



The Official Electronic Authentication of Real Estate or Property Rights Transactions between Prohibition and Approval

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Abstract:

The electronic notarial writing relating to the building or land rights has had divergences in international and national legislation in comparative law. There are those who have forbidden this writing with the virtues of the clear texts by considering it insufficient as to the required conditions, by the acts relating to the buildings and others which admitted it with the organization of its conditions to give it an evidential value in evidence.

Keywords: *Electronic Official Writing. Immovable. Land Rights. Proof.*

Authentification électronique officielle des transactions immobilières ou relatives aux droits de propriété entre l'interdiction et l'approbation

Résumé :

L'acte notarié électronique relatif aux droits immobiliers ou fonciers fait l'objet de divergences en droit comparé, tant au niveau international que national. Certains s'y opposent, invoquant la clarté du texte mais le jugeant insuffisant au regard des conditions requises. D'autres textes législatifs, relatifs aux bâtiments et autres, l'autorisent, sous réserve de l'organisation des conditions nécessaires à sa reconnaissance comme preuve.

Mots-clés : *Acte notarié électronique. Immobilier. Droits fonciers. Preuve.*

Introduction:

The technological and informational evolution of communication tools and information technology worldwide has led to the emergence of a new type of legal transaction concerning real estate or real property rights, which are concluded remotely and do not involve the physical presence of the parties at the moment of mutual consent. This new form of transaction has necessitated, for its conclusion and proof, an adaptation of evidentiary law by developing the prevailing concept of official written documentation, allowing for the recognition of a new type of official documentation in electronic form, supported by intangible, non-physical media.

Comparative legislative trends—both regional and national—have diverged on the issue of recognizing this form of documentation, oscillating between rejection and acceptance.

This raises the question: to what extent is there legislative recognition of official documentation in electronic form as valid proof of legal transactions related to real estate or real property rights, especially when most general evidentiary rules require such transactions to be officially documented? What is the position of Algerian legislation on this matter?

If such recognition is granted legislatively, to what extent does it meet the conditions required to confer official status, as established by general evidentiary rules? What is the legal evidentiary weight granted to it in proving real estate transactions? In the case of a conflict between electronic and paper-based official documentation, which one takes precedence? And what is the extent of discretionary power granted to the judge in weighing between the two?



These are the questions this research aims to address.

1. The Extent of Legislative Recognition of Electronic Official Documentation for Real Estate Transactions

Official documentation, according to general evidentiary rules, refers to the act by which a public officer, a judicial officer, or a person entrusted with a public service records what was carried out in their presence or what was declared to them by concerned parties, in accordance with legal formalities and within the limits of their authority and jurisdiction. Such official documentation constitutes the most important formal requirement for the validity of real estate legal transactions, under penalty of nullity.

However, ever since electronic evidence began to gain recognition, a question has emerged regarding the possibility of formalizing real estate transactions through official documentation in electronic form. To what extent can this type of documentation fulfill the same functions as traditional written official documentation – such as proving the explicit intent of the contracting parties and satisfying the formal requirement necessary for the conclusion of real estate transactions? What are the essential conditions required for electronic documentation to acquire the status of official documentation, such that it may be granted the same legal value as paper-based official documentation?

In this regard, comparative regional and national legislations have adopted two divergent and opposing positions on the matter. Some have explicitly excluded real estate transactions from the scope of legal acts permitted to be proven by writing in electronic form. Others, by contrast, have expressly allowed for the official documentation of real

estate transactions in electronic form, provided certain predefined rules and conditions are met, and have granted such documentation the same legal evidentiary weight as that given to written official documentation for real estate transactions.

1.1. The Legislative Trend Upholding the Principle of the Insufficiency of Electronic Documentation to Fulfill the Legally Required Formality for Real Estate Transactions

Some comparative legislations, despite recognizing the possibility of electronic writing fulfilling the formal requirements for the validity of certain legal transactions—based on the internationally, regionally, and nationally established principle of electronic formalism—have deliberately chosen not to extend this recognition universally to all legal acts. These legislations have preferred that specific categories of transactions, notably those related to the creation or transfer of real property rights, continue to be concluded using traditional written forms rather than through electronic means.

In this context, the European Directive of June 8, 2000, on electronic commerce, clearly stipulates in Article 1(2) that:

"This Directive shall not apply to contracts that create or transfer rights in real estate, except for rental rights, nor to contracts requiring the involvement of courts, public authorities, or professions exercising public authority. It shall also not apply to contracts of suretyship granted by individuals acting for purposes outside their trade, business, or profession, nor to contracts governed by family law or the law of succession, such as wills, donations, marriage contracts, divorce declarations, or adoption acts."



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It is evident from this provision that the European legislator excluded a wide range of legal transactions from being validly documented in electronic form. These include, among others, contracts requiring the intervention of courts or public authorities, or those involving professionals with public authority—such as notaries and judicial officers—entrusted by their states to confer official character on legal instruments. Particularly noteworthy is the explicit exclusion of contracts creating or transferring real estate ownership rights, with the sole exception of rental agreements.

Several Arab legislations have adopted a similar stance, in line with the European Directive mentioned above, by excluding legal transactions concerning immovable property or real rights from the scope of transactions that can be officially documented electronically.

One prominent example is the Jordanian Electronic Transactions Law No. 85 of 2001, which regulates this matter in Article 4(b), stating:

*"Unless otherwise provided by another law, the provisions of this law shall not apply to:

1. The creation or amendment of wills or endowments.
2. Transactions involving the disposition of immovable property or of movable property requiring registration under applicable laws, including related powers of attorney, ownership deeds, and the establishment of real rights, except for lease contracts relating to such property.
3. Powers of attorney and transactions concerning personal status.

4. Notices related to the cancellation or termination of utility services (such as water, electricity), health insurance, or life insurance.
5. Pleadings, litigation documents, court notices, and judicial decisions.
6. Securities, except as otherwise provided under special instructions issued by competent authorities in accordance with the Securities Law or any other legislation."*

This provision reveals that the Jordanian legislator adopted the same legislative posture as that of the European counterpart by excluding a wide array of legal transactions from the possibility of being concluded through electronic form. Of particular importance is the exclusion of transactions involving immovable property (including real estate), especially those requiring registration under applicable laws, along with related powers of attorney, ownership documents, and the creation of real rights – again with the exception of lease contracts related to such property.

Moreover, the Bahraini legislator, through the enactment of Law No. (28) of the year 2002 concerning Electronic Transactions, has also expressly excluded a specific set of legal transactions from the scope of applicability of the provisions governing electronic records and electronic signatures.

This exclusion is clearly articulated in Article 2(2) of the aforementioned law, which stipulates the following:

"The provisions of this law shall apply to electronic records and electronic signatures; however, the following matters are expressly excluded from its scope:



A - All legal matters and cases that fall under the exclusive jurisdiction of the Sharia courts in accordance with the provisions of Decree Law No. (26) of 1986 concerning the organization of the judiciary and its subsequent amendments.

B - Personal status issues pertaining to non-Muslim individuals, including but not limited to marriage, divorce, child custody, adoption, inheritance, and the creation or amendment of wills.

C - Transactions and legal acts for which the law mandates documentation in official written instruments in order to be legally valid and enforceable.

D - Negotiable financial instruments.

E - Property ownership deeds, with the exception of those specifically addressed in Article 23 of this law. "

From this exhaustive enumeration, it becomes unambiguously clear that the Bahraini legislator did not entirely adopt the legislative direction and stance embraced by the European Union, which excluded only a limited category of contracts—specifically, contracts that create or transfer real estate ownership rights—from the realm of transactions validly concluded through electronic writing, while allowing exceptions such as lease contracts.

On the contrary, the Bahraini legislative approach can be described as more stringent and more expansive in its scope of exclusion. The law categorically disqualifies all transactions and legal dispositions that, according to the prevailing legal framework, require formal validation through official notarized documents—without exception. This comprehensive exclusion extends to contracts that create or transfer ownership rights in immovable property (i.e., real estate), and also encompasses contracts that

establish or transfer lease rights in such immovable property, which were partially allowed under European law.

Similarly, the United Arab Emirates—through the promulgation of Federal Law No. (1) of 2006 regarding Electronic Transactions and E-Commerce—has followed a comparable path in formulating a clear legislative position that excludes particular categories of transactions from the ambit of electronic documentation.

In Article 2(2) of said federal law, the following exclusions are enumerated in detail:

"This law shall apply to electronic records, documents, and electronic signatures that are relevant to electronic transactions and electronic commerce. However, the following are explicitly excluded from its provisions:

A - Transactions and legal issues concerning personal status, such as marriage, divorce, and the drafting or execution of wills.

B - Ownership deeds pertaining to immovable property (i.e., real estate).

C - Negotiable instruments that are transferable by endorsement or delivery.

D - Transactions related to the sale, purchase, transfer, or lease of immovable property for durations exceeding ten years, as well as the registration of any other legal rights associated therewith.

E - Any documents for which the law requires notarization or authentication before a notary public.

F - Any other documents, records, or transactions that may be excluded by specific legislative provision. Furthermore, the Council of Ministers may, by official decree, add additional categories of transactions or legal matters to the above list, or remove or amend any of the listed exclusions."



Soumission : 12/05/2025 Acceptation : 08/06/2025 Publication : 25/08/2025

This legislative framework reflects a detailed and deliberate exclusionary policy. The Emirati legislator, much like the Bahraini counterpart, removed from the scope of electronic formalism all matters involving ownership documentation of immovable property, as well as transactions involving the conveyance or leasing of such property where the lease term exceeds ten years.

What distinguishes the Emirati legal approach, however, is a nuanced exception embedded within its structure: lease contracts involving immovable property for periods less than or equal to ten years are not excluded from the scope of this law. In other words, such lease agreements may, under UAE law, be validly concluded through electronic means and documented officially in electronic form, thereby recognizing their legal enforceability and equivalence to traditional written instruments.

This legislative nuance underscores a degree of measured flexibility in the Emirati framework, distinguishing it from the broader and more rigid exclusion observed in the Bahraini law. While both legal systems converge in rejecting the applicability of electronic documentation to transactions involving ownership or long-term leasing of immovable property, the UAE law opens a narrow but significant window for the recognition of short-term real estate lease agreements within the electronic documentation paradigm.

1.2. The Legislative Trend Upholding the Principle of Recognizing Electronic Official Documentation for Real Estate Transactions

Despite the fact that European Directive No. 2000/31, issued on June 8, 2000 concerning electronic commerce,

granted Member States the discretion to exclude certain legal transactions from the scope of those that may be concluded electronically – particularly those requiring the involvement of public authorities or professionals exercising public authority under national laws – the French legislator chose not to fully adopt this exclusionary approach.

Indeed, France emerged as one of the pioneering legal systems to formally recognize the possibility of electronically executed official documentation for real estate transactions. This progressive stance was first codified in Article 1369 of the French Civil Code, which explicitly provided for the possibility of creating an official act on an electronic medium, and granted such acts full evidentiary value, provided that their creation and preservation meet the specific conditions set out in a decree issued by the Council of State.

Pursuant to this legislative provision, two key decrees – No. 2005-973 and No. 2005-972 – were issued on August 10, 2005, in which the French legislator defined in detail the procedural and technical requirements for the creation and preservation of official writings on electronic media, including specifications applicable to notaries (*les notaires*) and judicial officers (*les huissiers de justice*).

Under French law, electronic official documentation takes two distinct legal forms:

1. The first form is what can be termed a "formal writing on an electronic medium", as referenced in Article 1369 of the Civil Code. This is a traditional official act, fulfilling all legal formalities and procedural requirements typically associated with paper-based official documentation, with the only difference being that it is executed on an electronic support.



Soumission : 12/05/2025 Acceptation : 08/06/2025 Publication : 25/08/2025

Importantly, this type of electronic act does not imply remote execution, as it presumes the physical or represented presence of the parties before the competent authority (notary or officer), just as in paper-based documentation. The digital format simply replaces paper, without altering the in-person nature of the process.

2. The second form, however, refers to genuinely electronic official documentation in the strictest and most modern sense of the term. This form involves a fully remote execution, where each party is physically located in a different place, and the entire process is conducted through electronic means, with no physical or represented presence of the parties before the public official. This form was recognized by the French legislator under the provisions of Article 2291 of the Civil Code (formerly Article 1317-1), and further elaborated in Article 20 of Decree No. 71-941, as amended by Article 33 of Decree No. 2005-973, concerning electronic deeds drawn up by notaries.

This legal evolution demonstrates that France has institutionalized a comprehensive and dual-layered framework for the valid creation, authentication, and preservation of official electronic documentation, both in-person and remotely, thereby legitimizing the use of technology in the formalization of legal transactions, including those relating to real estate and real property rights.

By contrast, Egyptian legislation has been comparatively less explicit and less comprehensive in its recognition and regulation of official electronic documentation. The Egyptian

legal system has not explicitly codified the possibility for public officials to create official acts in electronic form. However, it has indirectly acknowledged the evidentiary admissibility of electronic documents, provided that they meet the technical, procedural, and legal conditions stipulated in Articles 10 to 13 of Electronic Signature Law No. 15 of 2004, as well as the technical specifications and security standards set forth in Article 14 of the law's Executive Regulation.

Nonetheless, the Egyptian approach lacks a detailed, formal legal framework comparable to the one established by the French legislator. There is no comprehensive regulatory scheme delineating the procedural mechanisms, authentication conditions, and preservation methods for electronic official documentation, particularly in the context of real estate transactions. Consequently, while Egypt recognizes the probative force of electronic documentation in principle, it does not yet provide an integrated legal infrastructure for the creation of official acts by public authorities in electronic form, thereby limiting its practical implementation.

Likewise, in Moroccan legislation, there is no explicit prohibition against the possibility of electronic official documentation for real estate transactions. This is especially true considering that the Moroccan legislator addressed the conditions necessary for granting official status to electronically executed writings through the second paragraph of Article 417-2 of the Dahir forming the Code of Obligations and Contracts, which states:

"The signature necessary to complete a legal document allows for the identification of the signatory and expresses his acceptance of the obligations arising from the said



Soumission : 12/05/2025 Acceptation : 08/06/2025 Publication : 25/08/2025

document. The document becomes official if the mentioned signature is affixed in the presence of a public official who has the authority to authenticate documents."

From the plain reading of this provision, affixing an electronic signature before a competent public official grants the electronic writing relating to real estate transactions an official status, similar to that of private writings. However, the Moroccan legislator has not yet intervened to regulate the specific modalities for electronic official documentation by public officials, nor has it established the technical standards for affixing electronic signatures, or whether such signatures must be qualified or basic.

The recognition of the possibility of electronic official documentation and the granting of its evidentiary value equivalent to that of paper-based official documentation has raised questions regarding the applicability of the same legal formalities and procedural requirements found in traditional documentation. This is particularly relevant considering that electronic documentation is characterized by the non-simultaneous physical presence of the parties at the moment of mutual consent, making it difficult to ascertain their legal capacity and verify the issuance of offer and acceptance.

Nonetheless, it has been established that electronic official documentation can overcome this challenge by ensuring the personal appearance of each party, albeit in a manner peculiar to the digital context. This can be achieved by requiring multiple public officials to be involved in the creation of the electronic official writing, where each party appears before a public official located in his or her own jurisdiction, and each official receives their consent and signature.

This solution mirrors the approach adopted by the French legislator, particularly in Article 23 of Decree No. 2005-973, which amended Decree No. 71-941 of November 26, 1971, concerning acts prepared by notaries. This method provides several advantages, most notably:

- Ensuring the personal presence of all parties, including the public official, during the electronic official documentation process;
- Assigning a public official to each party, who receives their consent and signature;
- Maintaining the integrity of the official character of the document despite the involvement of multiple officials.

However, creating an electronic official writing involving more than one public official necessitates the use of an advanced technical system, as stipulated by Articles 9 and 23 of Decrees No. 2005-973 and No. 2005-972, which amended Decree No. 71-941 and Decree No. 2013-222 respectively.

These provisions require that notaries and judicial officers use a data processing and communication system approved respectively by:

- The Conseil Supérieur du Notariat (CSN) for notaries, and
- The Chambre Nationale des Huissiers de Justice (CNHJ) for judicial officers.

This system must guarantee the confidentiality and integrity of the contents of the electronically created official writing.

Under general evidentiary rules applicable to paper-based official documentation, certain legal formalities must be observed for the document to carry full evidentiary force, including:

- The form, drafting, and dating of the writing;



Soumission : 12/05/2025 Acceptation : 08/06/2025 Publication : 25/08/2025

- Its stability and readability;
- Verification of the legal capacity and consent of the contracting parties;
- The requirement that the notary, parties, and witnesses sign each page and attachment of the document.

However, these formalities take on specific characteristics in the digital context, adapted to the immaterial nature of electronic documentation. The French legislator accounted for these features in the regulatory framework established by Decrees No. 2005-973 and No. 2005-972.

Among the requirements are:

Articles 19 of Decree No. 2005-973 and Article 24/4 of Decree No. 2005-972 stipulate that the notary or judicial officer must sign the electronic official document using a qualified electronic signature presumed to be reliable and secure. This requirement complies with the technical standards laid out in Decree No. 2001-272 of March 30, 2001, concerning electronic signatures. This measure ensures the integrity and resistance to tampering of the document during transmission and consultation.

Additionally, it is required that the parties and any witnesses (if present) affix their signatures, although the 2005-973 Decree does not require these to be qualified electronic signatures. Instead, the use of visible scanned images of their handwritten signatures on-screen is permitted, even though such images do not offer the same level of security and reliability as qualified signatures.

Furthermore, Articles 22 and 34 of Decree No. 2005-973 and Article 24/2 of Decree No. 2005-972 stipulate that if

attachments are included, the notary must ensure that they are inseparably linked to the main document and that their electronic signature is affixed to all attachments. The date must also be written entirely in words, not in numbers, as a further safeguard of authenticity.

1.3. The Position of Algerian Legislation on the Recognition of Electronic Official Documentation of Real Estate Transactions

Regarding the position of Algerian legislation, it must first be observed that the Algerian legislator has not adopted a clear or explicit stance on this issue, neither by prohibiting nor by expressly authorizing electronic official documentation, as comparative legislations have done. Instead, the legislator has merely affirmed the principle of equality between electronic and paper-based evidence, without addressing the detailed implications and specificities related to this equivalency.

The Algerian legislator has acknowledged parity between electronic writing and paper-based writing, as well as between a qualified electronic signature – one that fulfills the legally stipulated conditions – and the traditional handwritten signature, as established by Article 324 bis 1 of the Algerian Civil Code, which provides:

“Evidence by writing in electronic form is considered equivalent to written evidence on paper, provided that it is possible to verify the identity of the person who issued it and that it has been prepared and preserved under conditions that ensure its integrity.”

This principle is further confirmed by Article 34 of Law No. 04-15 dated February 10, 2005, relating to electronic signature and certification, which states:



Soumission : 12/05/2025 Acceptation : 08/06/2025 Publication : 25/08/2025

“Only the qualified electronic signature shall be considered equivalent to a handwritten signature, whether issued by a natural or legal person.”

However, the Algerian legislator did not clarify whether this principle of equality extends to official writings, or whether it is limited exclusively to private writings.

In contrast, it is noticeable that most comparative legislations have generally agreed to authorize the principle of electronic formality, which allows legal writings in electronic form to fulfill the formal requirements imposed by law for certain legal acts due to their seriousness. Nevertheless, differences between these legislations lie in the scope of this recognition, particularly in the exclusion of certain legal acts from the possibility of relying on electronic writings in their conclusion or proof.

Among the most commonly excluded acts are legal acts that involve the transfer of ownership of real estate or real rights. While some legislations have explicitly prohibited the official documentation of such acts in electronic form, others have permitted it under strict legal conditions, with French legislation standing out as a leading model in this regard.

As for Algerian legislation, it has not addressed whether electronic writing may satisfy the formal requirement when such is expressly required by law for the validity of a legal act—neither in an absolute manner nor with specific exceptions to that general principle. Consequently, the Algerian legislator should have at least provided a clear provision explicitly allowing for electronic formalism, similar to what has been done in modern comparative legislations.

This lack of regulation may suggest that the Algerian legislator intended a gradual and cautious approach toward the legal treatment of issues related to modern technologies, limiting its recognition to the use of electronic writing and signatures strictly for evidentiary purposes, without extending that recognition to matters of legal formality. Nevertheless, it would be both useful and necessary for Algerian legislation to address and regulate this matter, following the example of modern laws on electronic transactions, in order to eliminate any ambiguity regarding the application of these principles.

Moreover, the Algerian legislator has not explicitly stated the possibility of creating an official document in electronic form for legal acts that require mandatory official documentation by law, including acts that transfer ownership of real estate or real property rights. In contrast, such a possibility has been clearly granted by the French legislator.

Therefore, it can be stated that the current texts of both the Algerian Civil Code and the Algerian Notarization Law do not include any provision that either authorizes or prohibits the creation of official writings in electronic form for the documentation of legal acts, including real estate transactions. This is particularly important since electronic official documentation is not merely about granting notaries the freedom to carry it out, but rather, it requires the existence of clear legal texts that regulate the work of the electronic notary, as well as the establishment of an internal digital network and a secure system for processing and transmitting information, which must be approved by the highest central authority overseeing notaries and judicial officers.



Such a system would connect their offices and facilitate the exchange and circulation of electronic official documents, in a manner that ensures their integrity and confidentiality.

2. The Legal Evidentiary Force Granted to Official Electronic Documentation

The comparative legislations that recognized the possibility of creating writings in electronic form have acknowledged their evidentiary force and granted them the same legal value as that granted to writings on paper. Based on this fundamental principle, it becomes legally permissible to confer upon official electronic documentation of legal transactions related to real estate the same legal evidentiary authority as that attributed to official written documentation on paper for such transactions.

This equivalence in legal value implies that official electronic documentation enjoys the same components and attributes of evidentiary force as prescribed by general rules of law. However, this situation gives rise to a potential conflict or dispute between the evidentiary forces of both forms – electronic and paper – a matter that some comparative legislations have addressed by instituting specific and detailed regulatory frameworks to govern such conflicts.

2.1. Establishing Functional Equivalence Between the Two Types of Official Real Estate Documentation – Electronic and Paper-Based

French legislation has granted official electronic real estate documentation the same legal authority as that of paper-based official real estate documentation. This is

explicitly stipulated in Article 939 of the French Civil Code, which affirms that once the official writing in electronic form meets the formal requirements to be deemed “official,” along with the technical and functional prerequisites outlined in Decree No. 2001-272—which guarantee the integrity and confidentiality of its content and the clear identification of the parties involved, and which includes the secure electronic signature of the public officer—then such an electronic document is granted full legal evidentiary force, identical to that of official paper-based documentation.

This position has also been adopted by the Egyptian legislator, as established in Article 14 of Egyptian Electronic Signature Law No. 15 of 2004, which states: "Electronic writings and electronic documents, within the scope of civil, commercial, and administrative transactions, shall have the same evidentiary weight as official and informal writings and documents, as governed by the provisions of the Law of Evidence in civil and commercial matters, provided that the conditions set forth in this law are met, in accordance with the technical and procedural regulations specified in its executive decree."

However, a crucial question arises in cases where one of the essential formal or technical requirements for granting official status to electronic real estate documentation is not met. For instance, if the entity producing the document lacks jurisdiction, or if the legally prescribed formalities of documentation are not observed, or if the official fails to affix his or her secure electronic signature—what then is the extent of legal evidentiary authority granted to the document under such circumstances?

Some legal scholars consider that in such cases, the same general evidentiary rule applied to paper-based official



Soumission : 12/05/2025 Acceptation : 08/06/2025 Publication : 25/08/2025

writings may be invoked—namely, that when one of the official requirements for paper-based writing is missing, the document is granted the evidentiary value of an informal (private) writing. Accordingly, it may be permissible for an official electronic real estate document that fails to meet one of the conditions of official status to hold the same evidentiary weight as an informal electronic writing—on the condition that it bears the signatures of the parties involved.

2.2. Effects of Establishing Functional Equivalence Between Electronic and Paper-Based Official Real Estate Documentation

As long as electronic real estate notarization holds the same legal value as its paper counterpart, it is governed by the same general legal rules concerning its evidentiary and executive authority, detailed as follows:

2.2.1. Evidentiary Force of Electronic Official Real Estate Documentation

By applying general evidentiary rules to electronic real estate notarization—identical to those governing paper-based notarization—such documentation, once it obtains official status, becomes binding in evidence against all parties, including the contracting parties themselves, their heirs, and all concerned third parties, without requiring acknowledgment from the contracting parties.

What is recorded in the electronic deed, and verified by the public official within the limits of his duties and jurisdiction, or signed by concerned parties in the official's physical presence, carries full official evidentiary value.

Anyone who denies the content must prove its invalidity, and can only do so by filing a forgery claim.

However, statements made by the parties in the absence of the public official—where the official merely registers what was declared to him—do not enjoy official status, and the opposite can be proven by regular means of evidence.

Additionally, electronic official real estate documentation, under the general rules of evidence, benefits from the presumption of material integrity—meaning it is presumed to be free of any alterations, such as erasures, modifications, overwriting, or insertions. If there is suspicion regarding its physical integrity, the party raising such doubts may refer the matter to the court and file a forgery claim, whereupon the court may decide to reduce or nullify its evidentiary value.

2.2.2. The Executory Force of Electronic Official Real Estate Documentation

Electronic official real estate documentation, when granted the official character in accordance with the general rules of evidence, enjoys executory force. This means it can be enforced without the need to obtain a judicial ruling, by obtaining an executory copy stamped with the execution formula by the legally authorized authority and delivered to the party entitled to enforce it. This is the formal element required by law to initiate enforcement procedures.

For example, Article 99 of the French law of Ventôse Year XI, which governs notarial offices, stipulates that notarized documents possess evidentiary force and are enforceable across the Republic. This principle was reaffirmed by Decree No. 2005-973, specifically in Article 40(3), which provides for the possibility of transmitting executory and official copies



Soumission : 12/05/2025 Acceptation : 08/06/2025 Publication : 25/08/2025

electronically, provided that the process meets conditions ensuring the security, confidentiality, and authenticity of both sender and recipient.

Subsection Three: Conflict Between Electronic and Paper-Based Official Real Estate Documentation and the Role of the Judge in Resolving It

As previously discussed, comparative electronic evidence laws that recognize electronic notarization of real estate transactions have uniformly granted such documentation equal legal evidentiary value to its paper-based counterpart, assuming each complies with the relevant legal requirements. Therefore, both are considered equally valid and of equal rank.

However, in cases where a conflict or contradiction arises between the two formats, the judge must assess the level of legal guarantees each format provides in terms of evidence.

While paper-based official documentation may offer legal assurances based on the physical presence of parties and the face-to-face nature of the notarization—thereby enhancing trust—electronic official documentation, according to some scholars, may offer even stronger guarantees of security and reliability.

Whereas traditional notarization relies primarily on the presence of the public officer during drafting and signing, electronic notarization often involves the participation of multiple public officers, each appending their secure, legally presumed-reliable electronic signatures—as defined by law. These signatures are presumed authentic until proven otherwise, due to their compliance with highly complex technical and legal standards ensuring both their security and trustworthiness.

Furthermore, a secure technical infrastructure connects electronic notaries, guaranteeing the confidentiality and integrity of the notarized and transmitted information. This could warrant preferring electronic official documentation over the paper-based version in cases of conflict – especially when the electronic deed includes not only the secure electronic signatures of public notaries, but also the secure electronic signatures of the involved parties or interested third parties.

This viewpoint aligns with electronic evidence legislation in jurisdictions like France, which explicitly presumes the trustworthiness of a legally compliant electronic signature.

In contrast, Algerian legislation lacks such explicit provisions, and thus the Algerian judge has only the general rule at his disposal – i.e., the equality in legal value between notarized documents signed electronically (with secure electronic signatures) and those signed by hand, as long as each meets its respective legal validity requirements.

Therefore, favoring one format over the other is not supported under Algerian law. In the event of a conflict, the judge retains full discretion to decide based on the specific facts and circumstances of the case.

Conclusion:

The aim of this brief research was to try to determine the position of the Algerian legislator regarding the recognition of official notarization of real estate legal transactions in light of Algerian legal texts, which are characterized by a lack of clarity and explicitness on the matter. It also took into consideration the comparative legislative texts, which are



Soumission : 12/05/2025 Acceptation : 08/06/2025 Publication : 25/08/2025

conflicting between prohibition and recognition on this issue.

Therefore, the Algerian legislator must take a clear and explicit stance by expressly acknowledging the possibility of official electronic notarization of real estate transactions. This possibility not only requires boldness from notaries to initiate such practices, but also necessitates the existence of explicit legal provisions that regulate the work of electronic notaries. Additionally, there must be an internal network and a system for processing and transmitting information, approved by a central authority to which notaries and judicial officers are affiliated and which links their offices. This would ensure that electronic official documents are exchanged within a secure and confidential framework.

The French legislative model should be taken as an example to follow in this regard.

As for the position taken by some comparative legislations that prohibit the official electronic notarization of real estate transactions, such a position is unjustified. Even if these legal transactions have serious consequences and require the personal presence of their parties, it is still possible to officially notarize them in electronic form if the profession of "electronic notary" is activated. This professional acts as a neutral, independent, and trustworthy intermediary. One of their main roles is to verify the identity and legal capacity of the parties involved in electronic legal transactions, and to authenticate and record the content of electronic deeds and contracts after verifying their accuracy and integrity.

These functions ensure the level of legal protection sought by legislations when requiring specific formalities for the conclusion of certain legal transactions.

Sources:

Algerian Legal Sources and Frameworks

1. Algerian Civil Code – especially Book II, Title IV (Obligations), and Book III (Property and Ownership Rights)
2. Code of Civil and Administrative Procedure (CCAP) – sections on authentication and public documents
3. Law No. 06-02 of 20 February 2006 – concerning the organization of the notarial profession
4. Executive Decree No. 08-243 of 3 August 2008 – fixing procedures for authenticating documents
5. Law No. 07-02 of 27 February 2007 – on electronic signatures and digital certification
6. Official Gazette of the People's Democratic Republic of Algeria – all published laws and decrees
7. Ministry of Justice – Algeria (justice.gov.dz) – resources on legal professions and digitization reforms
8. Ministry of Housing and Urban Planning – guidelines on real estate registration and deeds
9. Centre National du Registre du Commerce (CNRC) – electronic services for notarized business documents
10. Agence du Cadastre National – digital land registry and property certification processes

Academic and Institutional Research on Algerian Law



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1. University of Algiers Faculty of Law – theses and legal reviews on Algerian notarial practices
2. CRNA – Centre for Legal and Judicial Research, Algiers – publications on digital transformation in Algerian legal services
3. Algerian Review of Legal and Political Sciences (ARLPS) – peer-reviewed journal
4. Algerian Journal of Legal and Judicial Studies – articles on electronic documentation and e-justice
5. Doctoral dissertations from Algerian universities – comparative studies on traditional vs electronic notarization

Comparative and International Reports with Algeria Mentioned

1. World Bank Doing Business Report: Algeria (Registering Property Section)
2. OECD: “Improving Administrative Procedures in Algeria” – with references to notarization and e-documents
3. UNDP Reports on Digital Governance in North Africa
4. GIZ Reports – Algeria's Legal Modernization and Digital Notary Pilot Projects
5. UNCITRAL technical assistance to Algeria (Electronic Commerce and Signatures)
6. ITIDA & AfriLabs – reports including Algeria’s regulatory digital ecosystem

Academic Journals & Articles

1. *Journal of Internet Law*
2. *The Georgetown Journal of Legal Ethics*

3. *Harvard Journal of Law & Technology*
4. *Duke Law & Technology Review*
5. *International Journal of Law and Information Technology*
6. *Computer Law & Security Review*
7. *Law and Society Review*

Legal Frameworks & Statutes (USA, UK, etc.)

1. Uniform Electronic Transactions Act (UETA) - USA
2. Electronic Signatures in Global and National Commerce Act (E-SIGN Act) - USA
3. Remote Online Notarization (RON) Laws - USA (varies by state)
4. Law Commission Reports - UK (Digital Signatures & e-documents)
5. Land Registration Act 2002 - UK (sections on electronic conveyancing)