

Resolution of the Conversion of Joint Ownership into Shared Ownership by Notification at the Land Registry Offices

Haluk Saruhan

Asst. Prof. Dr. Girne American University, Cyprus, Türkiye. E-mail: haluk_47407@hotmail.com
Orcid: <https://orcid.org/0000-0003-2955-531X>

How to cite this article: Haluk Saruhan (2025). Resolution of the Conversion of Joint Ownership into Shared Ownership by Notification at the Land Registry Offices REVISTA EdeDC | Vol.05 issue.01, 91-99.

Accepted date: 14-01-2025

Publication date: 24-01-2025

DOI : <https://doi.org/10.79425/rev.v5i1, 91-99>

ABSTRACT

As a result of one or more of the heirs not agreeing to shared ownership in the transfer of real estate or immovable properties, and abstaining from signing for the execution of the transaction, the immovable property is recorded in the land registry as a joint ownership (participation) bracket with the signature of one of the parties. The process of converting the joint ownership into shared ownership in the land registry offices is more. It is a process that starts with the registration of shares without any prior knowledge. Because, in joint ownership, the share of the partners is not clear, and the share of each of them is widespread over all the goods included in the partnership. It prevents one or more of the stakeholders from selling, mortgaging or donating their real estate to a third party. Overcoming these obstacles through litigation takes a long process. In Article 703 of the Civil Code, joint ownership ends with the transfer of property, the dissolution of the community, and the transition to shared ownership. However, if there are partners who do not want to switch to shared ownership or if one or more of the partners cannot be reached, transition to shared ownership will be impossible. This In this case, Article 644 of the Turkish Civil Code must be resolved through litigation, which is a long process, by requesting the additional article 3 of the Cadastral Law No. 3402, by applying to the Land Registry Office, and by notifying the heirs who do not agree to shared ownership, to their addresses in accordance with the provisions of the Notification Law No. 7201. If they do not have a declaration regarding any sharing lawsuit within a period of

one month from the date of date, the question is asked whether any of the stakeholders have filed a partition lawsuit against these parcels by specifying the island parcel to the Civil Court of Peace of the place where the real estate is located, and if it is stated in the response letter that no sharing lawsuit has been filed. By taking the signatures of the person or persons who apply to the land registry office, the non-contractual transaction will be arranged, and the shared share will be made based on the inheritance certificate. It will be registered as ownership. In this article, the processes related to joint ownership and the conversion of joint ownership into joint ownership by the Land Registry Directorate in accordance with the additional article 3 of the cadastral law no. 3402 will be discussed. It will be concluded by touching on the differences between the stages here and the resolution of the lawsuit in accordance with Article 644 of the Turkish Civil Code.

Keywords: Heir, Joint ownership, Stakeholder, Notification.

I. INTRODUCTION

Fichte states that acquiring property is a fundamental right (Urrecht) as a requirement of sustaining life, like the right to life, work, life and education. Because a person wants to own everything in his life (Topkaya, 2008). This desire stems from the person's dreams of being free and consists of wanting to realize these dreams. Trying to understand whether the superior power of the state will prevent the person's dreams of property and freedom, whether it will put the principles of restriction into effect and what will happen, if any, will be the most effective method. According to Fichte, Property is the most fundamental right and what contributes to the individual'

free world is the desire to own something. If the right of property is to be defined in another way, it has the right to dispose of and use, which the owner is authorized with the broadest rights (Esener, 2015). According to another definition, if this right is broad and complete, it is a real property right and gives the owner the authority to use and benefit (Oğuzman et al., 2015). In TMK (Turkish Civil Code) Article 701 and onwards, joint ownership (ownership in participation) has been regulated and defined by the legislator. According to the definition of joint ownership in TMK Article 701/1, it is defined as the ownership of a property or belongings formed by a group together as a requirement of contracts arising from the Law. Based on this definition, joint ownership is about the state of joint ownership of a property as a group based on the contractual relationship arising from the Law (Oğuzman et al., 2017). Based on these definitions, in order to be able to talk about the existence of joint ownership (ownership in participation), it is necessary to mention the existence of two main elements. The first is the existence of a group originating from the contract. The second is the existence of a property with a common share for everyone whose shares are not clear.

TMK Article 256 Community of property, TMK Article 373, 379 Community of family properties and TMK Article 640, the partnership of inheritance is the form of joint ownership arising from the law. In addition, in TCC article 638/1, the ordinary partnership has been included in the joint ownership cases within the framework of the Turkish Code of Obligations (Akcaal, 2019). According to article 644 of the Turkish Civil Code, the heir or several heirs may request the Court of Peace to convert the joint ownership of one or more properties included in the state into shared ownership.

The judge requests that all other heirs be informed whether they have any justified reason for the continuation of the joint ownership. If no objection is raised by the heirs and no lawsuit is filed, the joint ownership of the dominant property will be converted into shared ownership. However, due to complaints about the long time it takes in the courts, searches have started for a quick and practical solution to the issue, and a more practical solution has been found with the additional article 3 of the Cadastre Law No. 3402, and an application has been made to the Land Registry Directorate, and the heirs who do not agree to shared ownership are notified to their addresses in accordance with the provisions of the Notification Law No. 7201, and if they do not make a declaration regarding the filing of any partition lawsuit within a period of one month from the date of notification, the question of whether any of the stakeholders have filed a

partition lawsuit for these parcels is asked by indicating the island parcel to the Civil Court of Peace where the immovable is located, and if it is stated in the response letter that no partition lawsuit has been filed, the Land Registry Directorate will register the property as a shared ownership based on the inheritance certificate by obtaining the signatures of the applicant person or persons for the non-contractual transaction to be prepared. Because, in terms of notification, it will primarily be made to the mernis addresses of the persons, to those who are not at their addresses or whose addresses are unknown, it will be made through public notification, and to those who are abroad, it will be made through consulates by the land registry office. Public notifications will be suspended from the neighborhood headman's office where the real estate is located for 15 days. After this period, it will be published in a newspaper with a large circulation and submitted to the land registry office with its documents. This will be the main subject of our article.

I. BASIC CONCEPTS RELATED TO COLLABORATIVE OWNERSHIP AND SHARED OWNERSHIP

A. OWNERSHIP

It is possible to come across many definitions of the concept of ownership in the literature. Although each definition is expressed with different words, the main theme of all of them points to a common point. Based on these definitions, the concept of ownership is the broadest real right that gives the authority to use the goods belonging to oneself, to benefit from the natural fruits of the goods, to make savings and at the same time to consume them. Therefore, ownership is the broadest real right and is a right that establishes dominance over the goods. Other real rights do not provide such broad authority to the owner.

B. COLLABORATIVE OWNERSHIP

We call the situations where more than one person has right over the goods and can establish joint control, but their shares are not clear, joint ownership, that is, ownership in participation. This situation is grouped under four main headings as joint ownership cases arising from contracts, Property Partnership, Family property partnership, Inheritance partnership and Ordinary partnership specified in the Turkish Code of Obligations. In joint ownership, the shares are not clear. The share of each shareholder is a common share for all goods.

C. SHARED OWNERSHIP

The concept of shared ownership has been defined many times, as in Joint Ownership. However, it is useful to define shared ownership as follows. Shared ownership is when a thing is not divided and the whole or a certain part of it is

shared. In shared ownership, the shares of each shareholder are clear. In shared ownership, the partnership of at least two people is required. In undivided rights, there is joint ownership for the shareholders. In shared ownership, each shareholder has the right to dispose of his/her share as he/she wishes. However, in shared ownership, the other shareholder has the right of pre-emption in sales and transfer transactions. Making the property subject to collusion, for example, showing a donation instead of sale, does not eliminate the right of pre-emption.

II. CONCEPT OF OWNERSHIP

The emergence of the concept of ownership dates back to primitive societies, and has been of great importance in terms of economic concepts, and has undergone changes from time to time in parallel with the development of societies. It has an effect from the division of society into class categories to the most fundamental point of the conflict of these classes. Later reforms and social, religious and political developments have brought many innovations. For this reason, it is useful to understand what the concept of ownership is (Kılıç, 2011). The right to property is any kind of property that enables people to sustain their lives and contribute to their development. Determining the limits of the dominance established over these properties falls within the scope of private and public law. Because public law, in addition to its determining role in the structure of private law, is also the branch of law authorized in limiting the right to property. This can only be restricted by the Constitution. The Constitution is the highest norm in the hierarchy of norms (Ertaş, 2004). There is a closer relationship between the person and the property. This relationship defines the dominance of the person over the property. Therefore, it is necessary to mention three elements. The first of these is the owner, who is the subject of the sovereignty element, the second is the thing that constitutes the subject of ownership, and the third is the relationship between the owner of the thing and the thing (Altan, 2008). The concept of property is the subject of Civil law in the narrowest sense and the subject of Constitutional law in the broadest sense (Bertan, 1976). In our previous law and in our current law, the concept of joint ownership was expressed under a single title as joint ownership. While the concept of joint ownership existed in Roman law, Islamic law and our previous law, joint ownership took its place in our law according to the Swiss Civil Code. The concept of joint ownership was evaluated between Articles 701-703 of the TMK. It caused discussions with the adoption of Law No. 743 on whether joint ownership was necessary, but

the legislator decided to preserve this type of ownership with Law No. 4721. However, in order to solve the problems encountered in practice, various solution proposals were presented to the right holders. In order to solve the problems that occur in joint ownership, it is necessary to have knowledge on two different issues. The first is the structure of joint ownership, and the second is the issue of the different views of legal institutions (Korkmaz, 2021). In joint ownership, the share is hidden and everyone's share is widespread to the entire property. Among the methods of converting joint ownership to shared ownership, with the amendment made in Additional Article 3 of the Cadastre Law No. 3402, the process and legal basis that starts with the application of one or more of the heirs by the Land Registry Directorates will be revealed.

A. TYPES OF OWNERSHIP

The right of ownership is divided into classes based on many principles (Ayan, 2000). When referring to the right of ownership, we can divide it into two in terms of subject as movable and immovable ownership. This distinction is a distinction made in the Civil Code. While making this distinction, the principles, scopes and limits of acquisition between both types are determined (Karaağaç, 2012).

Immovable ownership prefers to the right of ownership over immovable property. Immovable is fixed property that cannot be moved from one place to another (Esener ve Güven, 1990). Movable Property is the right of ownership over movable property. Things that can be moved from one place to another can be subject to movable property (Karaağaç, 2012). In terms of the right holder, if it is necessary to diversify the property, we can divide it as Private and Public Property. In private property, the right holders are private individuals. If the right holder in private property is only one person, Single Ownership prefers to joint ownership, if more than one person has the right, it refers to joint ownership (İpek, 1971). Joint ownership prefers to groups of people who have certain shares in the property with the same legal status (Eren, 2011). Joint ownership is a type of ownership over the property without the shares of more than one person arising from the partnership relationship, and the shares are common to all. In joint ownership, the partners must make all kinds of decisions by unanimous vote. Decisions taken to the contrary are invalid. However, the decision to be taken in transactions to be made on the person's share in obligatory transactions should not be invalid (Özmen, 2024).

B. COLLABORATIVE OWNERSHIP FROM TYPES OF OWNERSHIP

The right of ownership and the concept of goods contain very similar issues in terms of their expressions.

When talking about goods, we can infer a meaning as if we are talking about ownership, and when talking about property, we can infer a meaning as if we are talking about goods. In TMK article 701/f.2, it is stated that in joint ownership, the shares of the partners are not clear, and the share of each partner is widespread throughout the entirety of the good subject to the partnership (Korkmaz, 2021).

The source of joint ownership is the principle of "numerus clausus", which means closed number and limitation. Its source is the law and contracts arising from the law, where the group of people formed down the good together. In shared ownership, the owner has the right to dispose of his share, while in joint ownership, the owner does not have the right to free disposition in both management and disposition transactions, and they must make unanimous decisions. In joint ownership, the state arising from the law is inheritance partnership. In contractual joint ownership, it is property partnership between ordinary companies and spouses (Hatemi et al., 2014). Joint ownership ends when the partnership sells the entire property to someone else, the partnership is dissolved, the inheritance is divided, the joint ownership in the inheritance partnership is converted into shared ownership, and the real estate is destroyed, expropriated or acquired. The authority to convert joint ownership into shared ownership belongs to the Civil Court of Peace. However, based on this authority, this authority regulated in Article 3 of the Cadastre Law can also be resolved by notification by the Land Registry Directorates (Esener ve Güven, 1990). Seeing the difficulty of converting joint ownership into joint ownership, the legislator added additional article 3 to the Cadastre Law in 2009 to facilitate the solutions for real estate in this regard, thus providing a practical solution to the issue of converting joint ownership into shared ownership upon the request of a single heir. The same authority granted to the judge by article 644 of the Turkish Civil Code has also been granted to land registry directors (Anonymus, 2024).

C. COLLABORATIVE OWNERSHIP ARISING FROM INHERITANCE JOINTS

The acquisition of joint ownership through inheritance arises from the law. Since the deceased has more than one heir, the partnership they created due to the partnership of the estate is called joint ownership. In fact, joint ownership is established at the time of the death of the deceased and joint ownership also arises. However, if the deceased leaves three heirs behind, the property rights of these heirs on the properties are joint ownership. This ownership is

joint ownership based on inheritance relationship (Sirmen, 2016). In the establishment of joint ownership arising from inheritance, until the shares are determined, their partnership and decision-making will be unanimous. However, one or more of the partners can assign their share to one of their own partnerships without the permission of the partnership. Because they cannot sell or assign shares to anyone other than the partners. Again, due to the debt relationship, the share of a partner in joint ownership can be seized.

D. COLLABORATIVE OWNERSHIP ARISING FROM A PARTNERSHIP WITH AN ORDINARY COMPANY

According to Article 620 or the following articles of the TCC, if more than one person purchases one or more real estates and applies to the Land Registry Office and requests the registration of these real estates as an ordinary company, since the ordinary company does not have a legal entity, the names of the real or legal persons purchasing the real estate are written. However, it is registered in the land registry without determining the share ratios. Partners can obtain the following benefits with this transaction. They can only transfer their shares to someone within the partnership. It is impossible to sell them to a third party. Because if the third party is someone who is not wanted by the partners, it is inevitable for the partnership to experience problems in this sense. Because it can be registered as a joint ownership with a unanimous decision of the partners (Land Registry Office, 2014).

E. FAMILY PROPERTY JOINTS

The matters specified in TMK.Art.373 are summarized as follows: Relatives can establish a family property partnership with all or part of the inheritance shares they inherit or other joint properties. However, according to TMK.Art.379, in order to establish such a partnership, an application must be made to the Land Registry Office and it must be established with an official deed. It is registered as joint ownership by stating that it is a family property partnership in the Land Registry (Land Registry Office, 2014).

F. GENERAL PROPERTY PARTNERSHIP

Property partnership is a property regime established by the spouses, provided that they notify the marriage officer during the marriage ceremony or by a contract to be drawn up at the notary after the marriage, based on their declaration of will. All properties established with the property regime are registered with the land registry office as joint ownership. By registering jointly, one of the spouses cannot dispose of these properties alone. Partners can dispose of

them together or one of the partners can perform transactions by giving a power of attorney to the other spouse regarding the transaction they want to perform. Properties acquired through donation cannot be included in the partnership without the consent of the donor (Land Registry Office, 2014).

III. RESOLUTION OF COLLABORATIVE OWNERSHIP BY LITIGATION MEDIATION CONDITION

One of the innovations brought by the provision of Article 18/B added to the Mediation Law (HUAK) by Article 37 of Law No. 7445 is that it makes the conversion of joint ownership into shared ownership a condition of litigation. There are two parties in this case and it can lead to similar results for both parties. There is no loser or winner in these cases. In such disputes, making mediation a condition of litigation only requires applying to mediation. Requesting, giving up, continuing and ending the mediation process is left to the will of the parties. The parties' reconciliation through mediation can reach a suitable solution by reaching a common ground. It can be a means for the parties to reach an agreement (Ceylan, 2023). In its decision numbered 2024/543 E, 2024/504 K and dated 21.02.2024, the Istanbul Regional Court of Justice 55th Civil Chamber concluded that the lawsuit filed with the plaintiff's request for the conversion of joint ownership into shared ownership is subject to the mandatory mediation condition and that the report stating that no agreement was reached should be attached to the petition, and that the lawsuit should be rejected due to the absence of the lawsuit condition.

IV. CONVERSION OF COLLABORATIVE OWNERSHIP INTO SHARED OWNERSHIP BY LITIGATION

In cases of dissolution of partnership, the multitude of heirs causes the number of parties to be high. This situation makes it difficult to hear the case, and the case takes a long time. First of all, the parties apply to a mediator, and a report is kept on the issue of agreement or disagreement and they apply to resolve the issue by litigation in court. Reaching a conclusion through mediation is in the interest of the parties both economically and in terms of time. In mediation applications regarding joint partnership, the mediator must contact all parties and ensure that they participate in the negotiations. In case of lack of participation, it should be closed as no agreement was reached (Ceylan, 2023). According to TMK Art. 701/1, joint ownership ends by being converted into joint ownership. Partners can terminate joint ownership based on a court decision. TMK Art. If there is an unborn fetus at the

time the lawsuit is filed under 584, the birth of the fetus is expected. According to TMK Art. 642/3, if the value of the estate decreases if the partition is made immediately, the judge may postpone the partition upon the request of one of the heirs. Each of the heirs may request that the joint ownership be converted into shared ownership for one or more of the inherited properties. In this case, the judge of peace sends an invitation to the heirs regarding whether they have any objections. If no objection is raised regarding the continuation of the joint ownership in this regard and the heirs do not file a partition lawsuit, the judge decides to convert it into shared ownership. However, the judge must determine the shares only by referring to the relevant inheritance document (Ceylan, 2023). Again, if a real estate is registered as joint ownership and the undivided share of any heir is seized by a creditor, the joint ownership may be converted into shared ownership. Because, by obtaining authorization from the enforcement office in accordance with Articles 94 and 121 of the enforcement and bankruptcy law, a lawsuit can be filed for the conversion of joint ownership into shared ownership in accordance with Article 644 of the Turkish Civil Code. Because the procedure to be carried out through the lawsuit firstly brings about mediation applications, then the court process and great difficulties in terms of finance. The conversion of joint ownership into shared ownership through notification at the land registry offices is a more practical and easy way.

A. APPLICATION PROCEDURES AND PROCESS PHASES TO THE LAND REGISTRY OFFICE FOR CONVERTING COLLABORATIVE OWNERSHIP INTO SHARED OWNERSHIP

If one or more heirs apply to the Land Registrar for conversion of joint ownership into shared ownership, the Land Registrar invites the other heirs to notify their objections, if any, within the specified legal period regarding the requested real estates. The notification costs are covered by the relevant party. If no objection is raised regarding the continuation of joint ownership or if no sharing lawsuit is filed, the Land Registrar receives a response from the judge of the court of peace of the place where the Land Registrar is located stating that no sharing lawsuit has been filed regarding the real estates or the block parcel numbers of the real estates, the transaction is completed by obtaining the signatures of the applicants for the non-contractual transaction, if a proxy is appointed, by obtaining the signature of the proxy for the non-contractual transaction, and by obtaining the It is registered in the land registry as a joint ownership in proportion to the shares (Dörtgöz, 2014). Because if the applicant or his representative requests joint ownership before the notification period, it is first registered as joint ownership,

then the heirs are notified with the same procedures. The documents requested during the process, firstly, at least one heir must make the request and pay the costs of notifying the other heirs. After these two requirements are met, the process is recorded by the land registry authorities and the process is started.

The process stages can be listed as follows (Dörtgöz, 2014):

- a) If all the participants do not come or cannot come to the land registry office, the persons who want to break the participation can apply to the land registry directorate, notify the ones who do not come and request the breakup of the participation.
- b) In this case, the land registry office notifies the persons who do not come, and notifies them that if they do not object, the joint ownership will be terminated by the land registry office.
- c) Notification is made to those whose addresses are unknown.
- d) In case of objection, regardless of whether a reason is given or not, an application must be made to the court to terminate the participation.
- e) If no objection is made within 30 days, a non-contractual transaction is established upon the request of the requesting parties or their representatives, and the participation is terminated. In calculating the 30-day notification, the day the notification is received by the heir is not calculated and is accepted as the day after the day it is received, and if the last day is a holiday, this period continues until the end of the first business day. Notification periods must be calculated separately for each heir.
- g) Necessary fees and revolving fund fees are collected.

B. NOTIFICATION PROCEDURES TO BE ISSUED TO THE HEIRS

a) Determination of the Addresses of the Heirs and Notification: (Tkgm. Land Registry Office Circular No. 2009/6 Amendment - 08/03/2013-1960 numbered authority approval)

1) First of all, according to Article 49 of Law No. 7201, if the heir has an address in the Land Registry Office records or if the Land Registry Office can determine the address from the land registry records, the notification will be made to this address.

2) If the heir/s do not have an address in the Land Registry Office. Since the address-based population registration system has been adopted in accordance with the Population Services Law No. 5490 and the Address Registration System Regulation published in the Official Gazette No. 26377 dated 15/12/2006. The population records and addresses must be obtained by entering the address <http://lk-mevzuat/mernis> and searching by the personnel assigned by the Land Registry Directorate and given the username and password, or by corresponding with the "Population Directorates" by the

Land Registry Directorates where there is no possibility of searching.

3) If one or more of the heirs is abroad or is a foreign national, notification will be made in accordance with the provisions of the Notification Law No. 7201. Requests regarding such persons will be submitted to the Land Registry Department of our General Directorate together with their documents and notification procedures will be carried out.

4) If there are heirs who do not have legal capacity: notification will be made to the legal representative of the heir. Whether the heir has legal representatives or not will be investigated by the declaration of the relevant person or by looking at the parcel registers/records subject to the transaction at the Land Registry Directorate and the Population registers/records (notations) of the relevant persons at the Population Directorates.

5) Notification shall be made to the heirs other than the requesting heirs within 30 days, by preparing two copies from the list of the persons to be notified in accordance with Article 33 of the Notification Regulation with the attached SAMPLE (I) letter and the inheritance document(s) attached, and the envelope with the notification certificate of SAMPLE (4) and the attached SAMPLE (5) deposit list, and by placing a copy approved by the PTT Directorate in the document file, and by sending a registered letter to the addresses determined.

6) The date on which the notification is made by hand or the registered notification is received by the heirs shall be accepted as the notification date and the period for objection and filing a lawsuit shall start on this date.

7) (Amended: Amended by the Official Approval dated 07/03/2013 and numbered 23294678-010.06/27-1942) If no objection is made and no partition lawsuit is filed within 30 days from the notification, the "conversion of joint ownership to shared ownership" process will be carried out upon the request of one or more heirs. Delays that may occur in the mail (etc.) will not be taken into account. If the last day of the period given to the heir to make a declaration falls on an official holiday,

the period ends the next day after the holiday ends. Articles 159-165 of the Code of Civil Procedure No. 1086 will be taken into account in the calculation of the period. b) Notification by Publication: The rightholder whose address is not in the land registry, whose current or determined address cannot be notified, and whose new address cannot be determined by the notification officer, shall be notified by publication in accordance with the provisions of the Notification Law No. 7201. In addition, a copy of the announcement is delivered by the Land Registry Office

to the headman of the village or neighborhood where the real estate is located to be announced in the manner customary there. The last announcement made in this manner is deemed to have been notified to the rightful owner at the end of 15 (fifteen) days from the date of the announcement. 6-Notification Expenses: Notification expenses are covered by the person concerned (the person making the request). Notification expenses will be paid by the person requesting the notification to the Land Registry Office in the form of a stamp according to the number of people to be notified. Notifications made by way of announcement will be covered by the person concerned personally.

C. WRITTEN PROCEDURE TO BE WRITTEN TO THE AUTHORIZED COURT AFTER NOTIFICATION

After calculating the notification dates of each notification separately for each heir as of the notification date of the notifications made by the Land Registry Offices, after the expiration of the 30-day period, the work to be done by the Land Registry Office will be to write a letter to the civil court of peace of the place where the immovable is located, specifying the province, district, neighborhood/village name and block/parcel number that are the subject of the conversion of joint ownership into shared ownership, and whether any sharing lawsuit has been filed regarding these parcels will be the subject of the question. According to the response letter to be received by the civil court of peace, if a lawsuit has been filed, the transaction will be REJECTED, if not, the joint ownership will be converted into shared ownership according to the non-contractual transaction to be arranged.

D. NON-CONTRACTUAL TRANSACTION TO BE CARRIED OUT AFTER NOTIFICATION

After all transactions are completed, if the notifications and their durations are recalculated and the Civil Court of Peace states that no sharing lawsuit has been filed by the heirs, the Land Registry Directorate completes the transaction by obtaining the signatures of the heirs or heirs who applied for the non-contractual transaction. If we give an example of this transaction; Registration Request Document: While the entirety of the immovable property with the characteristics listed above, registered in the Fesleğen neighborhood of Kızıltepe district of Mardin province, block 321, parcel no. 14, was registered as joint ownership under the names of Mahmut's children Haluk SARUHAN, Abdurrezzak SARUHAN and Harma TİMUR, Abdurrezzak SARUHAN, one of the heirs, did not come to sign the document in person, and the other shareholders

Haluk SARUHAN and Harma TİMUR, and after it was understood that they did not put forward any objections, after the proper notification according to the Notification Law No. 7201 and Annex. M. 3 of the Cadastre Law No. 3402, I request the registration of the immovable property registered as joint ownership as a shared ownership in proportion to our shares, and I accept that we are jointly and severally responsible for the property taxes that have not been paid to date. Then the non-contractual transaction is arranged as follows.

V. DIFFERENCES BETWEEN RESOLVING COLLABORATIVE OWNERSHIP BY LITIGATION AND RESOLVING COLLABORATIVE OWNERSHIP BY NOTIFICATION AT THE LAND REGISTRY OFFICE

In joint ownership, if the partners wish, they can file a lawsuit in the Civil Court of Peace and convert joint ownership into shared ownership. The lawsuit is for the conversion of all or part of the goods subject to joint ownership into shared ownership. The judge issues a warning as specified in Article 644 of the Turkish Civil Code, and warnings that do not comply with this article are invalid. If there is no objection that justifies the continuation of the joint ownership and if no lawsuit for sharing is filed, the judge decides to resolve the partnership. However, the judge must determine the share of the partners by referring to the relevant inheritance document in the judgment section (Ruhi et al., 2017). Again, since the conversion of joint ownership to joint ownership through litigation requires a very long time considering the workload of the courts and other issues, the re-examination of the file by newly appointed judges, the appeal and appeal periods of the decision after the decision is made, or if one or more of the heirs die while the decision is in the appeal or appeal stage, it takes a long time to send new notifications to the new heirs and include them in the case. The process of resolving joint ownership by the Land Registry office takes less time. Because the notifications made to the addresses of the heirs by the Land Registry office are 30 days as of the date of notification. If the 30th day falls on a holiday in the calculation of days, it becomes final as of the date of the first working day after that. Notifications to be made to the addresses of persons abroad are made by the land registry office of the General Directorate of Land Registry and Cadastre through consulates. In addition, notifications to be made to persons whose addresses are unknown or who have left their current addresses are made by announcement. Announced notifications are first duly announced in a newspaper with a wide circulation. The announced notification

is announced by the headman of the place where the real estate is located for 15 days. At the end of 15 days, it becomes final in the same manner. Then, a question is raised with the Civil Court of Peace of the place where the real estate is located as to whether any sharing lawsuit has been filed regarding these parcels. If it is stated in the court's response that no sharing lawsuit has been filed, the land registry office establishes shared ownership by obtaining the signatures of the applicants for the non-contractual transaction. As can be seen, the conversion of joint ownership into shared ownership by notification at the Land Registry Office is both resolved in less time and with little expense other than notification costs and revolving fund fees. It also takes a very short time in terms of time and reduces the court burden. However, in some cases, the Land Registry Office will not be able to convert the joint ownership into shared ownership according to the notification provisions. These are (Ruhi et al., 2017);

- a) If one of the heirs objects within the notification period or if the court determines that a partition case has been filed, the transaction will be rejected.
- b) If the notification costs are not covered by the applicant,
- c) If there is no inheritance document among the supporting documents at the Land Registry Office, or if it does not match the heirs and the Land Registry Office does not have the authority to correct this error,
- d) If two different inheritance documents have been submitted at the Land Registry Office in accordance with the notification principles,
- e) If the identity of the legal representative cannot be determined in the transaction to be carried out through legal means, a court decision will be requested.

II. CONCLUSION

In joint ownership, there is no concept of shareholding, there is the concept of partnership. The presence of more than one person on one or several real estates is a joint partnership. This partnership should be considered as a common share of the entire real estate, where each partner's share is common to the entire real estate. The partners must make a decision together. It is impossible for one of the partners to sell his share to a third party. In such a case, considering that the conversion of joint ownership into shared ownership takes a long time to resolve through litigation, it is clear that the inheritance partners go through a difficult process. However, according to the temporary article 3 added to the Cadastre Law No. 3402, if an heir applies to the Land Registry Office, the Land Registry Office will notify the relevant heirs that the joint ownership status will be converted to a shared ownership status. If the heirs do not make any objection claims, the question of

whether any sharing lawsuit has been filed in the parcels where the heirs are joint owners is brought to the Civil Court of Peace of the place where the immovable is located, and if it is claimed in the court's response that no lawsuit has been filed, the Land Registry Office will register it in the land registry as a shared ownership in proportion to the shares of the persons in the inheritance document. This situation will facilitate the heirs in converting the joint ownership into a shared ownership status, and will enable the heirs to dispose of their own shares as shared ownership. At the same time, considering that it takes a very long time to resolve joint ownership through litigation, the joint ownership resolved by the notification method in the Land Registry Office will be converted to a shared ownership status. It is easier to convert a joint ownership into a property in terms of both time saving and cost. In this case, there is no doubt that granting more authority to the land registry offices regarding the conversion of joint ownership into a shared ownership will facilitate the process. Because one of the powers to be granted is the authority to issue inheritance certificates, to issue notifications, to hear witnesses when necessary, to conduct an inspection of the real estate through an expert, to call the heirs through law enforcement officers, etc., which will facilitate the process.

REFERENCES

- [1]. Akçaal, M. (2019). Elbirliği Mülkiyetinde Yönetim. Süleyman Demirel Üniversitesi Hukuk Fakültesi Dergisi, 9(2), 211-249.
- [2]. Akipek, J. G. (1971). Türk eşya hukuku (aynî haklar). AÜHF Yay., Ankara 1971.
- [3]. Altan, A (2008). Mülkiyet Hakkı, Güvencesi ve Koruması, Gazi Üniversitesi Sosyal Bilimler Enstitüsü, Yayınlanmamış Doktora Tezi, Ankara.
- [4]. Ayan ,M. (2000). Eşya Hukuku 2 – Mülkiyet, Konya: 2. Baskı, Mimoza Yay., 2000.
- [5]. Ceylan, Ö. (2023). Yenice, "Ortaklığın Giderilmesi Dava Şartı", İÜHFD.
- [6]. Dörtgöz, G.Ö. (2014). Tapu İşlemleri, Bil Ofset, Ankara, 2014.
- [7]. Eren, F. (2011). Mülkiyet Hukuku, Ankara, Yetkin Yay., 2011.
- [8]. Ertaş, Ş. (2012). Eşya Hukuku, İzmir, 10. Baskı.
- [9]. Ertaş, Ş. (2004). Yeni Türk Medeni Kanunu Hükümlerine Göre Eşya Hukuku, Ankara: 5. Baskı, Seçkin Yayınları.
- [10]. Esener, T., Güven, K. (2015). Eşya Hukuku, Ankara: 6. Baskı, Yetkin Yayınları, 2015.
- [11]. Esener, T., Güven, K. (1990). Eşya Hukuku, Sevinç Matbaası, Ankara, 1990.

- [12]. Hatemi, H., Aybay, R. (2014). Eşya Hukuku, İstanbul: 4. Baskı, Vedat Kitapçılık
- [13]. Anonymous, (2024). Evaluation of companionship in jointownershipfrom a civil lawperspective (<https://www.turhanbilge.av.tr/medeni-hukuk-bakis-acisiyla-elbirliigi-mulkiyetinde-dava-arkadasliginin-degerlendirme>), (Internet Access Date: 11.11.2024).
- [14]. Karaağaç A. (2012). Tapu ve Kadastro Uzmanlık Tezi, Ankara.
- [15]. Korkmaz,A.(2021). Elbirliği Mülkiyetinde Eşyanın Kullanılması ve Korunması, İstanbul Üniversitesi Sosyal Bilimler Enstitüsü, Yayınlanmamış Yüksek Lisans Tezi, İstanbul.
- [16]. Oğuzman, M., Kemal, S., Özer,Otay., Özdemir, S. (2016). Eşya Hukuku, İstanbul: 19. Baskı, Filiz Kitabevi.
- [17]. Özmen, E.A.,Gülşah, S. (2024). “Birlikte Mülkiyette Yapılan Kazandırıcı İşlemler ve 6306 Sayılı KanunaDayalı Uygulama, <https://www.sabaozmen.av.tr>. (Erişim Tarihi:24/10/2024).
- [18]. Ruhi, A.C. (2017). İzaleiŞüyuOrtaklığın Giderilmesi Paylaşma Davaları, Ankara: 7.Baskı, Seçkin Yayınları.
- [19]. Sirmen, L. (2013). Eşya Hukuku, Ankara.
- [20]. Sirmen, L. (2016). Eşya Hukuku, Ankara: 4. Baskı, Yetkin Yay.
- [21]. Tapu Dairesi Başkanlığı, (2014). Tapu Sicil Uygulamaları, Keramet Tasarım ve Baskı, Ankara, 2014.
- [22]. Topkaya, A. (2008). “Fichte Devlet Mülkiyet İlişkisi”, Kaygı, 2008/11.