



PROVISIONS OF INSURANCE MORTGAGE IN CIVIL LAW

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Article history:		Abstract:
Received:	10 th March 2024	Guarantees in general and mortgages in particular have become of great importance at the present time because they are an essential element in ensuring the financing of investments in all economic and social fields. Since the insurance mortgage is not divisible, it is a right in return because the mortgagor doesn't donate to the mortgagee except in return, and the mortgager has rights and obligations based on the provisions of the Civil Code. There are rights for the mortgagee before the maturity of the debt and after the maturity of the debt. There are rights for the mortgagee before the maturity of the debt and after the maturity of the debt. The Iraqi legislator must clarify the provisions for registering the insurance mortgage contract accurately in the civil law due to the importance of this contract. Likewise, the rights of the mortgagor and the mortgagee and their duties must be stated in more detail than what has been stipulated in civil law.
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INTRODUCTION

Real rights are divided into original real rights and accessory ones, or what are called guarantees or insurances. In view of the risks included in the general guarantee, the legislator decided on some legal systems that provide a guarantee for the creditor to take protection. The most prominent of these guarantees is the insurance or official mortgage, as it is known that any a loan granted by the bank to individuals or companies that requires the agents to provide guarantees and insurances guaranteeing payment of the loan installments in order to complete the basic financing banking operations, on the basis of which banks grant loans of all types to the agents.

The purpose of any type of insurance is to ensure the fulfillment of obligations, and if we return to the general rule that says (that all of the debtor's funds are a guarantee for the fulfillment of his debt), then what is meant by the debtor's funds mentioned here are the funds that are in his possession at the time of implementation.

consideration that the guarantee may be real estate or non-real estate, as these guarantees vary, as they may be mortgaged shares in a company or a personal guarantor, and the insurance mortgage is one of the real insurances included in accessory real rights. It is the contract under which the creditor gains on a property designated for the fulfillment debt. His debt is a real right and may only be returned to real estate or a real right to real estate under certain conditions:

- a - The mortgaged property must be one that is valid for dealing with.
- b- The mortgaged property is valid to sale.
- c- Likewise, the mortgaged property is specific.

The mortgagee may be a legal entity (banks, companies), and the insurance mortgage may include, in particular, trees and buildings that are present and existing at the time of the mortgage on the mortgaged property or after which all improvements and constructions made on the mortgaged property are created. The insurance mortgage is considered a very important and vital topic because it is in direct contact with the life of the citizen and due to many changes that have occurred in Iraq in light of the current circumstances that necessitated adjustments and keeping up with what is happening. Therefore, we dealt this topic of ours through three sections, which are as follows:

The first Section: the insurance mortgage, its concept and origin

The second section: conditions for the insurance mortgage

The third section: The effects of the insurance mortgage

The first Section

The insurance mortgage, its concept and origin

In this section, we discuss the definition of the insurance mortgage in the first section, and we discuss its origins and characteristics in the second section.

The first requirement
Definition of insurance mortgage

We must clarify the definition of a security mortgage linguistically and terminologically.

The first section: - The insurance mortgage in language.

It means imprisonment of a thing by earning it and doing it, as God Almighty says (Every person is a pledge for what he has earned)⁽¹⁾and its meaning is stability and permanence, as imprisonment is called, as they say, a contingent blessing, meaning fixed and permanent.

The insurance mortgage has another definition in Islamic law. It is defined as corporal property that has a financial value according to Sharia and documented for a debt. If a person borrows a debt from another person, he makes the consideration of that debt a property locked up under his control until his debt is paid off.

The second section: The insurance mortgage terminologically

(It is a contract by which the creditor acquires a real right over a property allocated to pay his debt, under which he has precedence over ordinary creditors and the next creditors to him in rank in recovering his right from the price of that property in whatever hands it is in.)⁽²⁾.

It is concluded from this that the insurance mortgage or official mortgage is called:

1-The contract that provides the creditor with real right over a property designated to satisfy his debt.

2- The real right granted to the creditor as a guarantee for the fulfillment of his debt.

The assurance mortgage has been defined as an accessory real right arranged under an official contract to guarantee the fulfillment of an obligation. It thus grants the right of ownership of the property by its owner wherever he is, and he has the right to recover his right from its price in advance and priority.

That is, it is a contract between the debtor and the creditor (the mortgagor and the mortgagee), and the mortgagor is the original debtor, and he may be a third party (the real guarantor). This contract stipulates that the creditor has an accessory real right, which is the mortgage.

The insurance mortgage here is intended to be the sale of the mortgaged property upon maturity and the recovery of the right from it. Everything that may be sold may be mortgaged, and its implication is that it is not permissible to mortgage what is not permissible to sell. The insurance mortgage here is one of the real insurances that make the creditor take precedence over the ordinary creditor by receiving his right from those insurances. In addition to he has the right to the right to advance; there is another right, which is the right to trace. That is, if the owner of the real insurance sells this insurance, the creditor has the right to trace it in his possession, buy it, and enforce his right against it⁽³⁾.

The Second Requirement

Origins and characteristics of the insurance mortgage

The first Section: The origin of the insurance mortgage

Since the Roman era, the insurance mortgage has been known, as Roman law defined two types of mortgage:

They are the contractual mortgage and the legal mortgage, and French law came to add a third type to what the Romans brought so that there are three types of mortgage: the contractual mortgage, the legal mortgage, and the judicial mortgage, which is based on all of the debtor's real estate and is determined by the force of law.

As for Iraq, the insurance mortgage system existed during the time of the Ottomans, who borrowed the system from the French, and the Iraqi Civil Law borrowed most of its articles from the Egyptian Civil Law. As for the legal article that defined the insurance mortgage, it was identical to the Egyptian Civil Law except the name only.

The insurance mortgage has several characteristics, including the following:

- a- A real estate right.
- b- An accessory right.
- c- An indivisible right

First: - The insurance mortgage is a real estate right.

It is described as a real estate right because it only arises and is concluded over real estate, even if the original debt is linked to a movable property.

It grants its owner the advantages of the real right, the right of advance, and the accessory right. The latter enables the mortgagee to enforce the mortgaged property in the hands of any person to whom he has transferred ownership. If he gives a real estate right to the mortgaged creditor with all the advantages and real guarantees resulting from this right, and if this mortgage is a real right subordinate to a debt, then this dependency appears in certain matters:

- Including that the debt is transferred, along with the insurance mortgage, to the legatee from the mortgage creditor.
- Including that the debt is transferred along with the insurance mortgage, is also transferred to the assignee.

⁽¹⁾ Surat Al-Muddaththir (38)

See: Article 1285 of the amended Iraqi Civil Law No. 40 of 1951⁽²⁾

⁽³⁾ Muhammad Taha Al-Bashir and Dr. Ghani Hassoun Taha, Accessory Real Rights, Al-Atak Book Printing Company, Cairo, 2009. P.352.

Despite the above, the insurance mortgage remains a real estate right and this creditor must have the necessary capacity to transfer the property in the case that the mortgage creditor wants to abandon it or transfer it to another person. ⁽⁴⁾

Second: - The insurance mortgage is an accessory right.

It is described in this description as being ancillary to the debt guaranteed by this mortgage. This right does not exist except with the existence of the debt guaranteed by it, and it continues with the debt obligatorily and non-existent. Thus, it is subordinate to the obligation because it is linked to the original debt and is not based on independence. It exists with the existence of the debt and disappears with its disappearance through expiration, or invalidation.

Therefore, every insurance mortgage assumes the existence of a valid obligation guaranteed by this mortgage. As for the cases in which the insurance mortgage is transferred, they are as follows - :

- It is transferred with obligation to the recipient of the movable property.
- It is transferred with the obligation to the public or private successor of the mortgage creditor.

As for the method of ending the obligation, it ends with fulfillment or any other method of termination. What must be mentioned is that the insurance mortgage can guarantee a deferred obligation or a conditional obligation, so it becomes deferred or conditional like a guaranteed obligation⁽⁵⁾.

Third: The insurance mortgage is an indivisible right in two terms.

A- In terms of the mortgaged property.

If we assume that a property is transferred to the heirs of its owner and each heir becomes responsible for part of the debt, then in that case the part owned by the heir remains mortgaged for the entire debt, and if the heir does not pay the part of the debt for which he is responsible, the part of the property that entered into his ownership remains who is responsible for the rest of the debt, and the mortgage on this part of the property may not be canceled until the entire debt is paid.

If there are multiple properties mortgaged in debt, each property remains mortgaged until the entire debt is paid, and it is not enough to pay off the debt corresponding to this property until the property is freed from the mortgage.

B- In terms of the guaranteed debt.

Here it must be said that the mortgage claim is indivisible. If part of the guaranteed debt pays, the property guaranteeing the debt remains a guarantor for the remainder of the debt, and nothing corresponding to what has paid of the guaranteed debt is paid from it. If a quarter of the debt pays, for example, the entire property remains a guarantor for the remaining three-quarters of the debt without fulfillment does not free a quarter of the property from the mortgage.

What was mentioned above are both subject to the rule (every part of the property is a guarantee of the entire debt, and every part of the debt is guaranteed by the entire property), meaning what it means with regard to every part of the property being a guarantee of the entire debt, meaning that the creditor can collect the entire debt from any part of the property when it is distributed.

As for each part of the guaranteed debt by the entire property, that is, in the case of the death of the mortgage creditor, the personal right is distributed among the heirs, and each heir has the right to seize the property and enforce it to fulfill his right only, even if the value of the property is greater than the value of the debt, and the mortgager does not oppose because it is a part of the debt.

Other characteristics of the insurance mortgage are - :

- It is a formal contract, meaning that it is not valid unless registered with the Real Estate Registration Department and fulfilling the formal conditions.
- It is considered one of the guarantee contracts, such as the suretyship contract and the possessory mortgage contract.
- It is a contract binding on one side, since the person making the mortgage is the only one who is bound by it.
- It is a contract in return, because the mortgager does not donate the mortgage to the mortgagee, but rather it is in return, whether it is the fulfillment of an obligation or it is the creditor lending a loan to the debtor or granting him a term. ⁽⁶⁾

**The second Section
Conditions of the insurance mortgage**

There are two types of conditions that must be met for the insurance mortgage to be valid, which are formal conditions and objective conditions:

**The First Requirement
Formal conditions**

⁽⁴⁾ D. Abdel Razzaq Al-Sanhouri, Al-Wasit fi Sharh Al-Civil Law, vol. 10, Dar Al-Shorouk, Cairo, 2010 AD.p.189.

⁽⁵⁾ Samir Kamel, The mortgagor's ownership of Mortgaged Money in the Mortgage, PhD thesis - Ain Shams University, 1978 AD.p.24.

⁽⁶⁾ Abdul Majeed Al-Hakim and others, Civil Law and Provisions of Commitment, Part 2, Dar Al-Kutub for Printing and Publishing, Baghdad, 1986 AD.p255.

Two formal conditions are required for the insurance mortgage to gain its validity, which are that the contract be drawn up on paper.

Two formal conditions are required for a insurance mortgage to be valid, which is that the contract is drawn up on an official paper by the real estate registry, and that the contract contains certain data according to which the mortgaged property and the secured debt are accurately designated, and we will summarize them as follows:

First: Registration.

The Iraqi Civil Code stipulates in Article (1/1286) that: (The insurance mortgage shall not be concluded except by registering it in the Real Estate Registration Department, and each of the contracting parties must designate a chosen place of residence in the country in which the registration took place, and give each of them a signed copy of the mortgagor's contract document, from them, after taking their report confronting the witnesses).

So, from the above text, it is clear that the insurance mortgage is an official contract that cannot be concluded merely by mutual consent or agreement. The agreement must be concluded in the prescribed form by the law, which is registration in the Real Estate Registry Department.

The word mortgage here refers to two contradictory meanings- :

- It may mean the insurance mortgage contract itself and must be in an official paper as it is a formal contract.
- Or what is meant by the insurance mortgage right that arises from the insurance mortgage contract, which is the creditor's authority over the mortgaged property whereby the debt is paid from the price of this property.

Any contract under the law between the parties to the mortgage that didn't meet the formal conditions stipulated by the law, meaning that it was outside the real estate registration department, is not considered an insurance mortgage here, nor even just a promise of mortgage, because the latter also requires the official form. ⁽⁷⁾

Registration procedures are carried out according to an application that includes a special form signed by the contracting parties or their representatives, containing the serial number, or province, the location of the property, its descriptions, type and area, in addition to the names and full identity of the registration applicants and their civil status.

It remains to be recalled that the formality requirement is established for the benefit of the mortgagee creditor, as when the contract obtains an official, enforceable document, in addition to the fact that the purpose of the formality and registration requirement is to achieve many benefits for the mortgagor and the mortgagee, it is established for the benefit of the mortgager by notifying him of the danger coming to him through this behavior. As for the interest that it determines for the mortgage creditor, since the conclusion of the contract, it provides him with an executive document that will benefit him in the event that the mortgager refuses to fulfill the debt when the deadline comes, and thus spares him the need for litigation procedures. ⁽⁸⁾

Second: Data.

The law stipulates that the mortgage must be returned to a property or a real right over a property, and the mortgaged property must be something that can be dealt with and sold and must be specific. If the legislator stipulates that there is a specification of the mortgaged property and then makes a reference in another legal text to the specification of the debt, that is, the necessity of specifying the amount of the guaranteed debt in the mortgage contract.

It should be noted that the Iraqi Civil Code and related laws stipulate that in concluding a mortgage, data related to the allocation must be mentioned in the official contract. ⁽⁹⁾

**The second requirement
Objective conditions**

The insurance mortgage contract, like other contracts, requires the availability of conditions in its creation, the most important of which are satisfaction, the property (mortgaged money), and reason.

First: satisfaction.

Satisfaction is the foundation of all contracts, and the insurance mortgage contract is one of those satisfactory contracts. This condition is considered one of the most important objective conditions. Indeed, it is the basis for all contracts. It is the presence of two compatible wills, i.e. the offer and consent of the parties to the present contract and the mortgagee (i.e., with the consent of the two contracting parties. This is due to the general rules in the theory of Contract.

In most cases, the mortgagor is either:

- The debtor, or it may be another person.
- It is permissible to be a real guarantor who provides a guaranteed mortgage for the benefit of the debtor.

As for the mortgagee, he may be:

- A normal person.
- Or a legal person such as the state, municipalities, companies or banks.

⁽⁷⁾ Shaker Nasser Haider, Explanation of the New Civil Law, Al-Ma'arif Press, Baghdad, 1959 AD p.106.

⁽⁸⁾ Ahmed Salama, Official Insurance, Official Mortgage, Dar Al-Taawoun for Printing and Publishing, 1966 AD, p. 190.

⁽⁹⁾ Hussein Marza Al-Jubouri, The Effects of the Insurance Mortgage, research submitted to the Iraqi Judicial Institute, session 28, Baghdad, 2007, p. 5 .

It remains to be recalled that the mortgagor can conclude an insurance mortgage through an agency, which is on the part of the mortgagor and does not require it to be a special agency. Unlike the mortgagee, it must be a special agency.

Finally, it is required that the agency presented in the insurance mortgage transaction be from a guaranteed authority.⁽¹⁰⁾

Second: The property (mortgaged money)

The object of the insurance mortgage contract is the establishment of a real right over a property owned by the mortgagor to guarantee the fulfillment of an obligation owed by the mortgagor himself or to someone else. One of the conditions of the mortgage is that it receives money, and there are conditions for this money to become a valid subject for the mortgage, which are-

- a - Real estate property that is permissible to deal with and may be sold at auction.
- b- A precisely specified money.
- c- Owned by the mortgagor.⁽¹¹⁾

Third: The reason (guaranteed debt)

The reason for this contract is to guarantee the debt, and therefore the owner of the mortgaged property has agreed to establish an official mortgage on his property, noting that the conditions for the guaranteed right are the same as the conditions for the reason, meaning that it exists, is capable of existence, or is legitimate. There are cases in which there is a union between legality and existence, for example in a personal right or debt. If his work is to give a sum of money, it is always debt by its mere existence⁽¹²⁾.

Third Section Effects of insurance mortgage

It is known that the insurance or official mortgage contract gives the mortgagee creditor a right over the mortgaged property, which is the mortgage right, and according to it, the mortgagee creditor is able to use the mortgage claim on the mortgaged property if his debt comes due, and he has the right of precedence and succession over the rest of the creditors.

The insurance mortgage contract binds the mortgagor without binding the mortgagee creditor, and this mortgage right does not deprive the mortgagor of his ownership of the mortgaged property unless his ownership is expropriated in execution of the mortgage. We will explain the effects of the mortgage in the following: -

The first requirement The effects of mortgage insurance for the mortgagor

It is known that the insurance mortgage has several advantages:

First: It allows the mortgagor to continue disposing of his mortgaged property as his owner, but he restricts it to restrictions that do not cause harm to the mortgaged creditor.

Second: The mortgaged property shall not be removed from the ownership or possession of the mortgagor, whether he is the debtor or someone else who places his property as security for the fulfillment of the mortgagee's debt⁽¹³⁾.

If we want to talk about this topic, we must deal with it from two aspects:

The first aspect: the obligations of the mortgagor.

The second aspect: the mortgagor's authority over the mortgaged property.

The first aspect: the obligations of the mortgagor.

The first aspect: the obligations of the mortgagor.

The insurance mortgage is considered one of the contracts of compensation (contracts between benefit and harm) for the debtor mortgagor, as he mortgages his property in order to obtain a specific benefit, whether it is a loan or the term of the debt. In general, it is required that the mortgagor be qualified to dispose of it and own the mortgaged property.

It is common knowledge that an insurance mortgage results in two obligations for the mortgagor:

The first: The mortgagor's creation of the mortgage right.

Here, the mortgagor is committed to the following:

A- Establishing a mortgage right for the mortgaged creditor on the mortgaged property.

B- The seller's obligation to transfer ownership of the sold item to the buyer.

If the property is owned by the mortgagor, here the mortgage right is created on its own. The law stipulates this meaning by saying that if the obligation is something owned by the obligor, this obligation will be transferred on its own. The previous text includes the obligation to create a real right and the obligation to transfer a real right.⁽¹⁴⁾

Second: The mortgagor's guarantee of the safety of the mortgage right.

⁽¹⁰⁾ Abdul Razzaq Al-Sanhouri, *ibid*, p. 209.

⁽¹¹⁾ Samir Tango, *Personal and Real Insurance*, Atlas Press, Cairo, 1975, p. 302.

⁽¹²⁾ Muhammad Kamel Morsi, *Personal and Real Insurance*, 2nd edition, 1939 AD, p. 247.

⁽¹³⁾ Salah al-Din Nahi, *Al-Wajeez in Personal and Real Insurance*, vol. 1, 1953 AD, p. 55.

⁽¹⁴⁾ Dr.. Suleiman Markus, *Al-Wafi in Explanation Civil Law*, vol. 2, 3rd edition, 1994, p. 173.

The mortgager is obligated to guarantee the integrity of the mortgage, and the mortgagee creditor has the right to object to any default due to a decrease in his guarantee and he has the right to use any precautionary means in case of urgency. The legislator dealt with the case of destruction or damage to the mortgaged property.

The mortgagor's guarantee for the safety of the mortgage right is in the mortgage contract. For example, in the sales contract, the seller guarantees exposure and entitlement. It is not permissible for the mortgagor to arrange for any right on the mortgaged property to be made public before registering the mortgage, and this is by guaranteeing personal exposure, or to carry out any action that leads to the reduction or destruction of the mortgaged property. The legislator also spoke in another text that the right resulting from the destruction or damage of the mortgaged property replaces the mortgaged property in kind.

In the case that the mortgaged property is destroyed by the action of the mortgager and because of him, the mortgaged creditor has the right to request adequate insurance for his debt, or he may choose to recover the debt immediately.

As for what is related to the mortgagor's guarantee for the exposure of others, it may appear that there are so-called third parties claiming that they have a right over the mortgaged property. The third party was claiming that he owns the property, and the mortgage issued here by the mortgagor did not transfer to the mortgagee the right to the mortgage since it was issued by someone other than the owner, so here the mortgagor is obligated paying this claim to others. ⁽¹⁵⁾

If the mortgagor is committed to ensuring that the mortgage meets the purposes for which it was contracted, otherwise he must guarantee in the case that any of those purposes is violated, because the mortgagor's guarantee is a sufficient penalty for the mortgagor's obligation to ensuring the safety of the mortgage.

The Civil Code deals with the issue of protecting the mortgaged property and the mortgager must be committed to the safety of the mortgaged property. It affirms that if the mortgager causes destruction and damage the property through his fault, the mortgagee has the right to recover his right immediately, or to require insurance, according to his choice. ⁽¹⁶⁾

The fact that the possession of the mortgaged property remains in the hands of the mortgage debtor is the most important effects of the official or insurance mortgage contract, as the mortgage debtor continues to benefit from his property which brings him gains. The mortgage debtor's relationship with his property does not end once the mortgage right is established, but rather ends with his failure to fulfill the debt guaranteed by the mortgage. Since the insurance mortgage does not deprive the right of use and the right of exploitation granted to the debtor over his mortgaged property as one of the two components of the property right:

A - It is permissible for the mortgage debtor to dispose of his property by sale, for example, as long as the official mortgage right on the property is a real right that entitles its owner to the right to follow in whichever hand it is transferred to implement it.

B - The mortgage debtor may obtain another credit based on the mortgaged property, and the mortgage debtor is obligated to guarantee the safety of the property in a way that does not lead to a decrease in its value or its destruction.

Therefore, the mortgage debtor is considered a custodian of the mortgaged property after the mortgage contract is concluded, and the mortgager continues to enjoy legal rights only in that case because he cannot use the property and benefit from its gains.

As for the most prominent rights of the mortgagee creditor before the maturity of the debt: it is to preserve the mortgaged thing and not harm it or diminish its value.

However, the maturity of the debt, the creditor can enforce the mortgaged property based on his right to mortgage it and then enforce the debtor's other funds if the mortgaged property does not meet the value of the mortgage.

The creditor recovers his right from the mortgaged property according to certain procedures that lead to the sale of the property at public auction.

However, if the mortgager is someone other than the debtor, who is the real guarantor, then the mortgage creditor does not have the right to guarantee the property of the real guarantor, that is, he cannot recover his debt from all the guarantor's funds, but only the mortgaged property.

At the same time, the real guarantor may not ask the mortgagee to deprive the debtor of his other funds before executing the mortgaged property⁽¹⁷⁾.

The second aspect: the mortgagor's authority over the mortgaged property.

It can be classified into:

First: Ownership of the mortgaged property and its possession remain in the hands of the mortgagee in the insurance mortgage.

In an insurance mortgage, the mortgagor does not lose ownership or possession and keeps everything as it is, and this is what distinguishes an insurance mortgage from a possessory mortgage.

Second: The mortgager has the right to dispose of the mortgaged property.

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⁾Mansour Mustafa Mansour, In – Kind Solution Theory , PhD thesis, Cairo University, 1956 AD, p. 226

⁽¹⁶⁾Dr. Abd al-Razzaq al-Sanhouri, *ibid*, p. 278

⁽¹⁷⁾Dr. Nabil Ibrahim Saad, *Real and Personal Insurance*, Mansha'at Al Maaref, Alexandria, 2005, p. 96.

The law allows the mortgager the right to dispose of the mortgaged property as it was before the mortgage, provided that the right of the mortgage creditor may not be infringed after the mortgage.

If the mortgage creditor registers his mortgage right before the disposer announces to him the disposition issued by the mortgager, then the right of the mortgage creditor may not be infringed or affected ⁽¹⁸⁾

Third: The right of the mortgager to exploit the mortgaged property.

The Civil Code deals with the mortgagor's right to manage the mortgaged property and to collect its fruits at the time of his accession to the property.

The mortgagor has the right to manage the property in order to exploit it and collect its various fruits because the fruits belong to the mortgagor, whether they are natural or created. That is, the mortgagor exploits the mortgaged property according to its nature and the gains it produces. If the mortgaged property is agricultural land, it is permissible for her to exploit it for agriculture, and so on. The mortgager may not transfer the mortgaged property for other purposes. And it reduces the insurance of the mortgage creditor. If he does so, the mortgage creditor may object to that and request the cessation of actions that are harmful to him. ⁽¹⁹⁾

The second requirement

The effects of mortgage insurance for the mortgagee

It is known that there are fundamental effects resulting from the official mortgage that are in the interest of the mortgage creditor, and these effects are rights for the benefit of this mortgagee, and they essentially stem from the in-kind nature of the mortgage right as an accessory right to an original mortgage.

Likewise, the right was given to the creditor to enforce the right on the mortgaged property and request that it be sold on time in accordance with what was stated in the Code of Procedures, and all of this after notifying the debtor of payment. Agreements that give the creditor the right, if the debt is not paid at the time of its due date, may be invalidated to possess the mortgaged property for a specific price.

These legal texts address the following issues:

First: The mortgagee's creditor enforces the right he owns.

Here, the law has given the right to the mortgaged creditor to apply to implement his right upon the maturity of this right, as a creditor like all other creditors, and he has the right to implement the debtor's real estate and movable property while applying as an ordinary creditor.

Likewise, the mortgagor is implemented as a mortgage creditor, and his right here is focused on the mortgaged property with an official paper, which is one of the conditions of the mortgage. Here, the mortgage creditor does not need a ruling, but rather the implementation is based on that official paper. ⁽²⁰⁾

Second: Implementation on the non-debtor mortgagor (the real guarantor)

The mortgagor may be a non-debtor under an agreement, and according to the law, this is the real guarantor whose obligation here is in kind to fulfill the guaranteed debt. Thus, the mortgagee may implement on the mortgaged property that the real guarantor has mortgaged in the debt as an insurance mortgage, on the condition that it is exclusively on the mortgaged property, and not on the rest of the property of the real guarantor, since the latter is not obligated to provide a general guarantee for all his property in order to pay off the debt. ⁽²¹⁾

Third: If payment is not made, the condition of ownership of the mortgaged property is invalidated.

When the mortgage creditor agrees with the mortgagor on the right of the mortgage creditor to own the mortgaged property at a price that is the due debt or at any other price that may be greater than the due debt, in the case that the debt is not paid upon at its maturity, then this agreement is in violation of public order and therefore becomes invalid according to the stipulation according to Article 1052 of the Egyptian Civil Code⁽²²⁾ .

The third requirement

The effects of the insurance mortgage on others

The mortgage right is a power of the mortgaged creditor over the mortgaged property whereby he recovers the debt from the price of this property: if he recovers it vis-à-vis another creditor, this is called progress, and if he recovers it vis-à-vis the person to whom ownership of the mortgaged property has been transferred, this is called succession. The right of progress and succession are two advantages that are not directed towards the mortgagor but rather towards others.

⁽¹⁸⁾Sham Al-din al-Wakil, Al-Mawjiz in Theory of Insurance, Mansha'at al-Maaref, Alexandria, 1966, p. 187.

⁽¹⁹⁾ Samir Tango, *ibid*, p. 305

⁽²⁰⁾ Dr. Nabil Ibrahim Saad, *ibid*, p. 121.

⁽²¹⁾ Dr. Suleiman Markus, *ibid*, p. 182

⁽²²⁾ Salah al-Din Nahi, *ibid* p. 69

What is meant by third parties here is neither the mortgagor nor the mortgagee, as they are the contracting parties in a contract. What is meant by third parties here is neither the mortgagor nor the mortgagee, as they are the contracting parties in the mortgage, and are not considered to be third parties. Rather, what is meant by third parties is every person who has a right to be harmed by the existence of the insurance mortgage. It does not apply to any one of three persons. An ordinary creditor of the mortgagor who does not have a real right over the mortgaged property, who is harmed by the presence of a mortgagee of the property who takes precedence over him in recovering his right from the mortgaged property or a person who has an accessory real right over the mortgaged property, such as another mortgagee who holds an insurance mortgage or a possession mortgage, or a creditor who has a lien on the mortgaged property. Any of these people would be harmed by the existence of an insurance mortgage if an owner approaches it and receives his right before him from the mortgaged property.

Or a person who has an original real right over the property, such as someone to whom ownership of the mortgaged property is transferred after the mortgage or to whom a usufruct or Musataha right is granted over it. Any of these would be harmed by the existence of an insurance mortgage right if the mortgage creditor is able to come forward to fulfill his right from the mortgaged property. ⁽²³⁾

CONCLUSION

By studying the issue of the insurance or official mortgage, it becomes clear that it contains many positive implications that will revive the real estate financing sector and encourage credit, as it provides a kind of reassurance to creditors, especially banks and loan institutions.

Guarantees in general and mortgages in particular have become of great importance at the present time because they are an essential element in ensuring the financing of investments in all economic and social fields.

First: The Results.

- 1 .The insurance mortgage is indivisible.
- 2 .The insurance mortgage is a right in return because the mortgagor does not donate to the mortgagee except in return.
- 3 .The mortgagor has rights and obligations based on the provisions of the Civil Code.
- 4 .There are rights for the mortgagee before the maturity of the debt and after the maturity of the debt.

Second: Recommendations.

- 1 .We recommend that the Iraqi legislator clarify the provisions for registering the insurance mortgage contract accurately in the civil law due to the importance of this contract.
- 2 . We recommend that the legislator explain the rights and duties of the mortgagor and mortgagee in more detail than what is stipulated in the Civil Code.

Sources

The Holy Quran

First: books.

- 1 .Ahmed Salama, Official Insurance, Official Mortgage, Dar Al-Taawoun for Printing and Publishing, 1966 AD.
- 2 .Muhammad Taha Al-Bashir and Dr. Ghani Hassoun Taha, Accessory Real Rights, Al-Atak Book Printing Company, Cairo, 2009.
- 3 .D. Abdel Razzaq Al-Sanhouri, Al-Wasit fi Sharh Al-Civil Law, vol. 10, Dar Al-Shorouk, Cairo, 2010 AD.
- 4 .Abdul Majeed Al-Hakim and others, Civil Law and Provisions of Commitment, Part 2, Dar Al-Kutub for Printing and Publishing, Baghdad, 1986 AD.
5. Shaker Nasser Haider, Explanation of the New Civil Law, Al-Ma'arif Press, Baghdad, 1959 AD.
- 6 .Samir Tango, Personal and Real Insurance, Atlas Press, Cairo, 1975 AD.
- 7 .Muhammad Kamel Morsi, Personal and Real Insurance, 2nd edition, 1939 AD
- 8 .Salah al-Din Nahi, Al-Wajeez in Personal and Real Insurance, Part 1, 1953 AD.
- 9 .D. Suleiman Markus, Al-Wafi in Explanation of Civil Law, vol. 2, 3rd edition, 1994 AD
- 10 .Shams al-Din al-Wakil, Al-Mawjiz in Theory of Insurance, Mansha'at al-Ma'aref, Alexandria, 1966 AD.
11. D. Nabil Ibrahim Saad, Real and Personal Insurance, Ma'arif facility, Alexandria, 2005 AD

Second: Theses and research.

- 1 .Ahmed Hussein Marza Al-Jubouri, The Effects of the Insurance Mortgage, research submitted to the Iraqi Judicial Institute, 28th session, Baghdad, 2007 AD.
- 2 .Samir Kamel, The mortgagor's ownership of Mortgaged Money in the Mortgage, PhD thesis - Aldin Shams University, 1978 AD.
3. Mansour Mustafa Mansour, In – Kind Solution Theory, PhD thesis, Cairo University, 1956 AD.

Third: Laws.

- 1 .Iraqi Civil Law No. 40 of 1951, amended.
2. Egyptian Civil Law No. 131 of 1948 AD.

⁽²³⁾ Samir Tango, *ibid*, p. 309.