

# **The role of neighborhood proximity in restricting private property ownership:"An analytical study of Algerian real estate legislation"**

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## **Abstract:**

Neighboring property rights, as one of the most important rights affecting private real estate ownership – which is a constitutionally protected right in contemporary legislation, including Algerian law – entail a set of consequences for private real estate ownership, whether in terms of its exploitation, disposition, or use. These effects constitute a restriction on the rights associated with private real estate ownership, aiming to achieve a range of public and private interests.

## **Keywords:**

Neighboring property rights - Private real estate ownership - Right of exploitation - Right of disposition - Right of use.

## **Introduction:**

Given its importance, private real estate ownership has received considerable attention from both the constitutional and ordinary legislator, and has been the

subject of extensive study by legal scholars and jurists. Consequently, private real estate ownership has enjoyed constitutional and legal protection, making it a constitutionally protected and legally regulated right.

However, despite the importance of private real estate ownership and the legal protection afforded to it, the legislator, in an effort to strike a balance between protecting this ownership and other conflicting interests, has restricted private real estate ownership in its three aspects (use, disposal, and exploitation).

While private real estate ownership generally allows the owner to exercise the powers of use, disposal, and exploitation, the exception to this rule is the restriction of the owner's powers over their private real estate.

In this context, proximity to neighboring properties is considered one of the restrictions on private real estate ownership, as it is a situation that limits the owner's power to exploit their property, and at the same time, it is a reason for restricting private real estate ownership, as it is the situation upon which the owner's powers over their private real estate are restricted.

Based on this, the problem we can raise in this area can be formulated in the following question: **To what extent has the Algerian legislator addressed the impact of proximity to neighboring properties on restricting private real estate ownership?**

This is the problem that we can answer by dividing our study into the following sections:

- Explanation of related terminology.
- The role of proximity to neighboring properties in restricting the power to exploit private real estate ownership.
- The role of proximity to neighboring properties in restricting the power to dispose of private real estate ownership.
- The role of proximity to neighboring properties in evaluating the power to exploit private real estate ownership. Therefore, our study of the role of neighborhood proximity in restricting private real estate ownership in Algerian legislation will be conducted according to the methodology detailed below.

## **First: Explanation of Relevant Terminology:**

Studying the role of neighborhood proximity in restricting private real estate ownership requires us to address a number of terms related to this role, in order to understand it from all its aspects. On this basis, we will address the following concepts in this section:

### **01 – Private Real Estate Ownership:**

The term "ownership" has been used by legal scholars to denote a specific meaning related to the relationship between a person and property. Ownership has been defined as the technical management necessary to formulate a system of property from a legal perspective, and the specific powers it grants to the owner to benefit from their property. In other words, it is the legal means by which the law regulates how the system of property is assigned to a specific person, and grants them the necessary powers to achieve the various functions of their ownership <sup>1</sup>

The right of ownership has also been defined as the original and primary real right among other real rights, because of the powers it grants to the owner, enabling them to use, exploit, and dispose of their right as they deem appropriate, to achieve their desired goals and satisfy their needs <sup>2</sup>

Ownership in Algerian law is defined as the right to enjoy and dispose of things, provided that it is not used in a way prohibited by laws and regulations <sup>3</sup>

Ownership is the owner's power to dispose of their property absolutely, in terms of substance, benefit, and exploitation <sup>4</sup>

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<sup>1</sup> Nazih Muhammad al-Sadiq al-Mahdi, *Ownership in the Socialist System*, Dar al-Nahda al-Arabiya, Cairo, Egypt, 1971, pp. 1 and 69.

<sup>2</sup> Khalil Ahmed Hassan Qadada, *The Extent of the Legitimacy of Administrative Restrictions on the Right of Ownership: A Comparative Study between French, Egyptian, and Jordanian Civil Law, the Ottoman Code of Civil Procedure, and the Preliminary Draft of the Palestinian Civil Code*, Islamic University Journal, (Humanities Studies Series), Gaza, Palestine, Volume 12, Issue 2, June 2004, p. 151.

<sup>3</sup> See also: Article 647 of the Algerian Civil Code issued pursuant to Order No.: 75/58 dated 26/09/1975, which includes the amended and supplemented Civil Code.

<sup>4</sup> Ali Ahmed Saleh Al-Mahdawi, *Highlights on Law No. 27 of 2007 concerning Joint Real Estate Ownership in the Emirate of Dubai*, University of Sharjah Journal for Sharia and Legal Sciences, Sharjah, United Arab Emirates, Volume 07, Issue 02, June 2010, p. 197.

These definitions of ownership can be applied to private real estate ownership as a constitutionally protected right <sup>5</sup>

However, private property ownership – like other types of property – in Algeria was not stable after independence.

Under the socialist system, the state did not abolish it, but rather allowed it within certain limits and under strict restrictions, in line with the prevailing policies at the time. It was considered a social function rather than a right limited to meeting private needs.

Before the promulgation of the 1989 constitution, signs of a shift in the economic and political system began to emerge. The door was opened for private individuals to own state-owned real estate, and investors were encouraged to enter the built real estate market. With the adoption of the 1989 constitution and the complete abandonment of previous policies, private property ownership became constitutionally guaranteed, considered a fundamental pillar of the new sovereignty.<sup>6</sup>

On this basis, we can say that private property ownership is a constitutionally protected and legally regulated right, which grants the owner the authority to use, exploit, and dispose of their property, provided they do not violate applicable laws and regulations.

## **02 - Justifications for Restricting Private Real Estate Ownership:**

The restrictions imposed on the right to private real estate ownership expand or contract depending on the extent to which social principles are adopted and the resulting limitations on absolute rights, emphasizing the collective interest to a degree that may lead to a change in the very nature of the right of ownership itself, from an absolute individual right that only satisfies the personal interest of the

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<sup>5</sup> See also: Article 52 of the Constitution of the People's Democratic Republic of Algeria of 1996.

<sup>6</sup> Khawadmiya Samiha Hanan, Restrictions on Private Real Estate Ownership in Algeria, Al-Mufakkir Journal, Mohamed Khider University, Faculty of Law and Political Science, Biskra, Algeria, Issue 04, p. 232.

owner, to a right of a social nature that takes into account the interests of the community alongside the interest of the owner <sup>7</sup>

Therefore, in the field of private real estate ownership, the owner must abide by the laws related to private interest within the framework of the provisions concerning the owner's powers over their private real estate <sup>8</sup>

The justification for restricting private real estate ownership stems from the fact that the right of ownership is an extension of the human person and a guarantee of their freedom. Reality has proven that recognizing and protecting private property is the cornerstone of societal progress and a guarantee of its economic prosperity, and that infringing upon this right—the right of ownership—is a violation of a specific human right and politically indicates a system that is contrary to democracy and its recognized principles <sup>9</sup>

The justifications for restricting private real estate ownership also stem from the fact that the right of ownership in the modern era is no longer an absolute right, but has become subject to many restrictions that are increasing day by day. These restrictions may be due to protecting the public interest or protecting private interest, in order to achieve a number of objectives, the most important of which are:

- Preventing excesses in exercising the authority of private real estate ownership.
- Preventing abuse in exercising the authority of private real estate ownership.
- Preventing harm to the right of private real estate ownership itself <sup>10</sup>
- Working to protect a right that is more deserving of protection than protecting real estate ownership in its absolute form.

### **A. Achieving the Public Interest:**

This occurs when the public interest necessitates the cancellation or restriction of the owner's powers within a specific scope, if a conflict arises between the owner's

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<sup>7</sup> Nazih Muhammad Al-Sadiq Al-Mahdi, previous reference, p. 32.

<sup>8</sup> Abdul Aziz Hussein Ammar, *The Useful Summary on the Right of Ownership in General and the Restrictions Imposed on It*, no publisher, no country, 2010, p. 04.

<sup>9</sup> Khawadmiya Samiha Hanan, previous reference, p. 232.

<sup>10</sup> Abdul Aziz Hussein Ammar, previous reference, p. 05 and subsequent pages with modifications.

interest and the public interest, while taking into account public security, public health, and the preservation of national wealth <sup>11</sup>

### **B. Achieving the Private Interest:**

The private interest in this case refers to the interest more deserving of protection than the owner's interest. Restrictions in this regard vary, some requiring the owner to perform negative actions, preventing them from exercising their powers over their private real estate to avoid harming the interests of others, and others requiring them to perform positive actions on their property in a specific manner for the benefit of others <sup>12</sup>

The Algerian legislator, in restricting the right of private real estate ownership, has taken into account the achievement of both these interests, namely the public interest and the private interest, when it stipulated in Article 690 of the Civil Code that: "The owner must, in exercising his right, observe the provisions of the laws in force relating to the public interest or the private interest..." This is because the legal system of ownership represents a state of balance between conflicting interests, which the legislator defines in light of the reality being regulated <sup>13</sup>

## **03 - Types of Private Real Estate Ownership:**

Private real estate ownership may be independent (individual) ownership or joint (collective) ownership.

### **A. Independent (Individual) Real Estate Ownership:**

Independent real estate ownership is the situation in which the owner of the property can dispose of their property as they wish, so that their freedom is limited only by the obligation not to harm others in a way that would prevent them from the original benefit intended to be achieved from their property.

The basis of independent or individual real estate ownership is the achievement of full enjoyment of the property, which is not possible with common or shared ownership <sup>14</sup>

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<sup>11</sup> Nazih Muhammad Al-Sadiq Al-Mahdi, previous reference, p. 34.

<sup>12</sup> Ibid., p. 34.

<sup>13</sup> Ali Ahmed Saleh Al-Mahdawi, previous reference, p. 198.

<sup>14</sup> Nazih Muhammad Al-Sadiq Al-Mahdi, previous reference, p. 10.

## **B- Joint (Collective) Real Estate Ownership:**

Joint real estate ownership may be either undivided or divided:

### **• Undivided Joint Real Estate Ownership:**

Undivided ownership is that ownership in which two or more people own something, and the share of each is not separated. They are co-owners, and their shares are considered equal unless there is evidence to the contrary <sup>15</sup>

Therefore, undivided joint real estate ownership is that ownership belonging to two or more owners who own a specific property without specifying the share of each.

A co-owner may exercise their right of ownership, but since they do not own this property individually, but rather share it with other owners, and because the specific share of each co-owner is not defined, the owner's exercise of their powers of use, exploitation, and disposal is restricted by the rights of the other co-owners due to the lack of division <sup>16</sup>

### **• Divided Joint Real Estate Ownership:**

Divided joint ownership is the legal status of a property or group of properties whose ownership is divided into shares among several people, each share comprising a private part and a share of the common parts <sup>17</sup>

In this type of ownership, the owner may enjoy the private parts belonging to their share, and may also freely use and benefit from both the private and common parts, provided that they do not infringe upon the rights of the other co-owners or cause damage to the purpose for which the property was intended <sup>18</sup>

The jointly owned property is the entire building or part of it, or the land, or both, which is divided into units designated for independent ownership, with a portion of that property (building and land) designated as common parts <sup>19</sup>

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<sup>15</sup> See also: Article 713 of the amended and supplemented Algerian Civil Code, previous reference.

<sup>16</sup> Muhammad Hussein Qasim, A Summary of Original Real Rights: "The Right of Ownership," Al-Halabi Legal Publications, (undated), Vol. 1, 1st edition, 2005, p. 117.

<sup>17</sup> – See Article 743 of the amended and supplemented Algerian Civil Code, previously cited.

<sup>18</sup> See also: Article 749, *ibid*.

<sup>19</sup> Ali Ahmed Saleh Al-Mahdawi, previously cited, p. 198.

It should be noted in this regard that the restriction on the owner's right to use and exploit the jointly owned property can be by force of law or by agreement of the co-owners. It should also be noted that this type of ownership can take the form<sup>20</sup> of acquiring a single property with each partner owning a specific share, or it can occur in the case of ownership of floors, buildings, and apartments (compulsory co-ownership).

#### **04 – Adjacency in the Neighborhood:**

Adjacency<sup>21</sup> refers to things that are adjacent to each other, meaning that one thing is attached to another.<sup>22</sup>

Adjacency is evident in apartments and floors, whether they are attached to another dwelling or plot of land, or are located independently within a shared property.

#### **Secondly: The Role of Adjacency in Restricting the Authority to Use Private Real Estate:**

The right to use private real estate is considered the most prominent form of the owner's authority over their property, whether this ownership is independent or shared. Before addressing the role of adjacency in restricting private real estate ownership, it is necessary to define what is meant by the authority to use private real estate.

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<sup>20</sup> Muhammad Hatem Al-Bayat, The Legal Description of the Roof in the Environment of Multi-Story Buildings: "An Analytical and Foundational Study in Civil Law Compared to Administrative Decisions Issued by the Governorate of Damascus and the Ministry of Housing," Damascus University Journal for Economic and Legal Sciences, Damascus, Syria, Volume 25, Issue 2, 2009, p. 536.

<sup>21</sup> Juxtaposition differs from accession, which means the physical merging or union of two distinct things, each owned by a different owner, without an agreement between them regarding this merger, making it difficult or impossible to separate them.

For more details, see:

Jamal Khalil Al-Nashar, Accession as a Cause of Acquiring Ownership in Islamic Jurisprudence and Civil Law, New University Publishing House, (undated), p. 56.

Ramadan Abu Al-Saud, A Concise Guide to Original Real Rights: "Their Provisions and Sources," University Publications House, Alexandria, Egypt, (undated), p. 202.

<sup>22</sup> Ali Ben Hadia - Belhassen Belish - Jilani Ben Al-Haj Yahya, The New Dictionary for Students, Tunisian Distribution Company, Tunis, p. 215.



## **01 – Defining the Authority to Use Private Real Estate:**

The authority of use is the power to use the thing by the owner for the original purpose for which this thing was intended, and according to its nature, in a way that serves the owner's benefit, while the substance of the thing remains without being consumed <sup>23</sup>

The authority of use in general, and the use of private real estate in particular, is equally valid whether it is through the owner's personal use or by the owner inviting others to use it gratuitously without compensation. The authority to use private real estate grants the owner the right to use their property to the point of damaging, destroying, or eliminating it <sup>24</sup>

As for the reasons for restricting the owner's powers in using their private real estate, they stem from the fact that the owner's interest in the use conflicts with a more important interest that deserves protection when it is impossible to combine the two interests <sup>25</sup>

## **02 – The Role of Adjacency in Restricting the Use of Independent Private Real Estate:**

The role of adjacency in restricting independent private real estate ownership can be addressed by examining the most important restrictions imposed on this ownership as a result of adjacency, through the following points:

### **A – The Restriction on Abuse of Private Real Estate Use:**

The theory of abuse of rights is generally considered to be relatively recent in Arab countries, including Algeria, having only emerged in the 20th century. Legal scholarship and judicial precedent preceded legislation in addressing the abuse of rights.

The use by an owner of their private, independent real estate in a manner that violates the obligations imposed on such use is considered a form of wrongdoing. In this case, the use is considered a transgression of the objective limits of the right of ownership, requiring the cessation of the unlawful use and establishing

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<sup>23</sup> Nazih Muhammad al-Sadiq al-Mahdi, previously cited source, p. 24.

<sup>24</sup> Ibid., p. 29.

<sup>25</sup> Ali Ahmed Saleh al-Mahdawi, previously cited source, p. 197.

the owner's liability in all its forms. It is not sufficient for the owner to adhere to the objective limits of the right of ownership when using their private real estate, as their use may still be considered unlawful despite adhering to these limits if they have abused that right.

Abuse of rights means that the owner may not exceed the limits of their right itself, nor commit a specific wrong, but nevertheless be held liable for their use of that right due to the harm caused to others as a result of that use if the owner has abused it.<sup>26</sup>

In this regard, Article 674 of the Algerian Civil Code stipulates that: "Ownership is the right to enjoy and dispose of things, provided that it is not used in a manner prohibited by laws and regulations," and then Article 691 of the same law stipulates that: "The owner must not abuse their right to the extent that it harms the neighbor's property."

## **B - The restriction of unusual neighborhood nuisances:**

The owner must not excessively use their right, otherwise they will be held responsible for any excessive harm caused to the neighbor as a result of their use of that right. This is an old concept advocated by Islamic Sharia, and it appeared in the writings of Pothier and was adopted by the judiciary in France and Egypt despite the absence of a text stipulating it. The concept of neighborhood nuisances, although an old idea, did not gain particular importance until the modern era<sup>27</sup>

In this regard, Article 691 of the Algerian Civil Code stipulates that: "...A neighbor may not claim compensation from his neighbor for unusual neighborhood nuisances; however, he may request the removal of these nuisances if they exceed the usual limit. The judge must take into account custom, the nature of the properties, their location in relation to each other, and the purpose for which each property is intended..."

Therefore, the criterion for assessing unusual damage is custom, the nature of the properties and their location, and the purpose for which they are intended. This is a flexible, not rigid, criterion. The existence of an administrative permit, for example, does not preclude considering the damage as unusual. Furthermore, the

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<sup>26</sup> Nazih Muhammad al-Sadiq al-Mahdi, previously cited source, p. 227.

<sup>27</sup> Abdel Moneim Faraj al-Sadda, Original Real Rights "A Study in Lebanese and Egyptian Law," Dar al-Nahda al-Arabiya, Cairo, Egypt, (undated), p. 54.

assessment of whether the damage is usual or unusual is a factual matter within the judge's discretion, noting that the judge may refuse to grant a request to remove unusual neighborhood nuisances if their removal would be burdensome for the owner, and in this case, he may award compensation instead.<sup>28</sup>

### **C - The Obligation to Establish Boundaries:**

In the case of two adjacent undeveloped plots of land belonging to different owners, the contiguity of their boundaries may lead to difficulty in identifying the dividing line between them, and the disputes that this issue may raise between the neighboring owners.<sup>29</sup>

Therefore, the legislator has allowed the owner of the adjacent property to compel his neighbor to establish boundaries for their contiguous properties, provided that the costs of establishing the boundaries are shared between them.<sup>30</sup>

Establishing boundaries means defining the dividing line between two undeveloped plots of land and marking it with physical markers such as bricks, iron, or other materials.<sup>31</sup>

This is a measure imposed by the contiguity of the properties. Boundaries are established either amicably by agreement between the adjoining neighbors, or by resorting to the courts through a lawsuit to determine the boundaries<sup>32</sup>. This is a real property action that is not subject to a statute of limitations, provided that the ownership itself is not in dispute between the neighbors. The court is responsible for establishing the boundaries by applying the ownership documents of both parties to the physical markers separating their properties.<sup>33</sup>

If an owner exceeds the established boundaries of their property, they are held liable, whether the encroachment was due to a personal error by the owner or an error committed in their capacity as a custodian (presumed fault).<sup>34</sup>

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<sup>28</sup> Abdel Aziz Hussein Ammar, previously cited source, p. 05.

<sup>29</sup> Muhammad Shukri Surour, A Summary of the Regulation of Property Rights in Egyptian Civil Law, Dar al-Nahda al-Arabiya, Cairo, Egypt, (undated), p. 269.

<sup>30</sup> See also: Article 703 of the amended and supplemented Algerian Civil Code.

<sup>31</sup> Saeed Jabr, The Right of Ownership, (no publisher) Cairo, Egypt, 2001, pp. 396-397.

<sup>32</sup> Abdel Aziz Hussein Ammar, previously cited source, p. 09.

<sup>33</sup> Saeed Jabr, previously cited source, p. 297.

<sup>34</sup> Abdel Moneim Faraj al-Sadda, previously cited source, pp. 54-55.

## **D- Restriction Regarding the Dividing Wall:**

If two properties are adjacent, the dividing wall between them may be jointly owned by both owners (neighbors) or exclusively owned by one of them<sup>35</sup>. In this regard, a neighbor cannot compel their neighbor to fence their property. However, if the owner fences their property or even builds a wall on one of their boundaries, the wall is considered their exclusive property, and their neighbor cannot force them to relinquish ownership of any part of this wall or the land on which the wall is built.<sup>36</sup>

## **03 – The Role of Proximity in Restricting Joint Private Real Estate Ownership:**

The use of joint private real estate ownership entails a set of restrictions related to proximity to neighboring properties.

In this regard, we note that joint private real estate ownership is also restricted, just like independent ownership, due to proximity to neighboring properties, by the restrictions on the abuse of the right of private real estate ownership and the restriction on unusual neighborhood nuisances. The legislator did not restrict this joint ownership in this area with provisions that differ from the provisions related to independent ownership, with the exception of the following case:

### **• The Party Wall Restriction:**

The party wall in joint real estate ownership is considered a common wall, and a common wall is a wall jointly owned by the two neighbors<sup>37</sup>

A wall that, at the time of its construction, separates two adjacent buildings up to their dividing line is considered a common wall unless there is evidence to the contrary<sup>38</sup>

The owner of the common wall has the right to use it according to the purpose for which it was intended, and to place beams on it to support the roof without overloading the wall. If the common wall is no longer suitable for the purpose for

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<sup>35</sup> Muhammad Shukri Surour, previously cited source, p. 272.

<sup>36</sup> Saeed Jabr, previously cited source, p. 402.

<sup>37</sup> Saeed Jabr, previously cited source, p. 398.

<sup>38</sup> See also Article 707 of the amended and supplemented Algerian Civil Code.

which it was intended, the cost of its repair and reconstruction shall be borne by the partners according to each one's share <sup>39</sup>

In this regard, it must be noted that neither of the partners in the common wall may request the division of the wall or dispose of their undivided share, nor may their creditors seize this undivided share.

If the repair and reconstruction of the common wall is carried out by one of the partners without the other, and this partner was solely responsible for the damage to the wall, then this owner alone bears the costs of repair and reconstruction <sup>40</sup>

### **Third: The Role of Neighboring Properties in Restricting the Right to Dispose of Private Real Estate:**

Although the general principle dictates that the owner of real estate has the right to dispose of their property in any way they deem appropriate, the law that granted them this right has restricted it with a number of limitations.

Therefore, within this section, we will address the definition of the right to dispose of private real estate and the role of neighboring properties in restricting this right, as follows:

#### **01 – Defining the Right to Dispose of Private Real Estate:**

The right to dispose, in general, including the right to dispose of private real estate, encompasses two types of dispositive acts:

**Legal disposition:** This is a legal act that results in a legal effect on the real estate. It includes the owner's transfer of all or some of their rights over this property to another party, permanently or temporarily, with or without compensation, and whether this disposition involves the permanent transfer of ownership, such as a sale, or merely the creation of a real right over it, such as a mortgage.

**Physical disposition:** This includes physical acts that result in a tangible effect on the owned property, such as changing its form, destroying it, or dividing it, etc.<sup>41</sup>

<sup>39</sup> See also: Article 704 of the amended and supplemented Algerian Civil Code.

<sup>40</sup> Abdul Aziz Hussein Ammar, previously cited source, 11.

<sup>41</sup> Nazih Muhammad Al-Sadiq Al-Mahdi, previously cited source, p. 214.

As for the restrictions on the right to dispose of private real estate, they are numerous, including the expropriation of real estate for public benefit, compelling the debtor to sell their property through a judicial sale, and compelling a co-owner to sell their undivided share, etc., but according to legal conditions and regulations.<sup>42</sup>

In the following two points, we will present the most important restrictions related to the role of neighborhood proximity in restricting private real estate ownership:

### **1 – The role of neighborhood proximity in restricting the power of disposition over independent private real estate ownership:**

Neighborhood proximity entails a set of restrictions on the power of disposition over private real estate ownership, the most important of which can be addressed as follows:

#### **A – The right of pre-emption:**

Pre-emption is a right that allows the substitution of the buyer in the sale of real estate under the circumstances and conditions stipulated by law<sup>43</sup>, and those entitled to the right of pre-emption are:

- The owner of the bare ownership if all or part of the usufruct right corresponding to the bare ownership is sold.
- The co-owner in common ownership if a part of the property is sold to a third party.
- The usufructuary - the owner of the usufruct right if all or part of the bare ownership is sold<sup>44</sup>

Therefore, it can be said that pre-emption is characterized by the following essential elements:

Pre-emption, as a restriction on the freedom of disposition of independent private real estate ownership, means that right by which the pre-emptor (the owner of the independent private real estate) replaces the buyer in the sale of the property, according to the conditions and deadlines specified by law.

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<sup>42</sup> Ali Ahmed Saleh Al-Mahdawi, previously cited source, p. 198.

<sup>43</sup> See Article 794 of the amended and supplemented Algerian Civil Code.

<sup>44</sup> See also: Article 795, same source.

The person wishing to exercise the right of pre-emption must declare their intention to do so to both the seller and the buyer within 30 days from the date of the notice sent to them <sup>45</sup>

The declaration of the intention to exercise the right of pre-emption must be made by an official document declared through the court registry, and the sale price and expenses must be deposited with the notary within a maximum of 30 days from the date of the declaration of the intention to exercise the right of pre-emption. It is stipulated that the deposit must be made before filing the pre-emption lawsuit.<sup>46</sup>

### **B. Restriction on the Right of Disposal:**

The general principle – as previously mentioned – is that the owner has the right to dispose of his property as he wishes. However, the freedom of disposal is not granted solely for the benefit of the owner, but also serves to achieve the public interest. It may happen in practice that a legal act transferring ownership includes a condition that prohibits the new owner from disposing of the property and restricts his authority to dispose of it<sup>47</sup>.

## **2–The Role of Adjacency in Restricting Joint Private Real Estate Ownership:**

The restriction on joint private real estate ownership related to adjacency appears in the form of a prohibition on disposal, and its provisions are generally applicable. Therefore, this prohibition, with regard to joint real estate ownership, is subject to the same provisions as independent real estate ownership.

Other forms of restriction on joint real estate ownership include:

– The Right of Pre-emption of the Neighbor:

The partner entitled to the right of pre-emption is:

- The partner who has an undivided share.
- The neighbor who is a partner in one of the property rights.

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<sup>45</sup> See Article 799 of the amended and supplemented Algerian Civil Code.

<sup>46</sup> See Article 801, same source.

<sup>47</sup> Muhammad Shukri Surour, previously cited source, p. 283.



- The neighbor who has no partnership with his neighbor in the ownership or in the property rights, and there is no other type of partnership between them.

On this basis, some jurists have concluded that pre-emption means the right of the partner to acquire his partner's share at its price, or that it is the right of the partner to seize his partner's share from the person to whom it was transferred, provided that the conditions for this are met <sup>48</sup>

The neighboring partner who is entitled to the right of pre-emption is This applies to someone who is a co-owner of the property being sold. However, if the co-owner's property is separate from the property being sold, then he is not considered a co-owner of the property being sold and therefore does not have the right of pre-emption as a co-owner.<sup>49</sup>

#### **Fourth: The Role of Neighboring Properties in Restricting the Right to Exploit Private Real Estate:**

Similar to its role in restricting the rights of use and disposal, the proximity of neighboring properties plays a role in restricting the right to exploit private real estate, as we will explain in the following two points, after first defining what is meant by the right to exploit private real estate.

##### **01 – Defining the Meaning of the Right to Exploit Private Real Estate:**

The right of exploitation means the owner's investment of the owned property, not for personal use, but in order to generate a specific income, which is called the fruits (or yield) of the property<sup>50</sup>. It is the right that entitles the owner to exploit the real estate property, so that it yields a specific return or income. This exploitation may be direct, carried out by the owner himself, or indirect, through a legal transaction by which the owner grants the property to another party for their use in exchange for rent (or a fee) received by the owner.<sup>51</sup>

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<sup>48</sup> Council of Senior Scholars, Ruling on Pre-emption in Private Facilities, Journal of Islamic Research, Permanent Committee for Scientific and Regional Research, Volume 01, Issue 03, p. 230.

<sup>49</sup> Muhammad Hussein Qasim, previously cited source, p. 264.

<sup>50</sup> Nazih Muhammad Al-Sadiq Al-Mahdi, previously cited source, p. 24.

<sup>51</sup> Same source, p. 29.



The reason for restricting the owner's right over their property stems from a conflict of interests, such as the restrictions imposed on the exploitation of premises, activities harmful to public health, and those disturbing the peace, etc.

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## **02 – The Role of Adjacency in Restricting Independent Private Real Estate Ownership:**

Adjacency plays an important role in restricting the powers of exploitation in independent private real estate ownership, as we will detail below:

### **A - Irrigation or Drainage Restrictions:**

These restrictions are called water-related restrictions and include:

- **The right to water:** This refers to the right of a person to irrigate their land from a private irrigation channel owned by another person, a right from which neighboring landowners benefit. In this case<sup>53</sup>, adjacency means that the neighbor's property is either adjacent to the irrigation channel itself or adjacent to the land through which the channel passes, with the necessity of paying a fee for the water in this case.<sup>54</sup>
- **The right of drainage:** Drainage refers to the right of the owner of agricultural land far from a public drain to drain excess water from their land. This right is granted to the owner who does not have sufficient drainage or has no drainage at all.<sup>55</sup>

### **B - Restriction of the Right of Way:**

The law allows the owner of landlocked land that has no access to a public road, or has access but it is insufficient, to request a right of way over neighboring properties in exchange for compensation commensurate with the damages that may result from this.<sup>56</sup>

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<sup>52</sup> Ali Ahmed Saleh Al-Mahdawi, previously cited source, p. 197.

<sup>53</sup> Saeed Jabr, previously cited source, p. 384.

<sup>54</sup> Same source, pp. 284-286.

<sup>55</sup> Abdul Mun'im Faraj Al-Sadda, previously cited source, pp. 77-78.

<sup>56</sup> See Article 893 of the amended and supplemented Algerian Civil Code.

However, the owner of landlocked land whose lack of access is due to their own actions cannot benefit from the right of way and can only pass through by agreement or permission.<sup>57</sup>

### **03 – The Role of Adjacency in Restricting the Power of Disposition in Joint Private Real Estate Ownership:**

Joint private real estate ownership, by its very nature, can lead to the following results:

- Regarding undivided joint ownership: In this type of ownership, all owners own the property in common. Therefore, they share all the rights and powers arising from this property, and thus it is not possible... - The concept of easement of passage, access, or view applies because ownership in this case is undivided.
- Regarding divided co-ownership: This type of ownership grants the owner the right to exercise their powers over the private parts belonging to their undivided share, and they have the right to enjoy both the private and common areas, provided that they do not infringe upon the rights of the other co-owners or cause damage to the property. In this case, after the division of each co-owner's share, the right to water and the right of passage remain common rights or shared ownership among all co-owners.
- Regarding co-ownership of built properties: This refers to the legal status of a built property or a group of built properties, where ownership is divided into shares among several individuals, each share comprising a private part and a share in the common areas.

In this case, the common areas are considered to be the built and unbuilt parts of the property owned jointly by all co-owners in proportion to each one's share, for the use or benefit of all or the majority of the co-owners. It should be noted that the common areas in this case are not subject to division and include the land, roofs, main walls, main corridors, etc. The most prominent example of this type of ownership is the ownership of apartments and floors, where the co-owners share the roofs, staircases, etc..

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<sup>57</sup> See Article 695 of the amended and supplemented Algerian Civil Code.

## Conclusion:

After studying the role of neighborhood proximity in restricting private real estate ownership in Algerian real estate law, we were able to record a number of findings, the most important of which are as follows:

- Private real estate ownership is considered one of the most important rights enjoyed by individuals today. Therefore, this ownership has received special protection granted by the fundamental legislator, who delegated to the ordinary legislator the task of regulating it and imposing restrictions on it so that it does not deviate from the framework for which it was intended.
- Despite the importance of protecting private real estate ownership, this protection in Algerian legislation did not appear in the form we know it today until the issuance of the 1989 Constitution.
- However, the protection enjoyed by private real estate ownership has not prevented the imposition of a set of restrictions on it, in order to preserve a range of conflicting interests and protect the interests of those most deserving of protection, by balancing the protection of this ownership with the achievement of public interests and parallel private interests.
- The forms of restricting private real estate ownership vary between restrictions on the right of use, those on the right of disposal, and those on the right of exploitation.
- Neighborhood proximity is considered one of the forms of restrictions imposed on private real estate ownership, and at the same time one of the reasons for restricting this ownership. The restrictions imposed by neighborhood proximity vary, including those affecting the right of use, the right of disposal, and the right of exploitation; that is, it restricts all the powers of private real estate ownership.
- The restrictions imposed by neighborhood proximity on private real estate ownership vary depending on whether the ownership is independent or joint. These restrictions differ according to the type of ownership, whether independent or joint.