of some commentators, this is not a problem. It is only logical that lawful possession would ultimately lead to the acquisition of real estate ownership through prescription. Otherwise, the activation of possession principles would serve no purpose. The possession certificate is simply a mechanism for consolidating possession as a means of acquiring ownership. Initially, granting the certificate does not confer any ownership rights to the possessor until the necessary conditions for invoking acquisitive prescription, including the legal time requirement, are met. Therefore, it is considered a temporary possession document and a means of future ownership, serving to eliminate any doubt about the status of the occupant and the initiation of possession.

The legislator has set a one-year period for the actual exercise of possession before granting the possession certificate. Despite its short duration, this period is often considered a presumption of control deserving of protection, similar to possession protection claims such as the action to prevent interference or the action to stop new construction. The real issue arises from the legislator's silence on specifying the time frame within which the possessor can invoke acquisitive prescription.

In principle, acquisitive prescription cannot be invoked until 15 years or 10 years have elapsed in accordance with Article 14 of Executive Decree 91-254. The legislator did not clarify whether the possession certificate can be considered a valid document for invoking short-term prescription, given that it is an officially registered document. Furthermore, it remains unclear whether the possessor of a possession certificate is considered to be in good or bad faith. A possessor may be considered in good faith if they believed they had the right to obtain a possession certificate, for example, if they were the property owner but could not prove it. Conversely, bad faith may be demonstrated if the possessor obtained the

certificate while knowing they were not entitled to it, in which case they would be treated as a bad-faith possessor for purposes of prescription⁽²⁾.

According to general rules, acquisitive prescription can be invoked through a legal action or when relying on legal possession to obtain an ownership title through real estate investigation under Law 07-02, only after the necessary period has passed (15 years or 10 years). This period can be evidenced by the possession certificate, such as when a possessor obtains a possession certificate after holding the property for three years and declares the duration of their possession in the affidavit⁽³⁾ accompanying the possession certificate request, as per Article 6 of Executive Decree 91-254. The three-year period is then recognized as the starting point of possession, which is presumed by the possession certificate, allowing the possessor to acquire ownership of the property after the required prescription period. The possessor must prove their current possession, establishing a presumption of their possession during the intervening period. Until the prescription period is reached, they cannot claim ownership through possession due to the absence of one of the essential conditions—namely, the legal time requirement.

However, in cases where land surveying operations begin in the area where the property covered by the possession certificate is located, the legislator has stipulated that such properties must be regularized ([Article 47 of Law No. 90-25, 1990, p. 1560](#)) like other properties, and the property is registered in the name of the possessor holding the possession certificate. This occurs without specifying the time period that must be met for possession to be formalized in their favor. A ministerial instruction dated July 06, 1994, confirmed that no investigation is conducted into the duration of possession for holders of a possession certificate. The holder is considered in good faith, and is treated as if they have completed the legal period required for acquiring ownership through prescription. This is a significant departure from the general rules of prescription, which require a period of either 10 or 15 years. The possession certificate thus becomes an exception to the general rules of prescription, subject to its own provisions. When it exists during land surveying operations, it triggers acquisitive prescription, regardless of the possessor's actual period of possession.

For instance, a possessor may obtain a possession certificate after only one year of controlling the property, and if land surveying operations are conducted within less than five years of this possession, the property is registered in the possessor's name, and they are granted a real estate title without needing to meet the required legal time period. When combining the period of their possession with the administrative procedure time frame, they do not complete the required prescription period of at least 10 years. The justification for this is that such properties cannot remain without regularization, otherwise, the purpose of the possession certificate as a tool for expediting real estate organization would be lost⁽⁴⁾. It is unreasonable for a possessor holding a possession certificate to have the property registered as ownerless and subject to different procedures that result in its registration in the name of the state, as will be explained later.

I. 1.2 Issues related to the real estate subject to the preparation of the possession certificate:

The possession certificate aims to regulate the legal status of real estate by enabling any possessor of a property, who is unable to prove their legal status concerning the property they occupy, to establish their capacity as a possessor. This grants them protection over their occupation of the property through safeguarding their possession, and it also allows them to solidify ownership through this possession. The possession certificate is only valid for specific properties where ownership is not firmly established, as the absence of such ownership negates the purpose of issuing a possession certificate. Additionally, the property must not fall within a surveyed area, as the survey seeks to establish property ownership, rendering the possession certificate practically unnecessary thereafter. Furthermore, an issue arises regarding the nature of the property in question—whether the possession certificate is permissible for both built and unbuilt properties.

I. 1.2.1 Regarding the material nature of the property subject to the possession certificate request:

Numerous questions arise regarding the possibility of obtaining a possession certificate for built properties, especially given the increasing number of applications in this regard. The Algerian legislator did not explicitly address this, but it is clearly stated that the possession certificate is granted for "land" within private ownership. Upon examining this term in detail, it becomes evident that "land" refers to unbuilt properties, meaning that the issuance of possession certificates is limited to this type of property.

The judiciary has resolved this issue by establishing the principle that granting a possession certificate for built land is not permissible, and doing so would be considered a violation of the law ([Supreme Court Decision No. 720039, 2012, p. 407](#)). It is not required that the entire land be built upon; it suffices for part of the land to be built, making it non-vacant. In one case, a governor issued a decision to demolish an illegal construction. In response to the concerned party's inquiry about the demolition decision, despite possessing a possession certificate for the building, the competent authority affirmed that the possession certificate is not valid for the property in question⁽⁵⁾.

I. 1.2.3 Regarding properties under private ownership with unregistered deeds:

Article 2 of the executive decree specifying the procedures for preparing and issuing a possession certificate, along with Article 39 of the Land Orientation Law, stipulate that the possession certificate can only be granted for privately owned land. It cannot be requested for landholders of national properties, regardless of the type or legal classification of such properties, nor can it be granted for endowed lands (waqf properties). This is not due to the inability to possess these lands, as they can indeed be possessed and legally protected, but rather because of the legal effect resulting from the issuance of a possession certificate, namely the invocation of acquisitive prescription (adverse possession) ([Article 14/3 of Executive Decree No. 91-254, 1991, p. 1365](#)). Such prescription is not applicable to other categories of real estate, for which there is no prescription regardless of how much time has passed.

To prevent such issues, the mayor (president of the municipal council), according to Article 9 of Executive Decree 91-254, must notify the head of the national property department at the provincial level or the regional or municipal inspectorates within 15 days following the submission of a possession certificate request at the municipal registry. This is to verify the legal status of the property in question and determine whether it falls outside the public or private real estate portfolio of the state and the province. The relevant authority must also ascertain whether the municipality holds any rights to the property subject to the possession certificate.

It is also required that there be no deeds proving another individual's rightful ownership of the property. This raises the question of what the legislator means by "unregistered deed land." Some interpret this as ownerless properties, which are lands that are annexed to state property through expropriation, and thus no one can possess them. Others associate it with the general land survey, which serves as a material basis for applying the title registration system, whereby the person who registers the property in their name is granted a document proving ownership, namely the property deed. Therefore, unregistered deed land refers to property that has not been surveyed and for which no property deed has been issued to its owner. However, this presents an additional independent condition related to the location of the property: it must not be situated in a surveyed area, which means no property deed would have been issued for it. The legislator's phrasing is broad, allowing for various interpretations, especially given the diversity of documents proving property ownership. While the legislator may focus only on the deed as a means of proving ownership, if the objective of this condition is to give priority to the rightful owner of the property, then there is no need for a possession certificate as a means to clear property ownership when a stronger document already exists to prove ownership. Therefore, the legislator's intent behind "unregistered deed" means that the property ownership is not established by a deed⁽⁶⁾.

Documents proving property ownership include notarized registered contracts, customary contracts with a fixed date issued before 1971, administrative contracts and decisions, and final judicial judgments and decisions ([Mahmoudi, 2007, pp. 216-217](#)). The question arises: how can a property be unregistered in a deed while simultaneously requiring that it be privately owned?

Determining the nature of the property does not necessarily mean determining its owner, especially since properties belonging to national estates have their formation rules set by law. Properties that are privately owned are those determined by the competent authorities to have a specific nature and not part of the general or private national estate. Ownership of such properties may not be clearly defined; otherwise, efforts to clear property ownership would not be necessary. Due to illegal transactions made in violation of the law ([Lahlou, 2004, p. 154](#)), the complexity of legal systems, or the difficult periods Algeria has experienced, many properties have an unclear legal status. This may be because the owner is unknown and the state has not taken expropriation measures, or because the property has multiple owners or its legal status has not been updated. As a result, these are privately owned properties, but they lack an official deed.

Verification that no private individuals hold any rights to the property in question is carried out through a series of broad public notices that allow any interested party to become aware of the possession certificate request and to file objections that would halt the process of issuing the certificate. The mayor must, within 15 days of the possession certificate request being filed⁽⁷⁾, publish an extract from the request on the municipality's notice board, in public spaces belonging to the municipality, and, if necessary, in the national newspaper for a period of two months. This gives anyone with rights to the property the opportunity to submit a written objection within two months of the publication. The notification to the head of the state property department at the provincial level is not only to ensure that the property is not part of the national estate but also to verify that the property is unregistered. The head of the state property department must inform the mayor of the legal status of the property within two months of being notified, under penalty of personal liability ([Articles 8, 10, and 11 of Executive Decree No. 91-254., 1991](#)).

I. 2. Issues related to the effects of the possession certificate:

The necessity to regulate property ownership has led to the introduction of the possession certificate, given the significant effects it creates, allowing the possessor to attain mechanisms typically reserved for the rightful owner of the real property. Due to the issues investors faced regarding the real estate subject to investment, which impacted their

projects, they were granted possession certificates. These certificates allow them to secure financing for their projects through obtaining bank loans and acquiring certain permits and urban planning certificates. In these cases, possession is sufficient to carry out construction activities without the need for ownership documents. However, the practical application is not as straightforward, as several gaps and contradictions arise, particularly regarding the subsequent stages following the receipt of loans or building permits. This is especially true since the possessor does not hold a real right to the property, but rather a mere physical possession combined with the intent to own.

I. 2.1 The issue of obtaining construction and urban planning permits:

The legislator granted the possessor benefiting from a possession certificate the right to enjoy powers typically reserved for the rightful owner of the property. The legislator recognized the possessor's authority to act but excluded the right to transfer the land, whether freely or for a price, as well as the transfer of possession itself, prohibiting its transfer to others. Thus, the possessor is granted authority over the material aspect, allowing them to alter the physical nature of the property, while legal acts that could change the property's legal status are excluded. The legislator did not extend such legal authority to the possession certificate ([Article 43/1 of Law No. 90-25, 1990, p. 1560](#)).

The possessor is entitled to obtain a building permit and a demolition permit. Since construction and urban planning works are not limited to these two permits but also involve other individual decisions specified in Urban Planning Law 90-29 ([Executive Decree No. 15-19, 2015](#)), including subdivision permits, urban planning certificates, partitioning certificates, and certificates of conformity, a question arises as to whether the holder of a possession certificate can obtain these other permits and certificates, particularly the subdivision permit and partitioning certificate. Given that the role of the urban planning certificate is to define building rights on the land ([Article 2 of Executive Decree No. 15-19, 2015](#)), the legislator allowed any interested party, whether the owner, their agent, or the possessor, to submit a request for it ([Mahzoul, 2014, pp. 85-86](#)). Therefore, the holder of a possession certificate is entitled to obtain an urban planning certificate to outline the details of the construction project on the land they possess, as it does not affect the substantive right of the recognized owner.

Regarding the certificate of conformity, which aims to verify that the completed construction complies with the building permit, the legislator granted the holder of a building permit the right to request this certificate. Thus, the holder of a possession certificate is allowed to have their construction conform to the building permit issued to them by obtaining the certificate of conformity.

This system, however, raises the following issues:

- The first issue concerns the subdivision permit, which is required for any subdivision of a vacant plot of land⁽⁸⁾ that results in the creation of new building rights and easements, either for the construction of buildings or for selling or renting the land. The legislator, in urban planning laws, limited the right to request this permit to the property owner or their agent, thereby excluding the possessor holding a possession certificate from obtaining it. This contrasts with the French legislator, who allowed anyone who can prove they are a permanent occupier of a plot of land to request this permit ([Laouiжи, 2012, p. 125](#)).

The contradiction here lies in a memorandum issued in 1991 by the General Director of National Property, concerning the preparation of possession certificates ([Memorandum No. 23-41, 1991](#)), which allowed the holder of a possession certificate to request a subdivision permit, a provision not permitted under urban planning laws, especially since Executive Decree No. 15-19 did not address this matter.

If the possessor intends to construct new buildings on a portion of the land covered by the possession certificate, and since this would result in the subdivision of the vacant land into several plots—into real estate units without altering the legal status—and given that Article 43 of Decree 15-19 requires attaching the references of the subdivision permit to the building permit application in such cases, and since the Urban Planning Law does not allow the possessor to obtain a subdivision permit, the request for the building permit will consequently be rejected.

Contrary to some opinions suggesting that the legislator acted wisely in not allowing the holder of a possession certificate to obtain a subdivision permit because they are not the owner of the property, based on the argument that the subdivision permit grants the right to sell the plots resulting from the subdivision ([Mahzoul, 2014, p. 97](#)), what becomes of the possessor's right to build on these plots? Especially since the primary purpose of subdivision is to construct buildings in addition to potentially selling or leasing the resulting plots. There would be no harm in allowing the possessor to obtain a subdivision permit, as long as their possession of the land has been established through the possession certificate. This would enable them to commence construction works, particularly since selling the plots cannot occur arbitrarily, but is subject to the legal transfer of ownership, which requires the presence of an ownership deed; the subdivision permit alone is insufficient for this purpose.

Another issue arises if the holder of a possession certificate, who has constructed a building after obtaining a prior building permit, wishes to divide the building into two or more sections, resulting in the physical partitioning of real estate units without altering the legal status. The law mandates the necessity of obtaining a partitioning certificate, and limits its request to the owner or their agent. However, Article 33 of Decree 15-19 stipulates that the applicant for a partitioning certificate must justify the existence of the building on the plot with a legal document, such as an ownership deed, or an administrative document, such as a certificate of conformity. Since the possession certificate is an administrative document that justifies the construction of the building, and the legislator mentioned administrative documents in Article 33 by way of example, citing the certificate of conformity, this could open the door for the possessor to obtain a partitioning certificate from the competent authority if they wish to divide the building they constructed.

Additionally, for co-possessors, the legislator allowed them to jointly obtain a possession certificate. Since the possession certificate grants the right to construct, the co-possessors can exercise this right. The legislator did not address the issue of construction permits for co-owners in urban planning laws, raising the question of whether such permits can be granted to co-possessors.

Returning to the rules governing voluntary co-ownership, we find that co-owners who hold at least three-quarters of the shared property have the right to build, which falls under non-ordinary administrative actions⁽⁹⁾. Therefore, the law grants them the right to obtain a building permit—assuming it does not allow them to construct illegal buildings. Applying the rules of shared ownership to shared possession, and since the possessor is treated as the apparent owner, co-possessors with a possession certificate should be able to obtain a collective building permit that enables them to construct buildings on the land⁽¹⁰⁾. As for the subdivision permit and partitioning certificate (Memorandum No. 23-41, 1991), the memorandum concerning the preparation of possession certificates allowed co-possessors to divide their possession of the land after obtaining a subdivision permit for urban land or a partitioning certificate for agricultural land (the partitioning certificate also applies to built urban real estate), in case they wish to divide the use of the land or exit the state of shared possession⁽¹¹⁾. This is only possible if the land itself is capable of being physically divided, in preparation for acquiring physical shares after invoking acquisitive prescription. Each possessor is prohibited from selling their share of the shared possession, as this is imposed by the nature of the possession certificate, which is personal and non-transferable. Moreover, it prohibits any legal action that could change the legal status of the land.

Another issue arises concerning construction and demolition activities related to existing buildings. The possessor cannot carry out construction activities such as extending or modifying existing buildings, which were built based on the possession certificate granted for vacant land, because these activities require obtaining a new building permit. In this case, the possessor cannot obtain a building permit because there is no justification for their ownership of the building. The possession certificate cannot be relied upon because it does not apply to built properties. Additionally, the previous building permit cannot be used to prove ownership of the existing building, as the judiciary has ruled that a building permit is not a document of ownership.

Similarly, with regard to demolition activities, the possessor cannot obtain a demolition permit unless the building subject to demolition had a prior building permit obtained through the possession certificate. It is worth noting that the Reconciliation Law No. 08-15 allows the holder of a possession certificate to regularize an illegal building constructed on the real estate covered by the possession certificate by enabling them to obtain a building permit for regularization, a permit to complete the construction, or a certificate of conformity (Article 35 of Law No. 08-15, 2008, p. 19).

Based on all of the above, the possessor's use of the material powers granted by the possession certificate is restricted, as they are only granted this right in limited cases. If they exercise this right by constructing buildings with building permits, the built property will be registered in the possessor's name, while the land is not owned by them but remains under their possession only⁽¹²⁾. However, this issue is resolved by applying possession as a means of acquiring property ownership after the legally prescribed period for acquisitive prescription has passed.

I. 2.2 The issue of establishing a mortgage on land covered by a possession certificate:

In principle, a mortgage on a property as collateral for repaying a debt can only be established by the property owner, whether they are the debtor themselves or a guarantor for the debtor's obligation to pay their debt (Mahmoudi, 2007, p. 224). This is what the legislator stipulated in paragraph 2 of Article 884, requiring that the mortgagor be the owner of the mortgaged property and have the legal capacity to dispose of it. A mortgage issued by a non-owner is considered invalid. However, the legislator introduced an exception with a single case where a non-owner may mortgage property that does not fall within their financial estate, and this mortgage is deemed valid. This exception applies when the mortgage is issued by the possessor of the property based on a possession certificate. In this case, the legislator, in Article 44 of the Land Orientation Law, granted the holder of a possession certificate the right to establish a first-degree mortgage on the land subject to the possession certificate, but only to secure a medium- or long-term loan for the benefit of lending institutions, which are public financial institutions. The possessor is not allowed to establish a mortgage to secure the repayment of a debt to a private creditor.

The legislator granted the holder of a possession certificate an important legal status by allowing them to create a mortgage on the land under their possession. They are treated as someone holding a real property right—similar to holders of industrial or agricultural privileges—even though the possession certificate does not grant any real property rights but is merely a path toward such rights. The reasoning behind this approach is that these mortgages are often intended to encourage investment and finance projects in agriculture or construction ([Memorandum No. 23-41, 1991](#)), especially since the possession certificate, which is valid for both urban and agricultural properties, was introduced to remove the difficulties and obstacles hindering development and to clear ownership issues. The legislator saw that this goal could only be achieved by motivating possessors to improve the value of the properties and to utilize the land rationally, so that their possession does not become merely an infringement on unregistered property.

However, despite the legislator's objective in creating this legal effect on the possession certificate, granting the possessor the right to mortgage the land is a serious measure. It exposes lending institutions to risks of non-repayment within the specified time frame or the absence of the debtor who is required to repay ([Tayeb, 2021, p. 195](#)). This could occur in the following cases:

- In the event that the possessor does not wish to repay the debt and has not acquired ownership of the land through prescription: The right of the lending institutions transfers to the land held by the debtor, leading to its seizure and sale, without the possessor retaining any rights to it. Consequently, the burden of repayment does not fall on the debtor themselves. If the property is sold through public auction, the question arises: does ownership of the property transfer to the highest bidder, or merely possession?
- In the case of the possessor's death: The legislator has introduced a specific provision for this situation, allowing the possessor's heirs to request a possession certificate in their favor within one year of the death of their predecessor. If they successfully transfer the certificate to their name, there is no issue, as the lending institutions' right to the land remains, and the heirs become the new debtors to the lending institutions. However, the problem arises if the heirs do not exercise their right to request the possession certificate, which is then automatically canceled by law. Against whom will the financial institutions exercise their right to enforce repayment?
- In the case of the cancellation of the possession certificate: Since it is an administrative decision subject to annulment on any grounds, or in the event that the rightful owner of the land emerges, given that it is privately owned but lacks a deed to prove ownership, the state may also exercise its right of expropriation if the land is deemed ownerless.

The legislator did not clarify how to handle the aforementioned situations or the fate of the mortgage should they occur. This lack of clarity has led to reluctance among banks to provide loans secured by a possession certificate.

A mortgage grants banks or lending institutions the right to pursue the debt and priority⁽¹³⁾ in its repayment. A thorough analysis leads us to conclude that a mortgage established by the holder of a possession certificate is valid if the possessor provides sufficient collateral for repayment, particularly when the mortgage is intended to secure an agricultural investment project or a construction project, which is the original purpose of the possession certificate. The rights of these institutions remain intact and do not expire; they transfer to the investment project or the building constructed by the possessor on the land. Enforcement can thus be carried out against the project or building to recover the debt if the possession certificate is canceled, the possessor refuses to repay the debt, or the possessor dies without transferring the possession to their heirs. If the rightful owner of the land appears with a deed proving ownership, the building constructed by the possessor is subject to the rules of industrial property attachment as governed by Articles 782 to 790 of the Civil Code. If the possessor acted in good faith, meaning they were unaware of the existence of a rightful owner, the legal effects of the possession certificate cannot be revoked to protect the acquired rights, and the building remains intact. The mortgage right then transfers to the value of the building paid to the possessor by the rightful owner. If the owner transfers the ownership of the land to the possessor⁽¹⁴⁾, the mortgage remains on the land.

If the project or building is not completed, the mortgage is unaffected and remains valid against any party who acquires the property, as the creditor retains the right to pursue the mortgage regardless of whose hands it passes through. Lending institutions can then enforce the mortgage against the rightful owner of the land, who would be entitled to seek compensation from the possessor. All issues related to ensuring loan repayment are resolved if the possessor, by virtue of the possession certificate, acquires ownership of the land through acquisitive prescription.

II- Conclusion:

The possession certificate is considered to have binding evidentiary power, as the physical possession of a property based on the possession certificate constitutes a situation supported by an official and robust document in terms of proving the existence of legal possession. While it holds evidentiary value, this value is not conclusive, as it is possible to challenge its content through various means of proof. Additionally, the effects produced by the possession certificate

contain numerous contradictions, mainly due to the lack of clear, established rules that clarify how it should be applied in different cases. From our study of the issues related to the possession certificate's role in proving the status of a property possessor, we found that the possessor is limited in their ability to exercise material control, which the possession certificate grants them. This right is only acknowledged in limited cases. If they exercise this right by constructing buildings with building permits, the property will be registered in the possessor's name, while the land remains under their possession but not their ownership. However, this issue is resolved by applying possession as a means of acquiring property ownership after the legally prescribed period of adverse possession. If the property is recovered by its rightful owner, the status of the construction will be subject to the rules of property attachment.

Although the Land Orientation Law grants the possessor, through the possession certificate, the right to exercise material control over the property, and Executive Decree 15-19, which regulates the procedures for preparing urban planning contracts and delivering them, allows the holder of the possession certificate to obtain building and demolition permits, practical reality has shown otherwise. In most cases, building permits are denied to holders of possession certificates, limiting such permits to those who possess a registered ownership deed.

There is a contradiction between Memorandum No. 23-41 concerning the preparation of possession certificates and the provisions of Executive Decree No. 15-19, which does not allow the holder of a possession certificate to obtain a subdivision permit. This is especially critical since a subdivision permit is mandatory if the construction would result in the division of vacant land into multiple plots, creating new building rights. Consequently, this leads to the rejection of building permit applications. On the other hand, Memorandum No. 23-41 allows for the issuance of subdivision permits, creating a conflict between regulatory texts. Similarly, co-possessors are granted the right to jointly obtain a possession certificate, even though urban planning and development laws do not explicitly address this. Applying the principles of shared ownership to shared possession, since the possessor is treated as an owner—referred to as the "apparent owner"—co-possessors with a possession certificate should be allowed to obtain collective building permits that enable them to construct buildings on the land they possess.

Based on the above, there is a need to reconsider the legal texts governing the effects of the possession certificate, removing ambiguities to align them with the actual status of real estate. Additionally, simplifying these texts would help achieve coherence and reduce imbalances in the real estate system.

The role of the possession certificate in proving the continuity of actual control over a property should be strengthened by requiring periodic submission of the certificate to the mayor for endorsement, to verify the continuity of possession. This is important since the possession certificate only proves actual control at the time it was issued. Thus, subjecting it to periodic endorsement would eliminate the need to prove continuity through other means when invoking acquisitive prescription. Moreover, the scope of the possession certificate should be expanded to include built properties as well.

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- [12]. Supreme Court Decision No. 720039, dated June 14, 2012, issued by the Real Estate Chamber, *Supreme Court Journal*, no. 2, 2012, p. 407.
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- [14]. Articles 8, 10, 11 of Executive Decree No. 91-254, dated July 27, 1991, determining the procedures for preparing and issuing a possession certificate, established by Article 89 of Law No. 90-25 of November 18, 1990, concerning land orientation, *Official Gazette* No. 36, issued on July 31, 1991, p. 1365.
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- [19]. Memo No. 23-41, dated October 14, 1991, regarding the preparation of possession certificates, issued by the General Directorate of National Properties, Ministry of Economy.
- [20]. Article 35 of Law No. 08-15, dated July 20, 2008, specifying the rules for the conformity and completion of buildings, *Official Gazette* No. 44, issued on August 3, 2008, p. 19.
- [21]. Aisha Taib (2021), "Possession Certificate as a Mechanism for Securing Bank Loans," *Journal of Legal and Political Studies Research Center*, University Center of Tipaza, vol. 5, no. 2, p. 195.

Note:

- [1]. It may; indicates permissibility, not obligation, as it does not constitute a mandatory rule. Therefore, the possessor may rely solely on their physical possession without being required to obtain a possession certificate.
- [2]. In all cases, the possessor with a possession certificate may be considered in bad faith regarding the rules of acquisitive prescription for property, as long as they are aware that the property does not belong to them and that they are merely a possessor. Furthermore, a valid title does not refer to the document directed to the possessor, but rather to the transaction made to the possessor, such as a sale, for instance. The possession certificate does not include any transaction; rather, it is an official document to prove the possessor's status. Consequently, it is subject to the rules of long-term acquisitive prescription.

- [3]. A sworn declaration is attached to the possession certificate application, which includes a set of information, among which is a statement of the possession duration indicating the start date of the possession. Based on this, the calculation of the acquisitive prescription period begins
- [4]. Could the land registrar postpone the registration of the property until the completion of the possession period? In this case, it would be possible to regularize the situation of properties for which a possession certificate has been issued but have not yet reached the required period for acquisitive prescription. In response to a communication from the Director of Land Preservation in the province of Chlef, the Director of the Land Registry and Land Survey, representing the central administration in providing the necessary guidelines to address certain situations, indicated in his reply that land registrars must review and examine the cadastral documents and correct any missing information before signing the delivery report. This suggests that if the land registrar encounters a property with a possession certificate without the completion of the legal period, they may choose not to issue the delivery report, the date of which initiates the calculation of the land registration period, until the remaining period for prescription is completed. This approach is preferable to refusing registration or registering the property under the state's name, even though none of this fully aligns with the intended purpose of the possession certificate
- [5]. There is a noticeable lack of precision in the use of terminology. It would have been more appropriate to state that the possession certificate is not permissible for built property or in the context of construction.
- [6]. "Untitled lands," which in practical terms is referred to by specialists as "unassigned properties" – refer to Directive No. 16, dated May 24, 1998, concerning the operation of land surveying and property registration, issued by the General Directorate of National Property, Ministry of Finance.
- [7]. The legislator, by using the term 'petition,' refers to the request submitted by an individual to obtain a possession certificate. A petition, however, is only presented before judicial authorities to initiate legal proceedings
- [8]. The subdivision permit aims to divide or split a plot of land into two or several plots. Therefore, it is not advisable to use the phrase "division of ownership into multiple ownerships," as the ownership may remain the same, belonging to a single owner or subject to the possession of the same person, who seeks to divide it into real estate units without altering its legal status in terms of ownership rights.
- [9]. According to the provisions of Article 717 of the Civil Code, partners who own at least three-quarters of the common property have the right to decide, in order to improve the utilization of this property, on fundamental changes and modifications to its intended purpose that go beyond the bounds of ordinary management.
- [10]. In practice, the competent authorities avoid granting building permits to co-owners, and they are not allowed to exercise their right to build unless there is a contract or court ruling authorizing the division of the common property. Therefore, it is inconceivable to deprive the owner of their legally recognized right and grant it to the possessor.
- [11]. Exiting the state of joint possession leads to the issuance of an individual possession certificate for each holder of the jointly owned land.
- [12]. It would have been preferable not to recognize this right for the possessor, even if their possession is established by a possession certificate, due to the complications it causes, especially in cases where the possession certificate is revoked. It would have been better for the possessor to be subject to the same conditions as legal acts, exercising the owner's powers of use and exploitation without engaging in either form of disposition, as this authority is tied to the right of ownership.
- [13]. These are the two advantages of the mortgage: it grants the right of priority in recovering the debt over other creditors, and traceability, which gives the creditor the ability to enforce the mortgage on the property even if its possession has been transferred to another party, allowing the creditor to follow it regardless of whose hands it is in.
- [14]. The second paragraph of article 785 of the Civil Code stipulates that if the structures have reached a level of significance and the payment for them becomes burdensome for the landowner, the latter may request the transfer of ownership of the land to the person who erected the structures in exchange for fair compensation to the landowner.