

الملخص باللغة الإنجليزية

Foreclosure of mortgage

A comparative study in civil law and sharia'a

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Abstract

This study has dealt with the foreclosure of mortgage in Islamic sharia'a and civil law. It is included in the agreement between the mortgagee and the mortgage lender, which the debtor or the in-kind guarantor of the creditor's possession of mortgagors when the debt is due but not fulfilled, or they have agreed to sell the mortgaged without following the procedures stipulated by law.

The study aimed to clarify the concept of foreclosure of mortgage in Islamic sharia'a and civil law also to clarify the forms of the agreement between the mortgagee and the debtor, and legal nature of these agreements. The study then has dealt with the sale of the payment and its distinction from the foreclosure, the scope of nullity of the foreclosure; the study has followed the comparative analytical approach to legal texts and jurisprudential opinions related to foreclosure.

The study found that the rule of foreclosure in sharia'a differs according to the jurisprudence's schools. There are those who went to nullify the contract of foreclosure because of the nullity of the condition of ownership, while the second direction went to nullify the condition alone without the mortgage contract. The Jordanian and Iraqi civil codes went to nullify this agreement in all its cases, while the Egyptian civil code allowed the agreement to be an exception in certain cases in which the interest of the parties taken into consideration.

The study concluded that legislation should amended relating to the agreement between the creditor and the debtor towards ownership, or sale of the mortgagor without following the legal procedures, to be more comprehensive of the foreclosure forms and cases where the agreement is valid.