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Comparison of Mortgage laws in United States and Saudi Arabia

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The Saudi and the American Mortgage Laws

Introduction

Despite the fact that mortgage is a very controversial factor, it is a crucial factor of economy and its effects on the economy and the society are significant (Wood, 2007). To ensure that there is economic growth, each country and state implement a set of rules and regulations, with respect to mortgages of properties (Wood, 2007). More recently, various economies have been affected by a crisis, leading to many countries, particularly the United States, to question the validity of the mortgage laws. Saudi Arabia was also affected but due to the recent development in the Arabian economy, the mortgage laws have improved especially under mortgage and real estate. This paper analyzes similarities and differences between mortgage laws from western and Arabic countries, and contain the implementation procedures as well as the aims of effected regulations by multiple factors, for example cultural, political and social. The suggested study will give a specific information about differentiation of mortgage laws between the two target countries, also it will provide the guidelines that been taken in order virtually accomplish the aims of the law.

Overview of the U.S. Mortgage

The Legal Information Institute of Cornell University Law School (2010), contains the idea of mortgage manages the change of interest over a land property that was hold as a security or deposit for a loan or a debt by the mortgagor. Home loan is considered as the most basal technique among financing genuine property transactions since it assures the mortgagee of financial recovery. The mortgagor submits security to gain approval and transfers interests over the property. In the

United States, most of the mortgagees are financial institutions.

There are several installments, payable over a specific period to match principal amount plus interest, which divide the mortgage agreement between the mortgagor and the mortgagee (Pink wish, 2011). Breach of contract by the mortgagor shall lead to the foreclosure of the real estate property. It is through foreclosure that the mortgagee is authorized to declare when the full mortgage debt is due and order its immediate payment. Foreclosure of the security interest is including an acceleration clause declared in the agreement. If the mortgage debt is fall due and the mortgagor has not paid or outstanding, the security interest may be foreclosed or seized by the mortgagee, but land is only seized when the mortgagor defaults in order to recover the losses of the mortgagee. The foreclosure process varies depending on location and the mortgage agreement but it is mostly done through the court.

Some states in the United States have govern the acceleration provision of clauses which provide allowances for outstanding to prevent foreclosure. The instruments used in mortgages are known as traditional mortgages and may be in the form of a Deeds of Trust (Legal Information Institute, 2010).

There are three theories being observed to permit a legal title to a property that has been mortgaged. These are Title, Lien, and Intermediary theories. The main hypothesis is the title of theory wherein the security or deposit interest bolsters the mortgagee. For the most part, many United Sates have been noticing the lien hypothesis whereby the lawful title of the mortgage property and estates that shall stay in the ownership of the mortgagor, provided foreclosure has not included. The intermediate theory is where the lien theory is applied until such time that the mortgagor has defaulted on payments, then the title theory is applied (Legal Information Institute,

2010).

The Mortgage Process in the United States

The mortgage process in the United States starts with the consent of the mortgagee to grant a loan secured by a property. The mortgagee defines the terms of the loan and considers collateral to support the mortgage. The mortgagor will then do the paperwork binding the security to the loan. The paperwork is negotiable depending on the location of mortgagee but firms like Fannie Mae have developed standard paperwork for used in all states in the United States. All lenders can use the paperwork since it covers the interests of the mortgagor and mortgagee. The paperwork is referred to as a note and it shows the details of the loan such as interest rates and repayment plan. The details of the notes are not fixed but set according to market standards. Mostly, the due date is on the first of every month being the close of the loan for a month (Pink wish, 2011). The following must be met for a note to be binding: the original signatures of the borrower; the note should be complete with all the necessary data; the note should be free from tampering; there must be an interest rate and repayment plan, including the due dates; the date of the note should correspond to the date of the mortgage; and the note should be relevant to the type of loan (Pink wish, 2011). Borrowers should also state their collateral clearly for the note to be valid. The lender gains the right to use the collateral to recover his losses only after the mortgagor defaults. The security interest mostly used is either a deed of trust or a mortgage. The rationale behind the execution of either of the two documents is to assist the lender to build a lien on the real estate that was used as security by the mortgagor. The mortgage instrument used as security can be in any written form indicating that it is security for the lender. In mandatory side, the mortgage does not compel a

revocation clause. Equitable mortgage is where the mortgage indicates that the loan is advanced but later the lender shall have a security interest on the property.

The primary conditions of a valid mortgage instrument shall consist of the following, the names of the mortgagor and the mortgagee; the mortgaging clause, the total amount of the loan; the interest value rate and repayment plan; the promissory note and bond of shall include the same provision; long description and detailed of the real estate property; also shall both parties include protection and secure clauses; the date of the mortgage and the note ought to be the same; the mortgagor's signature; and the mortgage archive should be verified and guaranteed; and whatever other specific prerequisites relying upon the state where it was executed. (Pink wish, 2011).

On the part of common law, a Deed of Trust was not recognized so the state was required to pass an enabling law for the approval of its use. The deed is similar to the mortgage but different in the conveyance of the title and foreclosure procedure. The deed involves the mortgagor and the mortgagee but in addition has a trustee. In concept of the morality of the deed generates trust, the borrower shall transfer on the title to the trustee who must hold the real estate until full payment of the loan has paid. Then, the trustee will return the title to the borrower. Pink wish (2011) expressed that in actuality, the title is kept on trust for, or for the advantage of the lender.

The deed of trust contains clauses to settle issues between the involved parties. In the event of contract breach by the mortgagor, the lender has the right to foreclose the property through filing a complaint alleging that the mortgagor has defaulted payment of a secured loan. Thus, seeking redress from the court shall be done by the lender to allow the foreclosure of the real property in his favor. On the part of the mortgagor, he may deny the mortgage, or that wasn't executed; the home loan has been completely fulfilled; the rate of interest is usurious; or no default ever occurred (Pink

wish, 2011). After the court decides for the mortgagee, it shall arrange a pronouncement of dispossession or for foreclosure, which ends the privilege of the mortgagor to the impartial right of reclamation at the season of offer. The mortgagor loses all rights pertaining to the property but receives any excess from the proceeds of the sale after the lender pays himself though there is an exception where an equity of redemption exists. The court holds the right to conduct the sale and sets the minimum bid for the property. After completing all legal requirements, the court appoints a sheriff to conduct the sale. The bidder who succeeded shall have the title to the property that is free from any encumbrances but to the statutory right of recovery of the mortgagor (Pink wish, 2011). In some states, the foreclosure sale does not allow the mortgagor to buy back the property due to the rights of the junior lien holders to claim their interest over the property. However, it allows in others, provided that the previous liens over the real property shall attach. In sum, the essence of foreclosure sale is that the same must be accepted by the court having jurisdiction over the property. This prerequisite must serve as an assurance to the mortgagor and junior lien holders in light of the fact that the court must preclude the offer of the property, if pegged on a price that is too low (Pink wish, 2011).

Mortgage Laws in the United States

The Mortgagor and the mortgagee can practice their entitlement to exchange their advantage taking into account their mortgage assertion. There are several states in America that consider the exchange to have produced results notwithstanding when the most noteworthy bidder of the property in the abandonment deal has not yet assumed control over the dispossessed property. Such standard was received from the “Garn-St Germain Depository Institutions Act” of 1982 which has permitted increasing speed conditions to be enforceable in each state after the law has gotten to be agent. The quickening conditions in mortgage assertions have permitted the mortgagee to recoup

the primary obligation together with the interest endless supply of the mortgagor. The exchange of the security interest from the mortgagor to the mortgagee is administered by the law of agreements and property taking into account their mortgage assertion. There are several mortgage assertions that have included “due on” special provision and “due-on-encumbrance” conditions that will block the exchange of Mortgages (Legal Information Institute, 2010)

There are several occasions where the mortgage property are subjected to dispossession procedures and have junior liens appended to it. Consequently, it will be obligation of the state to figure out which among the liens ought to take inclination contingent upon the state law where the property is found in light of property interests.

One of the laws that govern mortgages is the “Uniform Commercial Code” (UCC). Article 9 of the UCC provides an outline on how to manage conflicts between mortgage conflicts on real property and liens on fixtures. A good example is where a personal property is fixed on a parcel of real property. Pursuant to Article 3 of the UCC, a mortgage founded on a negotiable instrument, can be considered as a security interest of a mortgage agreement (Legal Information Institute, 2010).

Generally speaking, the US mortgage laws are primarily governed by common law and statutory laws of each state and governed by state laws. Since the Mortgagees are usually the financial institutions, banks, there are particular government workplaces that are commanded to administer these banks. For example, the “Office of Thrift Supervision” is viewed as a delegate office in the “Treasury Office” yet does not screen the financial institutions, banks, exercises of governmentally contracted reserve funds affiliations (Legal Information Institute, 2010). National banks are monitored by the controller of currency charters while the federal credit unions are monitored by the National Credit Union Administration (Legal Information Institute, 2010).

Current Crisis in the United States Mortgage Laws

According to Immergluck (2009), the recent real estate crisis in America has resulted to foreclosure of properties of mortgagors who defaulted. This is due to the high-risk lending procedure and failure of the government to regulate the activities of the lending firms. The lending practices of “Government-Sponsored Secondary-Market” firms, for example, Fannie Mae and Freddie Mac have brought about huge harm on the land business. In the last section 2008, these two “Government-Sponsored Enterprises” (GSE) were examined by the United States “Treasury Department” for their high-hazard loaning exchanges and were put under conservator ship for inadequacy of assets to cover their obligations. For as far back as decade, mortgage loans in America got to be one of the significant ventures because of a few financial emergencies. This perspective has been bolstered by the “Wall Street” after it took insight of the high-chance advances given in the United States. The real estate business took a dive after GSEs expanded their mortgage and credit markets to accommodate mortgages and home buying. Therefore, the development business and government income declined subsequent to the land business sector or real estate market and property charges stayed uncollected. The estimation of land properties dove since larger part of the mortgagors defaulted.

As per Immergluck (2009), starting 2010, even the top moneylenders in the business sector, for example, Bank of America (Bof) and GMAC Mortgage stopped on the dispossession of mortgage after it was unveiled that greater part of the mortgage credits had been affirmed without following proper channels. Subsequently, these money related foundations and banks have consented to briefly suspend the high-chance loaning exchanges and the buy of mortgage sponsored securities which were the underlying wellspring of subsidizing or funding. In view of the books of the banks and the loaning organizations, the default in the installment of the mortgages brought

about the sharp decrease in the estimations of the genuine properties (Immergluck, 2009). The situation uncovered that the mortgage laws in the United States were approximately executed in light of the casual screening procedure of lodging credit applications or home loan application. It was later uncovered that false lodging advances were uncontrolled in light of the fact that there were sham purchasers who were allowed endorsement of their lodging advances without confirming the personality of the borrowers. This modus operandi of fraudulent buyers affected the U.S. real estate industry especially in states such as Florida, California, Denver and Nevada (Immergluck, 2009).

Overview of the Mortgage Laws in Saudi Arabia

The mortgage laws in Saudi Arabia are based on the classic principles of "rahn" in the Quran and Shariah Islamic law. Hassan and Mahlkecht (2011). In the Kingdom of Saudi Arabia, the base of the mortgage laws are overseen by the Board of Grievances and are accordant with the teaching of Shariah law. The mortgage law is overseen by local jurisdictional authorities, as oppose to the Bank Disputes Settlement Committee, a part of the Saudi Arabian Monetary Agency (SAMA) and the Negotiable Instruments Disputes Office (NIO). Hassan and Mahlkecht (2011). Disputes between banks and their clientele are resolved by the SAMA committee. Even though SAMA and NIO have the authority to oversee most financial transactions, it is the Sharia courts responsibility to enforce mortgage contracts. Hassan and Mahlkecht (2011).

Presently, SAMA is responsible and authorized to perform the following tasks aimed at organizing real estate mortgage contracts: Firstly, the agency can authorize banks to purchase real estate with the intention of targeting real estate finance, even though this type of transaction it is currently restricted by law. This will allow the real estate finance companies to provide financing to clients who are interested to purchase real estate; Secondly, The agency is able to authorize joint

stock companies to refinance mortgages, thus catering to the needs of the current market, and in doing so will enable the secondary market participants to acquire real estate finance assets coming from other banks and real estate companies involving the Public Investment Fund (PIF) and other recognized financiers. Thirdly, it is within SAMA's power to authorize licensed cooperative insurance companies to cover and insure potential risks relevant to real estate financing based on the existing Cooperative Insurance Companies Control Law (Chance, 2012).

The new mortgage laws has facilitated the emergence of several regulations aimed at improving real estate market by providing transparency and unhindered access to related information (Hassan and Mahlkecht, 2011). In addition, some real estate houses will be placed in better financial positions due to the new government regulation that have classed real estate market as a public market open to all. In fact, SAMA is authorized under the law to set the standards and procedures concerning real estate financing matters that may include the review of the current legal forms such as the real estate lease agreements. Development of real estate laws have provided real estate financiers with access to court records and public registries. According to Chance (2012), it is within SAMA jurisdiction to define governing principles that will enforce real estate financial institutions to reveal financing and costs of real estate products offered to the general public.

Critical Issues Concerning the Arabian Mortgage Laws

There are critical issues in Saudi Arabian mortgage laws that are not clear on conflict resolution. The essential issue is whether the local Shariah Court has the privilege to uphold contract if the obligation is secured by a mortgage that is interest bearing and violates Shariah laws. As indicated by Hassan and Mahlkecht (2011), the mortgage law in Saudi Arabia applies to land and other portable resources that have a "regular record". The main discernible worry in the mortgage laws in Saudi is that they have more extensive application and are engaged for the most

part on private lodging matters. Both the mortgage and financing laws in this nation have watched the "Rahn" plans under the standards of the Shariah Courts. When the mortgage law is firmly associated with private lodging concerns, it can be connected to the Re-Funding Project that covers residential lodging initiatives and activities (Hassan and Mahlkecht, 2011).

The Effectiveness of Mortgage Laws in Saudi Arabia

According to Chance (2012), the Arabian mortgage law has been enhanced and developed to make and enroll land contracts and uphold the privileges of both the mortgagor and the mortgagee by characterizing vital concerns that incorporate end of the mortgage among others. For the mortgage to become effective, it is mandatory that the mortgaged property be registered pursuant to the real estate registration system. In case that the sold property has not been enrolled, the option requires the interest of property confess on the title deeds and additionally the related registry done through the legal officials or the public notaries and courts of the nation. Chance (2012) mentioned that the mortgage must be agent and operative at the minute that has been registered. The terms of the mortgage contract must be detailed to avoid a scenario where the subjected property may be fraudulent. The registration shall revolve purely around the mortgage agreement and exclude other issues such as the right to enjoy the use and the fruits of the mortgaged property known as the "usufruct" (Chance, 2012).

The Mortgage Law in Saudi Arabia alludes to the enrollment of security interests that addresses the rights and benefits of both the enlisted and unregistered holders of security interests, which decides the prioritization of these interests. The enrolled mortgage will just get to be agent or compelling against outsiders or third parties after it has been enlisted. This is liable to exclusive privileges of outsiders or the individual who could enroll the mortgage in front of the others since it

is weighted on request of enlistment. The main registrant of the sold property must be controlled by the section number and the date showed in the enlistment record. This idea depends on the rule "race to the counter" framework that is right now being activated and practiced inside the community of the Gulf Cooperation Council (Hassan and Mahlkecht, 2011).

According to Hassan and Mahlkecht (2011), the classical “Rahn” principle supports the prioritization method to resolve issues on who has the right over the property. Registration In Arabian jurisdiction is considered as a part of the conventional "ownership by the mortgagee" which is synonymous to the guideline of productive ownership. It is clear that the Mortgage Laws in this country have strictly followed the Sharia Court principles in the context of the modern registration system used globally. This will give rise to dispute resolution difficulties between the mortgagor and mortgagee. The utilization of resolutions in past cases including comparative issues including contract in the Saudi Arabian framework has made it entangled to foresee the clarification and refinement of the guidelines of use and application (Hassan and Mahlkecht, 2011).

“Al-Rhan” Principle of Shariah

The term “Al-rhan” literal meaning is “collateral” Khan and Nisar (2004). In addition, Al-rahm implies an arrangement where an asset is put up as collateral for the payment of a debt or obligation. In general, the collateral offered by the debtor can be disposed in case the he or she is unable or incapable to fulfill agreed payments. Al-rahm also requires the borrower's asset to be delivered to a bank, serving as a security against the payment of the loan. Khan and Nisar (2004) mention that the term 'collateral' refers to a security deposited wherein the borrower is only granted the loan if this “collateral” is presented to the loaning bank. This security is a guarantee of the borrower's full intention of paying back the loan during its maturity (Khan and Nisar, 2004). Most

banks require that the presenting of the collateral is mandatory in order to the transfer of the loan to the borrower. Therefore, if the borrowing party of the mortgage fails to meet required payments it is within the loaning bank's right to sell the collateral using the proceeds as reimbursement for the amount loaned. The most common forms of collateral is property deeds, bonds, company shares, and ownership papers of vehicles. In addition the collateral might be objects of value that be presented themselves, rather than paperwork proving ownership, such as jewelry, antiques and works of art. (Khan and Nisar, 2004).

According to Ibrahim (2012), the concept of “al-rahm” is used for the achievement of the primary objective of Shariah in al-Muamalat, which is to protect the belongings of every person. To achieve this objective, the principles of al-rahm ensure that the borrower is given a loan that he will be able to pay in due time. This signifies that breach of contract will result to failure to follow the “rahm” principles which signifies noncompliance of the main objective of Shariah in al-Muamalat (Ibrahim, 2012).

In view of the investigation of Ibrahim (2012), the Shariah has four primary goals for Fiqh al-Muamalat. The principal goal is the dissemination or the circulation of riches among the general population for the objective of investment. According to this first objective wealth should be equally spread out to all people. This depends on the precept of the forbiddance of "Riba", which prohibits gathering and accumulation of over the top riches and ascendancy of riches. The second target is that all together for the acquisition and owning of property to be considered in conformity to the rule of "rahm", it should be free genuine to avoid issues in future. To be able to avoid this scenario, the parties of the contract are required to include witnesses in written form to avoid conflicts (Ibrahim, 2012). As a general rule, there must be compliance with these two requirements for the valid acquisition of the property or else the property will not be valid (Ibrahim, 2012).

The third goal of the Shariah is the recognition of equity and equity among the general population to be an obligatory goal in every single business managing in Islamic nations. According to this goal, each individual is required to engage in legitimate business only (Ibrahim, 2012).

The fourth and the last goal of Shariah in al-Muamalat are to secure the wealth and the property of the general population by avoiding and preventing transgressions performed by any party (Ibrahim, 2012). These are mandatory objectives for the Muslims. The last objective of the Shariah prevents anyone from indulging in illegal dealings of property. The inability to conform or obey to this fourth goal is an infringement of the law that will result to legal sanction and retribution. As per Ibrahim (2012), the al-Rahn principle of Shariah gives members of a contract the right to ask for collateral to be used as security in case of breach of contract by the other party to protect the faithful member of the contract. As part of the Muslim faith and culture, no Muslim should devour other people's property wrongfully (Ibrahim, 2012).

Application of "Rahn" Principles in the Mortgage Law of Saudi Arabia

As indicated by Hassan and Mahlkecht (2011), the legitimate contractual procurements contained in the investigative system of mortgage approval have observed the following ten "Rahn" standards which are: 1. The obligation of the mortgagor is nearly related to the sold or mortgaged property; 2. The mortgagee has the privilege to withhold and keep the sold or mortgaged property; 3. The mortgagee is obligated and compelled by sense of honor to protect and keep up the sold or mortgaged property; 4. The mortgagee needs to pay the duty and commitments that are identified with the sold or mortgaged property; 5. The mortgagor and the mortgagee should not interfere with the mortgaged property while the duration of the mortgage is still effective; 6. The mortgagee is

disallowed to make any utilization of the sold or mortgaged property; 7. The value of the mortgaged property should correspond to the debt of the mortgagor; 8. The mortgagee is not allowed to sell the mortgaged property for the satisfaction of the debt; 9. The mortgagee who is in control of the property should appreciate being a priority creditor who will be paid in front of alternate lenders or other creditors; 10. The mortgagee has the commitment to give back the mortgaged property when the obligation has been completely fulfilled by the mortgagor (Hassan and Mahlknecht, 2011).

Recent Innovations on the Mortgage Law in Saudi

As per Chance (2012), in light of the enhanced mortgage laws in Saudi Arabia, there are accessories that have been made available to real estate financiers: 1.) The capacity to earn second ranking in the mortgaged property in the event that there are other successive mortgagees prior to the party who asserts his right over the property; 2.) To be qualified for the privilege to implement the unclassified share of the partner in the title and the manner of division of the title deed. The mortgagor is allowed to attach up to the extent of the divided property, and provides right to the mortgagee to demand for the partition and sale of the divided property after establishment by the mortgagee of his right to enforce the secured property (Chance, 2012).

Furthermore, there is an express commitment with respect to the mortgagor to secure the mortgaged property and the mortgagee's entitlement to ensure and debate any worry that relates to decrease of the estimation of the mortgaged property. Another notable change is the "top-up" procurement and provision useful in the event that the value of the mortgaged property is reduced to the amount of the debt due to property misuse on the part of the mortgagor (Chance, 2012). The changes allow the mortgagee to demand for extra collateral from the mortgagor lest the mortgagee moves ahead to acceleration. It is the right of the mortgagee to file for the application of summary

judgment in court to prevent any activity that may harm the value of collateral.

There are some provisions in the law that prevents the execution of the new provisions after declaring them null and void even if contained in the mortgage agreement. The power of the mortgagee to foreclose the property shall extend to ownership to allow the mortgagee to cover the loaned amount. The only exclusion to the use of the property is the matter that relates to the income earned from the sale of the property since the excess amount is given back to the mortgagor (Chance, 2012).

News Reforms to the Mortgage Laws of Saudi Arabia

As per Chance (2012), there are new changes that were acquainted all together with enhance the mortgage framework in Saudi Arabia. There are five that have upgraded the Saudi Arabian mortgage: “The Real Estate Finance Law”, “the Finance Companies Control Law”, “the Registered Real Estate Mortgage Law”, “the Finance Lease Law and the Enforcement (Execution) Law”. “Under the Real Estate Finance Law”, the law has given financiers the authority to join and disseminate information inside the real estate finance market and enhance the liquidity of the institutions through methods that encourage government financial support. This can be accomplished with the assistance of mortgage renegotiate organizations and through securitization (Chance, 2012).

According to the “Finance Companies Control Law”, it has structured a framework for the Shariah compliant finance organizations and banks to join the real estate market. A portion of the option types of money shall incorporate the lease finance or investment and microfinance from different organizations that desire to enter the real estate business. The allowing of the law through the royal declaration has took into consideration the formation of another council for hear and

decide potential debates for infringement of the Finance Companies Control Law and the Financing Lease Law. This Committee is known as the Committee for the Resolution of Financing Violations and Disputes, which solves real estate issues except ownership and security disputes (Chance, 2012).

Under the “Registered Real Estate Mortgage Law”, the essential center for the change of the law is to give another system to the foundation of security over real property that will incorporate second positioning mortgages. This is the first time that the Mortgage Laws in Saudi Arabia have included such a provision to encourage more lenders to participate in real estate to boost the real estate economy (Chance, 2012).

Another law that is relied upon to improve the real estate market in the nation is the Finance Lease Law. This law has arranged the principles relating to the fund renting as a successful substitute item to secure an obligation. The Enforcement (Execution) Law has likewise accommodated another group of judges that has upgraded the procedure of usage and authorization of laws. This measure has characterized the implementation part of the court that will plainly distinguish the forces and ward of the offices tasked to execute the laws relating to land. This has additionally extended the sort of implementation activities that can be brought before the court (Chance, 2012).

Furthermore, there is an amendment to the Capital Market Law that has allowed for the registration of special purpose vehicles under the scope of the Capital Market Authority to allow these vehicles be used as security (Chance, 2012).

Issues Involving the New Reforms in the Mortgage Laws of Saudi Arabia

According to Chance (2012), there are some major issues that will affect market players with respect to the new reforms in the real estate industry. Some of the recognized inquiries of business sector members and spectators include: 1.) The resolution of the court in permitting account holders or debtors to approve mortgage loans with or without security “collateral”; 2.) The impact of the new procedures in light of the changes as for the standards of Shariah (Chance, 2012); 3.) The operation of registers as to the decisiveness of records against outsiders or third parties 4.) The impact of the new mortgage law framework association with unregistered property; 5.) The response of the notaries to the new laws in practice; 6.) Based on the land point of view, the impact of the changes to build private speculation of suppliers and the investment; 7.) The impact of the mortgage changes to the off-arrangement financing for designers since the new laws are more centered around completed properties; 8.) The capacity of the land business sector to give financing in view of longer terms, for example, 20-year or 30-year mortgage being executed in different nations; 9.) The production of a fluid as an optional capital market that will bolster existing foundation of possessions; 10.) The support level of government that will be reached out to the borrowers (Chance, 2012).

Comparison of Mortgage laws in United States and Saudi Arabia

In view of the presentation of mortgage laws in the two nations, United States also, Saudi Arabia, there are a several similitude and contrasts in the way of authorization, execution and usage of mortgage laws are in these two nations.

In both countries, there must be collateral to support the mortgage agreement for the mortgage to be effected. In the United States mortgage law, the procedure of selling a property begins with the assent of the mortgagee to concede the credit that is secured by a real estate define

the terms of the loan and consider the validity of the collateral. The mortgagor creates a note promising to pay and outlining the evidence of the security used. The note and the home loan are permitted to be executed in the meantime, but they are separated from each other under normal circumstances (Hassan and Mahlkecht, 2011).

According to the mortgage laws of Saudi Arabia, it is an indispensable requirement that the mortgaged property be registered with the real estate registration system for the mortgage to be effective. According to Chance (2012), if the property has not been registered, the alternative is to have the interest of property endorsed on the title deeds as well as the associated registry done through the notaries public and courts of the country.

Differences between the U.S. Mortgage Laws and the Arabian Mortgage Laws

The essential contrast between the mortgage laws in United States and Saudi Arabia is that in the Arabian nation, its mortgage laws pursue the Shariah "Rahn" standards. In the United States the mortgage laws have nothing to do with religion. In the enforcement of mortgage laws in Saudi Arabia, the financiers have to comply with the 10 "Rahn" principles. These standards as expressed by Hassan and Mahlkecht (2011) are substantial contractual procurement that typify the diagnostic structure of a mortgage assertion. In light of these standards, the mortgage laws in Saudi Arabia have guaranteed that the procurement are in accordance with the ideology of the religion or the "Rahn" standards. Such prerequisite is missing in the American mortgage laws.

The Arabian Mortgage Law does not disallow the act of securing a legitimate "Rahn" over different resources that are not yet enrolled (Hassan and Mahlkecht, 2011). The governing bodies having adjudicatory functions have allowed such procedure provided that these actions are consistent with the four orthodox of "Sunni Madhahib" which has a close connection to the

classical “Rahn” principles. Based on the classic “Rhan” principle, the mortgagee is given the first priority to recover all his money from the sale of the mortgaged property. The mortgagee must be favored over an outsider or third party if there are progressive mortgage including the same property. It bears focusing on that any demonstration of the mortgagor that concedes an outsider or third party to guarantee in front of first mortgagor without the mortgagee's assent will be viewed as void. (Hassan and Mahlknecht, 2011).

Similarities of Saudi and U.S. Mortgage Laws

The two countries follow the same concept of using collateral as security for the loan of the borrower especially where the lender is a bank. According to Khan and Nisar (2004), the insurance or collateral is a critical instrument for the security of loan since it gives lenders capacity to recover the amount borrowed by the debtor or the borrower. In actuality, the insurance raises the borrower's expense of default and in the meantime serves as a disincentive to default. (Khan and Nisar, 2004).

In the case of United States mortgage laws, it is mandatory to present collateral before the approval of the loan while it is not mandatory in the Islam system of Banking. The economists argue that the banks will contribute better to the growth of the economy but funding small enterprises without collateral. It was further clarified that following the Islamic banking framework or managing account system is established on participatory financing, the Islamic banks are not reliant on existing of tangible guarantees, contrasted with the Western financial institution framework (Khan and Nisar, 2004). It can be watched that the premium based managing an account framework or banking system usually permits credit offices to their customers who have the ability to give attractive and satisfactory tangible or genuine guarantee security as a part of their interest and benefits. This has widened the income gap between the upper and lower classes of the society

(Khan and Nisar, 2004).

Also, the presence of guarantee prerequisites has underlined the different position of banks when contrasted with the effectiveness of other money related firms (Khan and Nisar, 2004). Truth be told, a few incompetent associations and firms have the ability to secure credit by presentation of guarantee. Conversely, there are a few proficient associations and firms that not granted with significant amount of loan for their inability to give adequate insurance. It is therefore advisable for Islamic Banks to remove collateral requirements in order to encourage other investors expand their business and fund borrowers base on the feasibility of their projects (Khan and Nisar, 2004).

In light of the changes made on the Saudi Arabian mortgage laws, the goal of the government is to urge individuals to profit of lodging credits. As per Chance (2012), plainly the aim of the Saudi Arabian mortgage changes is done for giving amendments to the administrative authorization in so far as the real estate market viewpoints are concerned. At present, the demographics in Saudi Arabia have demonstrated that there are no less than 1.5 million new lodging units that must be implicit in the coming years. In this manner, the administration has anticipated that there will be a lodging cost inflation in the following couple of years and will turn into a noteworthy issue later on. The old mortgage laws made it troublesome for the general population to profit lodging credits and loans. Since the proportion of homes financed keeps reducing, many people are unable to build homes for their families. According to Chance (2012), the options offered to the people on home financing are unaffordable so most of them remain homeless. Majority of the financiers require collateral for their loans. The recent reforms to the Saudi Arabian mortgage laws are encouraging people to take mortgage loans.

According to Fattah (2012), mortgage loans in Saudi Arabia have greatly increased in the

past four years. This is evidenced by the giant leap taken by major banks in Saudi Arabia after they agreed to take more risks to build their real estate industry after mortgage law reforms. Real estate financing has grown to 83% to hit 48 billion riyals. This was an aftereffect of the four percent home buys in Saudi Arabia that have gotten financing through real estate mortgage loans. At present, the majority of the home purchasers could buy their new houses subsequent to getting assistance from the funds of their families (Fattah, 2012). The Arabian government's agency called the "Real Estate Development Fund" granted interest free mortgage loans to the low income earners.

After the close comparison of the mortgage laws in these two countries, it is clear that the real estate industry in America is well established in terms of laws and implementation. Foreclosure through advertisement can only be possible if there is a provision in the contract that has allowed the mortgagee to use this method. According to the mortgage laws in Saudi Arabia, the advertisement method is not available especially since reforms to the laws were made in 2012 (Fattah, 2012).

Unlike the mortgage laws in the United States, it has been established that it is easier to use mortgages and deeds of trust between the mortgager and mortgagee than the normal court proceedings.

Furthermore, Saudi Arabian mortgage laws do not give the mortgagor the privilege of recovery if there was default in the payment of his commitment. Despite the fact that not all the states in the United States have permitted this interest for the mortgagor, there are several states, which preclude the privilege of refund on the mortgagor, if the instrument that was implemented to secure the property is a deed of trust (Pinkowish, 2011). In light of this unprecedented deal exchange, the mortgagees in United States have turned out to be more mindful in their consistence

with the notification, and also other compulsory prerequisites before the offer of the sold property is permitted. The dispersion of the returns of the deal in the request of the inclination of leasers has watched the same way for legal procedures. It is likewise imperative to say that the mortgagors in the United States have been provided with a few choices in the event that their mortgage properties were foreclosed.

In the mortgage laws of Saudi Arabia, it is evident that the provisions on mortgage need to be clearly defined in terms of strict foreclosure or the normal court process, after the mortgagor has defaulted. Many of the states in the United States have watched the practice in light of the title hypothesis wherein the court of quality must permit the mortgagor an abundant chance to practice the equitable redemption as a right (Pinkowish, 2011). This practice is not explicitly specified in the mortgage laws of Saudi Arabia.

Conclusion

In conclusion, religion and culture are the main determinants of the types of mortgage laws that are implemented in the two countries. Additionally the two bring out the differences in the mortgage laws of the two countries. For instance, the real estate business in Saudi Arabia cannot be considered as fully developed. This is due to the fact that religion plays a vital role in influencing their banking systems. The essential thought of the home loan laws in Saudi Arabia has focused on taking after the idea of "al-Rahn" which is established in Shariah for the accomplishment of the primary target of Shariah in al-Muamalat. The Shariah "al-Rahn" standard has had confidence in the assurance and protection of flourishing, wealth and property of individuals (Khan and Nisar, 2004). The beyond any doubt approach to achieve this goal in agreement to the standards of al-Rahn is composed in a manner that the final result will implementing the acknowledgment of al-

Rahn's own mantra, which plans to shield the lender by ensuring that the account holder or debtor will have the capacity to pay his commitment. This indicates contradiction with the rules and standards of settlement of commitment will mean inability to follow the "Rahn" standards.

Subsequently, it is protected to say that the mortgage laws in the Western managing an account framework or banking system, for example, in the U.S. is more urbanized than in other Islamic nations like Saudi Arabia. There is truth in the hypothesis of Muslim financial analysts who expressed that the Islamic arrangement of saving money ought not be as protective as the laws in the U.S. Consequently, the home loan laws in Saudi Arabia ought not be as strict as the actualizing tenets and the executing standards of U.S. mortgage laws. It is suggested that on account of utilization of loan of small borrowers in Arab nations, it is not important to require the borrowers to present collateral. These financial specialists contended that the Islamic banks will have the capacity to add to the development and rise of the economy by permitting these little ventures to acquire adequate subsidizing even without giving the guarantee to secure their loan. As further clarified by the monetary specialists, since the Islamic banking system is established on participatory financing, the banks shall not be reliant on percent of real and tangible guarantees, contrasted with the Western managing an account framework (Khan and Nisar, 2004). It can be noticed that the premium based banking system typically permits credit facilities to their customers who have the ability to give acceptable real and tangible guarantee security as a component of their interest. Looking closely at this practice will show that over the long haul, such banking practice and overall policy has indeed expanded the current significant revenue hole between the upper and lower classes of the general public (Khan and Nisar, 2004). After accurate examination of the past studies concerning the mortgage laws in Saudi Arabia, these shortcomings can be kept away from

through the proposed measures with a specific end goal to cross over any barrier or gap between the upper and lower classes of the general public.

Making and actualizing laws is an extremely delicate issue in any given nation since it has its effects on the general public. The affectability of mortgage laws, with respect to its effect on the economy and prosperity of individuals, makes it one of the debatable laws. For the most part, different studies have been done on law usage in different nations, and the effects of the procedure in the general public. With the organization of changes in the mortgage laws in Saudi Arabia, it is normal that the real estate framework in the nation will develop in the coming years. As indicated by Chance (2012), in view of the new changes made on the mortgage laws of Saudi Arabia, the statutory extend of alterations and sanctioning of new amendments in the mortgage laws are noteworthy. Nonetheless, regardless of these progressions, the implementation of the law and the impact on the real estate stays to be hidden. It gives the general population and financial specialists or investors a feeling of trust following the new laws have made a legitimate environment that keeps on private capital investment to the present constrained real estate finance market. It is normal that it will require investment to set up the establishments of these modifications in light of the fact that the agreement of the general population has demonstrated that it won't simply be a matter of overnight accomplishment in the real industry. Changes serve as an appreciated proceed onward the part of the legislature to start evolutionary modifications in the right way.(Chance, 2012).

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