



The Condition of the Couple's Agreement in Choosing Housing and the Guarantee of its Implementation

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DOI:

10.30497/flj.2025.246620.2047



Introduction

Selecting an appropriate residence for marital life is both a right and a duty of the husband. However, it is possible that, either within the marriage contract or through a separate agreement, the authority to choose the residence is delegated to the wife or conditioned upon mutual agreement and cooperation between the spouses. In cases where such a condition of mutual agreement is stipulated, the legal consequence of failure to reach consensus is unclear. Does the condition become void, thereby reinstating the husband's unilateral authority to select the residence? Or, akin to other binding contractual terms, may the court be petitioned to enforce it?

Judicial decisions on this issue have been inconsistent. Some judges hold that the condition lapses, restoring the husband's right to unilaterally decide, while others maintain the condition remains in force. Moreover, once an agreement has been reached and the residence chosen, the legal nature, implications, and consequences of that agreement remain insufficiently discussed in jurisprudence.

This article aims to answer the following questions: What is the legal remedy if the spouses fail to agree on a specific residence? Does the condition or agreement become null and void, reverting the decision-making power to the husband? Or may the court intervene to enforce the condition or agreement? Furthermore, while mutual agreement on the family residence constitutes the execution of the prior condition or contract, it also represents an independent and binding agreement. Consequently, any change to the agreed-upon residence requires termination—through rescission, mutual cancellation, or automatic dissolution—of the prior agreement. This raises the further question: Must any new residence also be

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chosen by mutual agreement, or does the initial joint decision fulfill and terminate the condition, thereby restoring the husband's unilateral authority? The central premise of this article is that the condition or contract requiring mutual agreement in choosing the residence is legally binding like any other enforceable agreement, and that the court may be called upon for its enforcement. Additionally, it is argued that this condition or contract is inherently recurrent in nature—meaning that whenever the chosen residence changes for any reason, a new decision must also be made with mutual consent.

Literature Review

There is a noticeable gap in the legal literature regarding the condition or agreement of mutual consent in selecting a shared marital residence. No independent books or articles have been devoted to this topic, and even within broader discussions, it rarely receives focused treatment. Most jurists and legal scholars have examined the permissibility of delegating the choice of residence to the wife, addressing its validity under Islamic and civil law. While the validity of mutual agreement as a condition is rooted in the permissibility of delegation, it nonetheless constitutes a distinct legal issue with important practical and jurisprudential consequences, which this article seeks to explore.

Methodology

This study adopts a descriptive–analytical approach, relying on library-based research. It provides a detailed legal characterization of the relationships established between spouses under various scenarios. The research draws on diverse sources in Islamic jurisprudence and Iranian legal doctrine, analyzing opinions and interpretations, and applying them to current legal issues.

Findings

A contract or condition that subjects the choice of residence to the mutual agreement of the spouses is considered a binding and enforceable provision, just like other contractual terms, and demands appropriate legal remedies in case of breach. Furthermore, mutual agreement and selection of the residence constitute a valid and binding contract in and of themselves. Therefore, any modification to the chosen residence requires the dissolution

of the initial agreement—whether by rescission, mutual annulment, or automatic expiration. After such dissolution, a new residence must again be selected through mutual agreement. Accordingly, this condition is not a one-time provision, but rather one that must be continuously honored upon any change of residence.

Keywords

Mutual selection of marital residence; delegation of choice; spousal agreement on housing; change of marital residence.

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