



Housing, Land and Property Task Force
Afghanistan

A BRIEF GUIDE TO OWNERSHIP DOCUMENTS IN AFGHANISTAN¹

UN HABITAT
FOR A BETTER URBAN FUTURE

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This brief was produced in July 2020. The laws cited in this publication are unofficial English translations; for official legal documents, please refer to published Afghan laws in Pashtun and Dari. For more information please contact: Ben Flower, HLP Advisor, UN-Habitat, ben.flower@unhabitat-afg.org; Patricia Kheirallah, Head of Programme, NRC, patricia.kheirallah@nrc.no; Hamidullah Ataei, HLP Advisor, UNHCR, ataee@unhcr.org.

This brief provides information on legal documents associated with land ownership, land lease/rent, and land occupancy in reference to relevant Afghan laws. It is intended to provide guidance on land and property rights in relation to IDPs, returnees and other tenure insecure groups. This guidance note is not a legal document, but provides information and analysis from the Housing, Land and Property Task Force (HLPTF). The HLPTF is a sub-cluster of the Protection Cluster, and part of Afghanistan's Humanitarian Country Team. The content of this brief is extracted from UN-Habitat's (forthcoming) Housing, Land and Property Rights Guide.

Ownership documents

For households aiming to increase their tenure security, obtaining tenure documents is crucial. This is because the 2017 Land Management Law makes clear that ownership is proved through documentation (Box 1)

Box 1

Article 9 of the Land Management Law on proving ownership

A person's ownership of land and property shall be determined by valid legal documents provided that no other document nullifies or invalidates the valid legal document proving right of ownership.

Legally valid ownership documents fall into two categories: formal ownership documents and customary ownership documents.

Formal land ownership is most often proved by a **court-issued land title deed**. The courts issue deeds when land or property rights are being transferred or confirmed through the court. The transfer can relate to the purchase, gift, bequest, division, or exchange of land, a letter discontinuing legal proceedings, a settlement letter, a marriage certificate, or a title deed that is issued based on previous state property documentation. Article 18 of the Land Management Law recognizes other formal documents as means to prove ownership of land and property, including the decision of a court on a property dispute, historical property tax and ownership documents issued in the pre-Taliban era.

Customary documents can also prove legal land ownership. Customary documents record ownership transfers not conducted through formal processes. They include those relating to the purchase, ownership, gift, will, bequest, division, or exchange of land, a letter discontinuing legal proceedings, a settlement letter, or a marriage certificate. However, there is an important condition customary documents must satisfy to be considered as legal proof of ownership. Article 18.10 states that a **legally valid customary document is defined as that which records an informal transfer of property that has previously been documented through formal processes**. For example, if a parcel of land was legally documented with a court-issued title deed, and was subsequently transferred through a customary inheritance document, this customary document may constitute legal proof of ownership in the absence of any conflicting land claims. Understanding these legal complexities is important in determining the legal ownership rights of IDPs and Returnees, since many possess customary documents.

More details about formal and customary ownership documents can be found in Article 18 the Land Management Law.

Lease/ rental documents

If private property is leased or rented to individuals, then certain property use rights are vested in the lessee. The rights of lessors and lessees, or tenants, are detailed in Chapter 10 of the Land Management Law. Tenant rights are crucial from a humanitarian perspective because IDPs and returnees, particularly in urban areas, often lease land from private land owners. In this respect it is crucial that a legal document detailing the rights of the tenant and other information is produced, if the lease/rental agreement is to constitute a legally valid document (Box 2).

Box 2

Article 71 of the Land Management Law on lease contracts

The lease contract shall be in writing and include the following:

- Information about the parties, including name, father's name, national ID number, telephone number, and current and permanent addresses;
- The purpose for leasing the land;
- A detailed description of the land or property to be leased;
- Both parties' obligations;
- Duration of the lease;
- The amount to be paid for leasing the land or property, the time when such payments must be made, and the method of payment;
- Conditions for terminating the lease contract.

Occupancy documents

In some cases, property claimants may not have documents proving ownership, but can legally occupy land. Occupancy rights can be formally recognized and documented through the Regulation on Managing the Affairs of Urban Informal Areas 2017, and are documented through an Occupancy Certificate, provided certain conditions are met (Box 3). Occupancy Certificates are official documents that are issued by the government, and so are regarded as providing a high degree of tenure security for recipients. At present, Occupancy Certificates are distributed by the Government of the Islamic Republic of Afghanistan (GoIRA) through systematic land registration of urban informal properties through the City for All (CFA) programme. However, many IDP and returnees are not eligible for Occupancy Certificates because they are located on property claimed by the state or private sector individuals and entities. In such cases, HLP actors can support access to land allocation schemes (e.g. PD 305), or encourage families and individuals to obtain other tenure documents (e.g. lease/rent agreements, customary documents) to strengthen their tenure status.

Box 3

Article 5 of the Regulation on Managing the Affairs of Urban Informal Areas 2017 on Eligibility for Occupancy Certificates

Arazi in collaboration with Ministry of Urban Development and Housing², Independent Directorate for Local Governance and municipalities will identify the residential houses which are built in informal settlements for the purpose of registration and granting of occupancy certificates to the occupants according to the following conditions:

- I. The property should be within the boundaries of the master plan and/or urban strategic plan.
- II. The settlement should be able to be included in "urban plan" by the municipality.
- III. The settlement should have existed for at least 15 years before the passing of this regulation.
- IV. The property should not be located within a water source area.
- V. The property should not be located in public service establishments, entertainment parks, sports grounds, green areas and protectable area.
- VI. The property should not be in an area that is planned for the development of government or public projects within a period of ten years.