

PROPOSED LAW OF PROPERTY ACT – EPA 272 - III

I. TEXT OF THE ARTICLES

Part 1 **BASIC PRINCIPLES**

Content of the Act Article 1

This Act lays down the basic principles of property law, possession and real rights and the method of their acquisition, transfer, protection and extinguishment.

Real rights Article 2

Real rights are:

- ownership,
- lien,
- land debt,
- easement,
- right of encumbrance,
- right of superficies.

Object of a real right Article 3

(1) The object of a real right is a thing.

(2) The object of a lien and a usufruct may also be a property right.

(3) If a property right is the object of a real right the provisions applying to a thing shall apply *mutatis mutandis*.

Capacity of a thing Article 4

The object of real rights may not be a thing which the law explicitly prohibits from being the object of real rights.

Effect of real rights Article 5

Holders of a real right may enforce their right against any person.

Priority principle

Article 6

If more than one real right exists over the same thing the real right of the same type of priority acquired earlier shall have priority over a real right acquired later.

Principle of speciality

Article 7

Only an individually defined independent thing can be the object of real rights, except where this Act provides otherwise.

Connection between land and building

Article 8

Everything which by intention is permanently affixed to or is permanently on an immovable, above it or below it, is an element of the immovable, except where the law provides otherwise.

Presumption of good faith

Article 9

Good faith is presumed unless indicated otherwise.

Trust in the land register

Article 10

Anyone who acts honestly in legal transactions and relies on information about rights entered in the land register shall not suffer detrimental consequences as a result.

Presumption of ownership

Article 11

(1) It shall be presumed that the owner of an immovable is the person entered in the land register.

(2) It shall be presumed that the proprietary possessor of a movable is its owner.

Prohibition against abuse

Article 12

(1) The owner of a thing or the holder of another real right is limited by the same rights of others. Ownership and other real rights must be exercised in accordance with the fundamental principles of this Act, with their purpose and with the nature of the thing.

(2) If the holder of a right acts with the sole or clear intention of harming another person it shall be considered a sham exercise of that right.

Application of the provisions on ownership

Article 13

The provisions of this Act on the acquisition, transfer, protection and extinguishment of ownership rights shall apply *mutatis mutandis* to the creation and transfer of other real rights.

Presumption of complete form

Article 14

If this Act requires the form of a notarial protocol for a legal transaction it shall be considered that such form is complete if the legal transaction is concluded in the form of a court settlement or some other agreement before a judge.

Part II

BASIC TERMS

Thing

Article 15

(1) A thing is an independent corporeal object that can be controlled by man.

(2) Various forms of energy and waves that can be controlled by man are also deemed to be things.

Element

Article 16

(1) An element is everything which in accordance with general conviction is considered to be part of another thing.

(2) An element cannot be the independent object of real rights until it is separated from the principal thing.

Accessory

Article 17

(1) An accessory is a movable which in accordance with general conviction is intended for commercial use or to embellish a principal thing.

(2) In the case of doubt an accessory shares the fate of the principal thing.

Immovable

Article 18

- (1) An immovable is a spatially defined area of land together with all its elements.
- (2) All other things are movables.

Property in the public domain

Article 19

- (1) Property in the public domain is a thing which in accordance with its purpose can be used under equal conditions by everyone (general use).
- (2) The law determines what things are property in the public domain and what conditions apply to their use.
- (3) A special right to use property in the public domain may be acquired under conditions determined by law.

Fruits

Article 20

- (1) Fruits are the direct product of a thing which until severance are an element of the thing but which upon severance become an independent thing.
- (2) Fruits are natural fruits and civil fruits.

Collective thing

Article 21

A collective thing is several things which by general comprehension are deemed to be one thing.

Property right

Article 22

A property right in accordance with this Act is a right which is transferable and whose value can be expressed in money.

Land register permission

Article 23

Land register permission (registration clause) is an explicit, unconditional declaration by a person whose right is being transferred, altered, encumbered or extinguished permitting an entry in the land register. The signature on the land register permission must be certified.

Part III
POSSESSION

Concept
Article 24

(1) Possession is direct, actual control over a thing (direct possession).

(2) Possession is also held by a person who exercises actual control over a thing through some other person who has direct possession based on any form of legal title (indirect possession).

Joint possession
Article 25

Possession can be exercised by more than one person either by them possessing the thing together or by each of them exclusively possessing a specific part of the thing.

Holding
Article 26

(1) Anyone who exercises actual control over a thing for another person and is obliged to act in accordance with that person's instructions does not have possession (holder).

(2) A holder can exercise self-help for the possessor.

Proprietary and non-proprietary possession
Article 27

(1) Anyone who has a thing in his possession as his own is the proprietary possessor.

(2) Anyone who has a thing in his possession without wishing to have it as his own and who recognises the higher legal control of an indirect possessor is a non-proprietary possessor.

Good faith of the possessor
Article 28

The possessor is in bad faith if he knew or could have known that he was not entitled to possession.

Acquisition of possession by an heir
Article 29

An heir acquires possession of the decedent's things at the moment of the decedent's death.

Loss of possession
Article 30

(1) Direct possession is lost if the possessor ceases to exercise actual control over the thing.

(2) A consequence of the loss of direct possession is the loss of indirect possession. Indirect possession is not lost if the previous direct possessor becomes the indirect possessor.

Self-help
Article 31

The possessor has the right to self-help against a person who without justification disturbs his possession or deprives him of it, on condition that the danger is direct, that the self-help is immediate and urgent and that the method of self-help is appropriate to the circumstances in which the danger exists.

Dispute over disturbance
Article 32

Judicial protection against disturbance or deprivation of possession can be claimed within thirty days of the day on which the possessor learned of the disturbance and of the perpetrator and no later than one year after the disturbance originated.

Judicial protection of possession
Article 33

(1) The court shall give judicial protection with respect to the last state of the possession and any disturbance that has occurred. In this regard the right of possession and the good faith of the possessor are not taken into account.

(2) Even a possessor who obtained possession by force, secretly or by abuse of trust has the right to protection, except against the person from whom he gained possession in this manner if that person exercised permitted self-help as referred to in Article 31.

(3) The possessor shall not have legal protection if the disturbance or dispossession was based on a law.

Scope of judicial protection
Article 34

In a decision on a claim for protection from disturbance of possession the court shall order a prohibition against further disturbance of possession or order the return of possession and other measures necessary for protection against further disturbance.

Protection in the case of two or more possessors

Article 35

In relations between two or more possessors of the same thing any action which arbitrarily alters or hinders the way in which the possession has been exercised until that point shall be considered to be a disturbance.

Protection on the basis of a right

Article 36

A dispute over disturbance of possession (Article 32) notwithstanding, judicial protection of possession may be claimed on the basis of the right of possession.

PART IV OWNERSHIP

Chapter 1 **CONCEPT OF OWNERSHIP**

Ownership

Article 37

(1) Ownership is the right to possess a thing, to use and enjoy it in the fullest manner, and to dispose of it. Restrictions on use, enjoyment and disposal can only be determined by law.

(2) Ownership cannot be tied to a time limit or a condition unless otherwise determined by law.

Restriction on ownership at the will of the owner

Article 38

(1) The owner may restrict his right for any purpose which is not prohibited unless otherwise determined by law.

(2) A prohibition against the disposal or encumbrance of a thing or a real right by means of a legal transaction or will shall be binding only on the first owner and not also on his legal successors.

(3) A prohibition against disposal or encumbrance may be limited in time.

(4) A prohibition against disposal or encumbrance may only be entered in the land register if it is agreed between spouses or cohabiting partners, parents and children, and adopted children and adoptive parents. In this case the prohibition also has effect against third persons.

(5) By means of a legal transaction the owner may undertake to sell a certain thing to the other contracting party on request under agreed conditions (right of repurchase). A

right of repurchase cannot be transferred. A right of repurchase may be limited in time. A right of repurchase extinguishes upon the death or the dissolution of the other contracting party.

(6) A right of repurchase has effect against third persons if it is entered in the land register.

Chapter 2 **ACQUISITION OF OWNERSHIP**

Section 1 **GENERAL**

Methods of acquisition Article 39

Ownership is acquired on the basis of a legal transaction, inheritance, a law or a decision of a state body.

Acquisition of ownership on the basis of a legal transaction Article 40

Acquisition of ownership requires a valid legal transaction from which the obligation to transfer ownership derives, and the fulfilment of other conditions laid down in law.

Acquisition of ownership on the basis of inheritance Article 41

Ownership is acquired on the basis of inheritance at the moment of the decedent's death.

Acquisition of ownership on the basis of a decision by a state body Article 42

Ownership is acquired with the final court decision or final decision of a state body, unless otherwise provided by law.

Acquisition by prescription Article 43

(1) A proprietary possessor of movable property in good faith acquires ownership of it after three years.

(2) A proprietary possessor of immovable property in good faith acquires ownership of it after ten years.

(3) If a proprietary possessor in good faith, under the conditions referred to in the previous paragraph, exercises possession on part of the immovable, that part is subject to independent possession by prescription.

Restriction on possession by prescription

Article 44

(1) Ownership of property in the public domain and things outside legal transactions cannot be acquired by prescription.

(2) A right acquired by prescription may not be detrimental to a person who in good faith and trusting in the public records acquired a right before the right acquired by prescription was entered in the public record.

Calculation of the prescriptive period

Article 45

(1) The prescriptive period begins to run on the day when the possessor obtained proprietary possession of the thing in good faith and ends at the end of the last day of this period. The possessor must be in good faith for the entire duration of the prescriptive period.

(2) The prescriptive period also includes the time when the possessory predecessors of the current proprietary possessor in good faith had possession of the thing as proprietary possessors in good faith.

(3) In the case of co-ownership being acquired by prescription the good faith of each co-owner is judged independently.

(4) If a possessory predecessor was in bad faith the good faith of the possessory successor is judged independently.

(5) The prescriptive period also includes the time when the possessor was temporarily unable to exercise possession for reasons independent of his will.

Good faith of a legal person

Article 46

The good faith of a legal person is judged according to the good faith of its bodies and other persons for whom, with regard to their area of work, it is important that the thing belongs to the legal person.

Section 2

ACQUISITION OF OWNERSHIP OF AN IMMOVABLE

Construction over the boundary of an immovable

Article 47

(1) If a person builds a structure part of which extends onto, over or beneath another's immovable (builder), the owner of the immovable or the builder may propose that the court decide the arrangement of their mutual relationship in a non-litigious civil procedure.

(2) The court may order the builder to pull down the structure and restore the immovable to its original condition.

(3) If the consequences of restoring the immovable to its original condition would be clearly disproportionate to the damage suffered by the owner of the immovable as a result of the construction, the court may set appropriate compensation for the owner of the immovable and issue a ruling establishing a new border between the neighbouring immovables.

(4) In its decision under the previous paragraph the court shall take into account all the circumstances, in particular the justified interests of the participants, the question of the good faith of the builder and the actions of the owner of the immovable after he learned of the construction.

Increasing the value of an immovable

Article 48

(1) If a person (builder) erects, adds to or improves a structure with the consent of the owner of an immovable he does not acquire ownership of the immovable but he may make a claim on the owner of the immovable for the amount by which he was enriched.

(2) The owner and the builder may agree on co-ownership of the immovable. On the basis of an agreement the builder may demand the issuing of a document for the entry of the co-ownership in the land register.

(3) The period of limitation for claims by the builder begins to run on the day when the builder lost possession of the immovable.

Acquisition of ownership by means of a legal transaction

Article 49

(1) Acquisition of ownership of an immovable by means of a legal transaction requires an entry in the land register.

(2) The entry in the land register is made on the basis of a document containing the land registry permission.

Section 3

ACQUISITION OF OWNERSHIP OF MOVABLE PROPERTY

Occupation

Article 50

The right of ownership of a movable which is without an owner is acquired by the person who takes possession of the thing with the intention of appropriating it, unless otherwise determined by law.

Obligation of finder

Article 51

(1) Anyone who finds and takes possession of a movable (finder) must immediately notify the owner of the movable or a person who the finder justifiably believes is entitled to take over the movable.

(2) If the finder does not know a person as referred to in the previous paragraph, or the address of such person, he must report the find to the police.

(3) The police may take storage of the movable or leave it in the safekeeping of the finder.

(4) If the movable may become damaged, or if disproportionate costs are associated with its maintenance, the police may sell it at a public auction or at the daily price. The proceeds from the sale take the place of the found movable.

(5) If a found movable is of negligible value then the finder does not have to report the find to the police.

Acquisition of ownership by finding

Article 52

(1) A finder who has fulfilled the obligations laid down in Article 51 of this Act acquires ownership of the movable one year from the notification or reporting of the find, provided an entitled person has not requested its handover and provided the movable is still in safekeeping with the finder or the police.

(2) The provisions of the previous paragraph shall also apply *mutatis mutandis* to a found movable of negligible value.

Treasure trove

Article 53

(1) Treasure belongs in equal parts to the finder and to the owner of the movable or immovable on which it was found, unless otherwise determined by law.

(2) Treasure is a thing of substantial value that has been hidden for so long that it is no longer possible to ascertain its owner.

(3) The finder of treasure must report the find to the police.

Accretion

Article 54

Ownership of an immovable shall extend to movable property that has become an element of the immovable.

Merger Article 55

(1) If movables belonging to different owners are merged in such a way that they become elements of a unified movable, the previous owners acquire co-ownership of the new thing in proportion to the values of the individual movables at the time of the merger.

(2) If one of the movables can be considered to be the principal thing the owner of the principal thing shall become the owner of the unified movable.

(3) The principal thing is the thing which in accordance with general conviction is deemed to be the principal thing.

Mixing Article 56

If movables of different owners are mixed or combined in such a way that they can no longer be separated, or in such a way that their separation would incur disproportionate costs, the provisions of Article 55 of this Act shall apply *mutatis mutandis*.

Making of a new movable Article 57

(1) Anyone who, using his own material, makes or has made for him a new movable acquires ownership of it.

(2) If someone using another's material makes or has made for him a new movable he acquires ownership of it provided the value of the work is not substantially lower than the value of the material.

(3) If the material belonged to different owners the provisions of Articles 55 and 56 of this Act shall apply *mutatis mutandis*.

(4) Writing, drawing, painting, printing or engraving on a surface or treating it in some other way shall also be deemed to be the making of a new movable.

Rights of third persons Article 58

(1) With the extinguishment of ownership of a movable on the basis of Articles 55 to 57 of this Act other rights in respect of the movable shall also extinguish.

(2) If a former owner acquires co-ownership of a unified or new movable or becomes its sole owner the rights which encumbered the movable that belonged to him shall be resuscitated in respect of his co-ownership share or in respect of the unified or new movable.

Acquiring ownership of fruits

Article 59

(1) The fruits of a thing belong to the owner of the principal thing unless otherwise determined by this Act.

(2) A good faith proprietary possessor of a thing that bears fruits acquires ownership of the fruits at the moment of their severance from the principal thing. The same applies for a person who has the right to the fruits on the basis of a legal relationship with the owner of the principal thing.

(3) Under conditions determined by law anyone may acquire ownership of forest fruits, mushrooms and other freely growing plants.

Acquiring ownership on the basis of a legal transaction

Article 60

(1) Ownership of a movable is acquired with its delivery into the possession of the acquirer.

(2) Delivery of a movable is also deemed to be accomplished with the delivery of a document on the basis of which the acquirer may dispose of the movable, as well as with the delivery of part of it, or with the exclusion or any other designation of the thing which implies its delivery.

(3) Delivery of a movable is deemed to be accomplished with the concluding of a legal transaction on the transfer of ownership without its actual delivery:

- if prior to the concluding of the legal transaction the movable was already in the possession of the acquirer (*traditio brevi manu*);
- if the parties agree that despite the transfer of ownership the movable is to remain in the possession of the transferor (*constitutum possessorium*).

(4) If a thing is in the possession of a third person delivery is deemed to be accomplished at the moment when the third person was informed of the transfer of ownership (*traditio longa manu*). The transferor thereby transfers his indirect possession to the acquirer.

Subsequent acquisition of ownership

Article 61

(1) If a movable was delivered when the transferor did not have the right to dispose of it but subsequently acquired this right then ownership is also acquired at that time.

(2) If a movable was delivered in this way to two or more acquirers then ownership is acquired by the acquirer to whom the movable was delivered first.

Delivery through a representative

Article 62

Delivery of a movable to an acquirer is deemed to have been accomplished if the movable was delivered to the acquirer's representative.

Conditional transfer of ownership

Article 63

Transfer of ownership of a movable may be tied to a resolutive condition or a suspensive condition, in particular as transfer of ownership as security or reservation of title.

Special cases of acquisition

Article 64

(1) Ownership of a movable is acquired even if the transferor did not have the right to dispose of the thing if the acquirer was in good faith at the moment of delivery and acquired the thing on the basis of an onerous legal transaction, and the other conditions laid down in Article 40 of this Act are fulfilled.

(2) Ownership is acquired in the manner described in the previous paragraph only if the movable was sold at a public auction, if the transferor put such movables into circulation as part of its activity or if the transferor acquired possession of the movable by will of its owner.

(3) If the delivery was accomplished by means of *constitutum possessorium* the acquirer acquires ownership when the transferor delivers the thing into his direct possession, unless he is no longer in good faith at that time.

(4) With acquisition of ownership in accordance with the provisions of the previous paragraphs of this article all other rights in respect of the thing shall extinguish if the acquirer believed in good faith that these rights did not exist.

(5) Within one year of the extinguishment of ownership the previous owner may require the acquirer to sell the movable to him at the market price if it has a special importance for him.

Chapter 3

OWNERSHIP BY TWO OR MORE PERSONS

Section 1

CO-OWNERSHIP

Concept

Article 65

(1) Two or more persons have co-ownership of an undivided thing (co-owners) if the share of each of them in the thing is determined as a proportion of the whole (ideal share).

(2) If the co-ownership shares are not determined it is presumed that they are equal.

Entitlements of a co-owner

Article 66

(1) A co-owner shall have the right to possess an item and to use it together with the other co-owners in proportion to his ideal share and without thereby violating the rights of the other co-owners.

(2) The fruits of a thing in co-ownership shall be divided among the co-owners in accordance with their ideal shares. If this is not possible then the fruits shall be co-owned by the co-owners of the principal thing.

(3) A co-owner may dispose of his right without the consent of the other co-owners. If the subject of the co-ownership is an immovable then the other co-owners have a pre-emptive right if the immovable is sold. If the pre-emptive right is exercised simultaneously by two or more co-owners each of them may exercise their pre-emptive right in proportion to their ideal share.

Management of a thing

Article 67

(1) Co-owners have the right to manage a co-owned thing jointly.

(2) Transactions in connection with the regular management of a thing require the consent of the co-owners whose ideal shares comprise more than half of its value.

(3) Transactions required for the working and maintenance of the thing in order to achieve its purpose are deemed to be regular management transactions.

(4) If in cases referred to in the second paragraph of this article the co-owners are unable to reach agreement but the transaction is urgent for the regular maintenance of the thing, the court shall decide the issue at the proposal of a co-owner in a non-litigious civil procedure.

(5) Transactions exceeding the bounds of regular management, such as, in particular, disposing of the entire thing, determining the method of use and determining the manager of the thing, require the consent of all the co-owners.

(6) If one of the co-owners is not reachable for an extended period the other co-owners may propose that a trustee be appointed for him for a specific case.

(7) Resolutions adopted by the co-owners concerning the management of the thing also have the effect of benefiting and burdening the legal successors of an individual co-owner.

Burdens on a common thing

Article 68

The costs of use, management and other burdens that refer to the entire thing shall be covered by the co-owners in proportion to the size of their ideal shares.

Right to demand division

Article 69

(1) A co-owner always has the right to demand the division of a thing, except at an inappropriate time.

(2) A legal transaction with which a co-owner waives the right to division of a thing for an extended period shall be void.

(3) If a co-owner waives the right to demand the division of a thing for a specific period the waiver shall also be binding on his legal successors.

Method of division

Article 70

(1) The co-owners determine the method of division of a thing by agreement. The provisions regulating the acquisition of ownership by means of a legal transaction shall apply *mutatis mutandis* to the acquisition of ownership.

(2) If the co-owners are unable to agree, the method of division shall be decided by the court in a non-litigious civil procedure in such a way that the co-owners acquire in kind that part of the thing for which they demonstrate a justified interest.

(3) The court may defer the division for a maximum of three years if any of the co-owners demonstrates a stronger interest in not having the thing divided for some time than the interest of the co-owner proposing its division.

(4) If the physical division of a thing in kind is not possible even with payment of the difference in value, or if it is possible only with a substantial reduction in the value of the thing, the court shall decide that the thing should be sold and the proceeds divided up (civil division).

(5) At the proposal of a co-owner the court may decide that instead of being sold the thing belongs in full to that co-owner if he pays off the other co-owners by paying to them a proportionate part of the selling price determined by the court. If such a proposal is made by two or more co-owners the court shall determine which co-owner has priority, taking into account the size of the ideal shares, the manner in which the thing was used until that time and the needs of the co-owners.

(6) The co-owner who obtained the thing in accordance with the previous paragraph acquires ownership of the thing when the decision becomes final. He must pay off the shares of the other co-owners no later than three months from when the decision becomes final, together with interest at the rate at which money deposited in a bank for a period of three months in the place where the immovable is located earns interest. The other co-owners have a statutory lien on the thing until the full payment.

Insurance and guarantees in the case of division

Article 71

(1) The other co-owners are liable to the co-owner who obtains a thing or part of a thing by means of a division for legal and factual defects up to the extent of their ideal shares.

(2) The provisions applying to a contract of sale shall apply *mutatis mutandis* to the liability for factual and legal defects.

(3) If the object of the division is an immovable, until payment the other co-owners shall have a lien on it up to the value of their ideal shares as established in the resolution on the division.

(4) If the object of the division is movable property, until payment the co-owners shall retain ownership of it up to the value of their ideal shares as established in the resolution on the division.

Section 2

JOINT OWNERSHIP

Concept

Article 72

(1) Two or more persons can have joint ownership (joint owners) of an undivided thing when their shares are not determined in advance.

(2) Joint owners jointly use the thing and dispose of it and are jointly and severally liable for obligations arising in connection with the joint property.

(3) If one of the joint owners independently disposes of the thing it is deemed that the third person was in bad faith only if the third person knew that the thing was jointly owned and that it was disposed of without the consent of a joint owner.

(4) Each joint owner or his creditor may always demand the division of the thing, except at an inappropriate time.

(5) The provisions on co-ownership shall apply *mutatis mutandis* to joint ownership unless otherwise determined by law.

Chapter 4

NEIGHBOUR LAW

Prohibition against mutual disturbance

Article 73

(1) The owners of neighbouring or spatially connected immovables must exercise their right of ownership in such a way that they do not disturb or cause damage to each other.

(2) Rights which restrict the right of ownership of the owner of a neighbouring or spatially connected immovable (neighbouring immovable) must be exercised in good faith in accordance with local customs and in a way that least burdens the owner of the immovable.

Application of provisions

Article 74

The provisions of this chapter applying to an owner shall also apply *mutatis mutandis* to a direct possessor.

Prohibition against nuisance

Article 75

(1) In his use of an immovable the owner must refrain from actions and remedy causes arising from his immovable which hinder the use of other immovables beyond a level which in view of the nature and purpose of an immovable and in view of the local conditions is normal or which cause substantial damage (prohibited nuisance).

(2) Any disturbance by means of special devices without specific legal title shall be prohibited.

Maintenance work

Article 76

(1) The owner of an immovable urgently requiring work necessary for its use and exploitation may temporarily use a neighbouring immovable in order to carry out the work if this work cannot be carried out in some other way or if it can only be carried out otherwise at disproportionate cost.

(2) After use the neighbouring immovable must be restored to its previous condition.

(3) Appropriate compensation must be paid on request to the owner of the immovable that was used temporarily.

(4) Before the work is commenced the owner and possessor of the other immovable must be informed at an appropriate time and in an appropriate manner.

Regulation of boundaries

Article 77

- (1) The court shall regulate a boundary on the basis of the stronger right.
- (2) The stronger right shall be presumed to attach to the boundary for which the cadastral procedure is final.
- (3) If the value of the disputed boundary area exceeds twice the value for determining a dispute of small value, the court may regulate the boundary on the basis of the stronger right only if the proposer and the person against whom the proposal was lodged agree.
- (4) If the stronger right is not proven or if there is no agreement within the meaning of the previous paragraph of this article the court shall regulate the boundary according to the last quiet enjoyment of possession.
- (5) If the last quiet enjoyment of possession cannot be established the court shall regulate the boundary in such a way that the disputed area is divided according to a fair assessment.

Regulation of a boundary in a civil action

Article 78

If the value of the disputed boundary area exceeds twice the value for determining a dispute of small value, and the proposer and the person against whom the proposal was lodged do not agree to the boundary being regulated on the basis of the stronger right, each of them may claim the stronger right in a civil procedure within three months of the resolution on the regulation of the boundary becoming final.

Use of the boundary

Article 79

The owner of an immovable may use up to half of the width from his side of a boundary fence, ditch or wall and other things intended to demarcate the boundary.

Boundary markers

Article 80

- (1) It is presumed that boundary fences, walls, trees, ditches and other things intended to demarcate the boundary are the joint property of the owners of the neighbouring immovables.
- (2) Boundary markers must be maintained in the customary local manner. The costs of maintenance shall be covered equally by the owners of the neighbouring immovables.
- (3) The owners of the neighbouring immovables shall be jointly and severally liable for damage caused to third persons as a result of non-maintenance.

Trees on a boundary

Article 81

(1) The fruits of a tree standing on a boundary shall be divided equally between the owners of the neighbouring immovables.

(2) If a tree standing on a boundary obstructs the use of any neighbouring immovable the owner of the immovable may require the tree to be removed at the owners' joint cost.

Fruits falling on a neighbouring immovable

Article 82

Ownership of fruits which fall onto a neighbouring immovable is acquired by the owner of that immovable at the moment of the severance of the fruits from the principal thing.

Right to remove a branch

Article 83

(1) The owner of an immovable has the right to remove and appropriate the branches of a neighbour's tree extending into the airspace above his immovable and roots growing into his immovable if they disturb him and if the owner of the neighbouring immovable fails to do so at his request.

(2) If the owner of the neighbouring immovable is prohibited by special regulation from performing the actions referred to in the previous paragraph he shall have the right to compensation.

(3) The provisions of the first paragraph of this article shall not apply in cases where the boundary between the immovables is in a forest.

(4) Fruits from branches extending into the airspace of a neighbouring immovable shall become the property of the owner of that immovable upon severance.

Pursuit of animals

Article 84

(1) Domestic and domesticated animals may be pursued by their owner onto another's immovable.

(2) The owner or the possessor may only prohibit access to the immovable by the owner of the animals if he himself delivers the animals to the owner without delay.

Prohibition against excavation

Article 85

(1) An owner may not excavate his immovable or interfere with it in such a way that would cause a neighbouring immovable to lose solidity, stability or support.

(2) The owner of an immovable whose solidity, stability or support is endangered by the interference may demand a ban on the continuation of the work until suitable measures

are secured and carried out to prevent the loss of solidity, stability and support. If such measures cannot be carried out the owner may demand that the interference be prohibited.

(3) If in excavating and interfering with his immovable the owner erects special supports and constructions which ensure the stability of another's immovable the owner is obliged to maintain them regularly. He shall be liable for damage arising as a result of these supports and constructions irrespective of fault.

Prohibition against altering a watercourse

Article 86

The owner of an immovable may not on his immovable alter the flow, strength, quantity or quality of water flowing over his immovable to the detriment of a neighbouring immovable.

Run-off of precipitation

Article 87

The owner of an immovable must do everything necessary to ensure that precipitation coming off his building does not run off or fall onto another's immovable.

Way of necessity

Article 88

The court shall permit a way of necessity for an immovable that does not have the necessary connection with a public road for regular use or if such connection would be associated with disproportionate costs.

Determining a way of necessity

Article 89

(1) The court shall permit a way of necessity provided it does not prevent or substantially obstruct the use of the immovable over which it is to run.

(2) The court shall determine a way of necessity in such a way as to minimise the burden on the other's immovable.

(3) The entitled person must pay appropriate compensation to the person under obligation for the permitted way of necessity.

Cessation of a way of necessity

Article 90

A way of necessity may be altered or abolished if it is no longer necessary owing to changed circumstances.

Connection to public utility networks

Article 91

The provisions on a way of necessity shall also apply *mutatis mutandis* to connection to public utility networks and other networks if the owner of the immovable demanding it fulfils the conditions for connection.

Chapter 5

PROTECTION OF OWNERSHIP

Claim for return

Article 92

- (1) The return of an individually specified thing may be demanded from anyone by its owner.
- (2) The owner must prove that he has the right of ownership of the thing whose return he demands and that the thing is in the actual possession of the defendant.
- (3) The exercise of a claim referred to in the first paragraph of this article shall not be subject to the statute of limitations.

Possessor's objections

Article 93

The direct possessor may refuse to deliver a thing to its owner if he or the indirect possessor from whom he is exercising the right to possession is entitled to possession.

Appointment of a predecessor

Article 94

Anyone who possesses a thing in another's name may object to the plaintiff's claim by appointing an indirect possessor or predecessor.

Legal position of a proprietary possessor in good faith

Article 95

- (1) A proprietary possessor in good faith shall return a thing to its owner together with the fruits that have not yet been gathered.
- (2) A proprietary possessor in good faith is not obliged to pay for use of a thing and is not liable for deterioration or destruction of the thing caused during the time when he had the thing in his possession in good faith.
- (3) A proprietary possessor in good faith has the right to reimbursement of the costs necessary for maintenance of the thing.

(4) A proprietary possessor in good faith may claim reimbursement of beneficial costs to the extent by which the value of the thing has been increased.

(5) The owner of the thing must reimburse a proprietary possessor in good faith for necessary and beneficial costs as referred to in the third and fourth paragraphs of this article to the extent to which these costs are not covered by the benefits which he gained from the thing.

(6) A proprietary possessor in good faith has the right to reimbursement of costs which he incurred for his own satisfaction or in order to embellish the thing only to the extent that its value has increased. If what he did for his own satisfaction or in order to embellish the thing can be separated from it without damage then the proprietary possessor in good faith has the right to separate it and retain it for himself.

(7) A proprietary possessor in good faith has the right to retain the thing until such time as he is reimbursed for the necessary and beneficial costs which he incurred in connection with its maintenance.

(8) A proprietary possessor in good faith shall be in bad faith from the moment a suit is served on him and the owner can prove that he became a possessor in bad faith even before the suit was served.

(9) A claim for reimbursement of necessary and beneficial costs shall lapse pursuant to the statute of limitations three years from the day on which the thing was returned.

Legal position of a possessor in bad faith

Article 96

(1) A possessor in bad faith must return all the fruits to the owner of the thing.

(2) A possessor in bad faith must repay the value of all fruits collected which he has consumed, alienated or destroyed as well as the value of the fruits which he has not collected. This claim shall lapse three years after the return of the thing.

(3) A possessor in bad faith must make compensation for damage caused through the deterioration or destruction of the thing, unless the damage would also have occurred if the thing had been with the owner.

(4) A possessor in bad faith may claim reimbursement of necessary costs that would also have been incurred by the owner if the thing had been with him.

(5) A possessor in bad faith shall have the right to reimbursement of beneficial costs only if they are of benefit to the owner.

(6) A possessor in bad faith shall not be entitled to reimbursement of beneficial costs which he incurred as a result of his satisfaction or embellishment of the thing, but may take away a thing which he built in for his satisfaction or embellishment of the thing if it can be separated from the principal thing without damage.

(7) A claim for reimbursement of costs by a possessor in bad faith shall lapse pursuant to the statute of limitations three years from the day on which the thing was returned.

Bad faith of an indirect possessor

Article 97

- (1) If an indirect possessor was in bad faith and the direct possessor did not know or could not have known this, the direct possessor shall be liable as a proprietary possessor in good faith.
- (2) In the case referred to in the previous paragraph the owner may pursue claims against the indirect possessor in bad faith within one year of the return of the thing.

Claim for return by the presumed owner

Article 98

- (1) In the event of dispossession a proprietary possessor in good faith (presumed owner) of a thing also has the right to claim its return from a proprietary possessor in good faith who has the thing with a weaker legal title.
- (2) If two persons are deemed to be the presumed owner of the same thing the person who acquired the thing against payment has the stronger legal title. If their legal titles are of equal strength the person who has direct possession of the thing shall have priority.
- (3) A claim under the first paragraph of this article shall not lapse.

Protection against disturbance

Article 99

- (1) If a third person unlawfully disturbs the owner or presumed owner in some way other than by dispossessing them of the thing, the owner or the presumed owner may file a suit demanding the cessation of the disturbance and the banning of any further disturbance.
- (2) If the disturbance referred to in the previous paragraph caused damage the owner shall have the right to compensation for the damage under general rules on compensation for damage.
- (3) A claim under the first paragraph of this article shall not lapse.

Protection of co-owners and joint owners

Article 100

Co-owners and joint owners have the right to sue for protection of ownership in respect of the whole thing, and a co-owner also has the right to sue for protection of his right in respect of part of the thing.

Section 6

EXTINGUISHMENT OF OWNERSHIP

Acquisition of ownership by another person

Article 101

A person's ownership of a thing shall extinguish if another person acquires the right to own it.

Abandonment

Article 102

(1) Ownership of a movable extinguishes if the thing is abandoned.

(2) A thing shall be deemed abandoned if its owner unequivocally expresses the will no longer to have ownership of it.

Destruction of a thing

Article 103

Ownership extinguishes if the thing is destroyed. The owner retains ownership of the remains of the destroyed thing.

Extinguishment in other cases

Article 104

Ownership also extinguishes in other cases determined by law.

Part V

DIVIDED CO-OWNERSHIP

Chapter 1

GENERAL

Concept

Article 105

(1) Divided co-ownership is ownership of an individual part of a building and co-ownership of the common parts.

(2) An individual part of a building must represent an independent functional whole suitable for independent use, such as an apartment, an office or some other independent premises. Other individually defined rooms can also belong to an individual part in divided co-ownership if they are part of an immovable co-owned by the divided co-owners.

(3) Common parts of a building are other parts intended for common use by the divided co-owners and the land on which the building stands. Other immovables may also belong among common parts.

(4) Co-ownership by all the divided co-owners of the common parts is inseparably linked to ownership of an individual part. Co-ownership of common parts cannot be waived.

(5) None of the co-owners may request a division of the co-ownership of the common parts.

Determination of the co-ownership share

Article 106

The co-ownership share of each divided co-owner of the common parts is determined by taking into account the practical value of each individual part in divided co-ownership as a proportion of the total practical value of the immovable, unless otherwise provided by the law or a legal transaction.

Chapter 2

CREATION OF DIVIDED CO-OWNERSHIP

Methods of creation

Article 107

(1) Divided co-ownership is created on the basis of a legal transaction or by court decision and entry in the land register.

(2) A legal transaction for the acquisition of divided co-ownership can be an agreement on the division of co-ownership into divided co-ownership (division agreement) or a unilateral legal transaction.

Agreement

Article 108

(1) A division agreement must contain the names of the divided co-owners, the land register designation of the immovable, a precise description of the individual part of the building in relation to the other parts, a description of the common parts, a determination of the co-ownership shares of the common parts and a contractual regulation of the mutual relations among the divided co-owners in the extent set out in the first paragraph of Article 116 of this Act.

(2) If any of the co-ownership shares of the immovable is encumbered with a mortgage or a land debt a division agreement is only possible with the consent of the creditor. A division agreement must determine the individual part of the building in divided co-ownership to which the encumbrance transfers.

Unilateral legal transaction

Article 109

The owner of an immovable may divide his ownership of the immovable into divided co-ownership with a unilateral legal transaction. This transaction must have the same elements as an agreement under Article 108 of this Act.

Court decision

Article 110

(1) Each co-owner of an immovable may request that the court in a non-litigious civil procedure divide the co-ownership of the immovable into divided co-ownership if such division is possible.

(2) If any of the co-ownership shares of the immovable are encumbered with a mortgage or a land debt the court shall issue a ruling determining which individual part in divided co-ownership the encumbrance transfers to such that the division does not worsen the position of the creditor.

(3) The court ruling must contain all the elements of an agreement under Article 108 of this Act.

Transfer of a mortgage and a land debt

Article 111

A mortgage and a land debt which encumber the entire immovable which is divided up into divided co-ownership shall transfer to all the individual parts in divided co-ownership.

Chapter 3

DISPOSAL

Disposal of property held in divided co-ownership

Article 112

(1) Property held in divided co-ownership is subject to disposal as a whole.

(2) The provisions of this Act regulating the disposal of an immovable shall apply to the disposal of property held in divided co-ownership.

Changing co-ownership of common parts of an immovable into an individual part in divided co-ownership

Article 113

(1) Divided co-owners may conclude a written agreement that the common parts become part of an individual part in divided co-ownership, if this is possible.

(2) Divided co-owners may also agree that a new individual part in divided co-ownership be created from the common parts, if this is possible. The provisions of Article 108 of this Act shall apply *mutatis mutandis* to the content of the agreement.

Division and merger of individual parts

Article 114

(1) In a legal transaction a divided co-owner may divide an individual part in divided co-ownership into two or more new individual parts in divided co-ownership, if this is possible. In this regard the co-ownership share of the common parts belonging to the divided individual part in divided co-ownership is divided in the previous extent into new co-ownership shares for each new individual part.

(2) The legal transaction must contain the land register designation of the individual part of the building, a description and a demarcation of the newly created individual parts and a determination of the co-ownership shares of the common parts for each new individual part in divided co-ownership.

(3) All costs in connection with the division shall be covered by the divided co-owner of the individual part being divided.

(4) Two or more individual parts in divided co-ownership may be merged on the basis of a legal transaction into a new individual part in divided co-ownership. The provisions regulating the division of an individual part in divided co-ownership shall apply *mutatis mutandis* to this legal transaction.

(5) The contract referred to in Article 116 of this Act may determine that a division or a merger must not be carried out or that they are dependent on the agreement of the other divided co-owners.

Chapter 4

RELATIONS BETWEEN DIVIDED CO-OWNERS

Rights and obligations in respect of common parts

Article 115

The rights and obligations of divided co-owners in respect of common parts are proportionate to their co-ownership shares, unless otherwise provided by law or by contract.

Contract on mutual relations

Article 116

(1) Divided co-owners must conclude a contract on mutual relations to regulate, in particular:

- the costs and obligations encumbering the divided co-owners if they deviate from the provision of Article 115 of this Act;
- the method of forming a reserve fund if it exceeds the minimum amount under the third paragraph of Article 119 of this Act;
- any special restrictions on the use of individual parts in divided co-ownership;
- the manner in which common parts are used;
- the purpose of use of individual parts in divided co-ownership;
- the conduct of divided co-owners in legal transactions;

- the manner in which common parts are managed;
- the use of individual parts in divided co-ownership for particular purposes;
- the insurance of the building as a whole;
- the powers of a manager if they deviate from Article 118.

(2) A contract on mutual relations must be concluded in writing and shall have effect against any new divided co-owner.

Management of the common parts of an immovable Article 117

(1) The provisions of this Act regulating co-ownership shall apply *mutatis mutandis* to the management of common parts, unless otherwise provided in the contract on mutual relations.

(2) If the divided co-owners do not reach agreement on a transaction which exceeds regular maintenance then divided co-owners having more than half of the co-ownership shares of the common parts may propose that the court make a decision on the transaction in a non-litigious civil procedure. In reaching its decision the court shall take account in particular of the type of transaction and the division of the encumbrances and the consequences for the divided co-owners who opposed the transaction.

(3) The provision contained in the previous paragraph shall also apply to an amendment to a contract on mutual relations in the part concerning regular management of common parts.

Manager Article 118

(1) If an immovable has more than two divided co-owners and more than eight individual parts the divided co-owners must appoint a manager.

(2) The appointment of a manager is considered a regular management transaction.

(3) If a manager is not appointed each of the divided co-owners may propose that the court appoint a manager in a non-litigious civil procedure.

(4) A manager shall have the following powers:

- to carry out the resolutions of the divided co-owners;
- to ensure regular maintenance and functioning of common parts;
- to ensure division and enforcement of obligations;
- to manage the reserve fund and common money;
- to represent the divided co-owners in management transactions and in the name of the other divided co-owners to file an exclusion suit and a suit for payment of costs and liabilities encumbering a divided co-owner.

(5) In carrying out his activities the manager must act in accordance with the interests of the divided co-owners.

Compulsory reserve fund

Article 119

- (1) If an immovable has more than two divided co-owners and more than eight individual parts the divided co-owners must set up a reserve fund to cover future costs of regular management.
- (2) The funds in the reserve fund are the common property of the divided co-owners. The funds are managed by the manager separately in a special account.
- (3) The criteria for determining the contribution of a divided co-owner to the reserve fund and the minimum contribution shall be laid down in an executive regulation.
- (4) The funds in the reserve fund may be used only to meet costs of maintenance and necessary improvements and to pay off loans taken on for these purposes. Execution on the funds in the reserve fund is permitted only for these reasons.
- (5) A divided co-owner does not have the right to demand reimbursement of payments made into the reserve fund nor to demand its division.
- (6) If a divided co-owner fails to pay his contribution into the reserve fund the manager must call on him to do so in writing. Such call by the manager shall be considered an authentic document within the meaning of the Execution and Protection of Claims Act.

Statutory encumbrance

Article 120

- (1) If an immovable has more than two divided co-owners and more than eight individual parts there exists an encumbrance on an individual part in divided co-ownership to the benefit of the other divided co-owners for the costs of management and payments into the compulsory reserve fund up to the amount of five times the minimum payment into the reserve fund.
- (2) The encumbrance referred to in the previous paragraph has the highest ranking.

Chapter 5

RESTRICTIONS ON DIVIDED CO-OWNERSHIP

Obligations of a divided co-owner

Article 121

- (1) A divided co-owner must, at an appropriate time, ensure repairs to his part in divided co-ownership if this is necessary in order to avert damage being caused to other parts of the building.
- (2) A divided co-owner must allow access to his individual part in order for repairs and improvements to common parts to be carried out which it would not otherwise be possible to carry out or which could only otherwise be carried out at a disproportionate cost.

(3) If a divided co-owner does not allow access a court shall decide the matter in a non-litigious civil procedure upon a request from the manager or from the other divided co-owners.

(4) Repairs or improvements must be carried out in the shortest possible time and with the least possible disturbance to the divided co-owner.

(5) A divided co-owner must be given suitable notice of intended work.

(6) Divided co-owners must provide the manager and the other divided co-owners with required information and enable them to view all the documents necessary for management of the common parts.

Alterations to individual parts in divided co-ownership

Article 122

(1) A divided co-owner may without the consent of the other divided co-owners carry out alterations to his individual part in divided co-ownership provided they do not cause the deterioration of any other part of the immovable.

(2) Whenever alterations to an individual part in divided co-ownership also mean a major intervention in the common parts the divided co-owner may not commence the work without the consent of divided co-owners having more than half of the co-ownership shares of the common parts.

Action for exclusion

Article 123

(1) If a divided co-owner or other user of an individual part in divided co-ownership seriously violates the basic rules of neighbourly cohabitation or his obligations under the contract on mutual relations in such a way that the community with him is unbearable, divided co-owners having more than half of the co-ownership shares of the common parts may adopt a resolution to warn the violator.

(2) If in spite of the warning the violator continues with his behaviour, divided co-owners having more than half of the co-ownership shares of the common parts may adopt a resolution to file a suit for his exclusion and for the sale of his individual part.

(3) A judgement on exclusion shall be executed with the sale of the individual part in divided co-ownership in accordance with the rules regulating execution on immovables.

Pre-emption right

Article 124

(1) If an immovable has two or more divided co-owners and no more than five individual parts the other divided co-owners shall have a pre-emption right in the event of the sale of an individual part in divided co-ownership.

(2) The provisions of this Act regulating the pre-emption right of co-owners shall apply *mutatis mutandis* to the exercise of a pre-emption right.

Chapter 6
EXTINGUISHMENT OF DIVIDED CO-OWNERSHIP

Extinguishment by will of the divided co-owners
Article 125

Divided co-ownership can be converted into co-ownership or ownership of the immovable on the basis of a legal transaction. The provisions regulating the creation of divided co-ownership shall apply *mutatis mutandis* to the legal transaction.

Destruction of the building
Article 126

Divided co-ownership extinguishes upon the destruction of the entire building. In this case the divided co-owners become co-owners of the immovable and of the remains of the building in accordance with their ideal share of the common parts.

Destruction of an individual part
Article 127

If an individual part in divided co-ownership is destroyed and cannot be renovated the divided co-ownership of this part extinguishes.

Part VI
LIEN

Chapter 1
COMMON PROVISIONS

Concept
Article 128

(1) A lien is the right of a lienor in the event of the non-payment of a secured claim upon maturity to receive payment together with interest and costs from the value of the pledged property ahead of all other creditors of the pledger.

(2) The pledger may establish a lien for insurance of his own debt or the debt of another.

(3) The subject of a lien can be things, rights and securities provided they can be disposed of and have a pecuniary value.

Lien for future and conditional claims
Article 129

A lien may also be established for insurance of future and conditional claims.

Creation of a lien

Article 130

A lien can be created on the basis of a legal transaction, a law or a court decision.

Creation of a lien on the basis of a legal transaction

Article 131

The acquisition of a lien requires a valid legal transaction from which the obligation to establish a lien derives and the fulfilment of the other conditions laid down by this Act.

Nullity of contractual provisions

Article 132

(1) Contractual provisions stipulating that ownership of pledged property transfers to the lienor if his claim is not paid at maturity and on the sale of the pledged property at a predetermined price are null and void, unless otherwise provided by this Act.

(2) An agreement on the transfer of ownership and sale at a fixed price are valid if they are concluded after the secured claim has matured.

Right of disposal

Article 133

For the acquisition of a lien on the basis of a legal transaction the pledger must have the right to dispose of the pledged property.

Creation of a statutory lien

Article 134

A statutory lien is created at the moment when all the conditions laid down in law for the creation of a lien are met.

Creation of a lien on the basis of a court decision

Article 135

A lien on the basis of a court decision is created when the decision becomes final, unless otherwise provided by law.

Multiple pledging

Article 136

If an object is pledged to two or more lienors the order in which they are repaid in full is determined by the time when the lien was created.

Extinguishment

Article 137

(1) If a secured claim extinguishes the lien also extinguishes, unless otherwise determined by law.

(2) A lien also extinguishes upon the extinguishment of the object of the pledge. If a new pledgeable object takes the place of the original object of the pledge the lienor acquires the same type of lien on the new object.

Chapter 2

LIEN ON IMMOVABLES (MORTGAGE)

Concept

Article 138

A mortgage is a lien on an immovable.

Mortgage on an immovable owned by two or more persons

Article 139

(1) Each co-owner may establish a mortgage on their ideal share without the consent of the other co-owners.

(2) The contractual establishment of a mortgage on an entire immovable which is the object of the co-ownership requires the agreement of all the co-owners.

(3) If an immovable is jointly owned a mortgage can only be established on the immovable as a whole.

Extent of a mortgage

Article 140

(1) A mortgage encompasses the immovable as a whole as well as all its elements and fruits until such time as they are severed from the principal thing.

(2) A mortgage also encompasses the accessories owned by the pledger.

Creation of a mortgage on the basis of a legal transaction

Article 141

(1) The acquisition of a mortgage on the basis of a legal transaction requires an entry in the land register.

(2) The entry in the land register shall be made on the basis of a document containing the land register permission.

(3) The document referred to in the previous paragraph must contain a designation of the mortgagee and the debtor of the secured claim and the pledger, if the pledger is not at the same time the debtor of the secured claim, the legal basis, the land register designation of the immovable on which the mortgage is established and the amount and due date of the secured claim.

Creation of a mortgage on the basis of a directly executable notarial protocol

Article 142

(1) A legal transaction on the establishment of a mortgage may be concluded in the form of a directly executable notarial protocol in which the pledger agrees to secure the claim with the registration of a mortgage on the pledger's immovable and agrees that after the claim has fallen due the claim can be repaid from the proceeds obtained through the sale of the immovable and that the immovable shall be vacated and handed over within one month of the sale.

(2) The direct executability of the notarial protocol shall be noted in the land register and shall also take effect against any subsequent acquirer of ownership of the pledged immovable.

(3) The registration of the mortgage and the noting of the executability must be proposed by the notary immediately after the concluding of the transaction.

Creation of a mortgage on the basis of a court decision

Article 143

A mortgage is created on the basis of a court decision with its entry in the court register.

Statutory mortgage

Article 144

A statutory mortgage is created at the moment when all the conditions prescribed by law are fulfilled.

Joint mortgage

Article 145

(1) A mortgage can be established on more than one immovable as security for the same claim.

(2) In this case the mortgagee may demand repayment of his claim from the sale of the immovable of each of the pledgers, and may do so in any order.

Maximum mortgage

Article 146

- (1) A mortgage can also be established by determining a maximum amount up to which an immovable is used to guarantee a secured claim (maximum mortgage).
- (2) A maximum mortgage may secure an individual claim or claims originating in a specific legal relationship whose amount at the moment the mortgage is established is not determined.
- (3) With a maximum mortgage all the interest and costs of the secured claim are also secured up to the maximum amount.
- (4) In the case of the assignment of a claim secured with a maximum mortgage the transfer of the mortgage is excluded.

More than one mortgage on the same property

Article 147

- (1) More than one mortgage may be established on the same immovable.
- (2) An agreement whereby the pledger undertakes not to establish any further mortgages on the immovable is null and void.
- (3) Only after the first creditor is repaid in full is the next creditor paid, and so on in order.
- (4) If by agreement a creditor is repaid then the next creditors move up one place.

Transfer of a mortgage

Article 148

- (1) With the transfer of a secured claim the mortgage is also transferred, unless agreed otherwise.
- (2) The transfer of a mortgage shall take effect only upon its entry in the land register.

Supermortgage

Article 149

- (1) A supermortgage is a lien on a claim secured with a mortgage.
- (2) The mortgagee may establish a supermortgage for the benefit of a third person without the consent of the pledger.
- (3) The provisions regulating a lien on a claim shall also apply to a supermortgage.

Indivisibility of a mortgage

Article 150

(1) A mortgage is intended to secure a claim until its final repayment. If a claim is partly repaid the mortgage is not reduced.

(2) On the division of an immovable encumbered with a mortgage each of the parts of the immovable is encumbered with the mortgage in full.

(3) If a mortgage is established on a whole thing in co-ownership each co-owner may pay the whole debt. Upon payment the co-owner acquires the secured claim together with the mortgage.

Sale of an immovable secured with a mortgage before a claim matures

Article 151

If by his actions the pledger reduces the value of a mortgaged immovable or in some other way worsens its state, the mortgagee may ask the court to instruct the mortgagor to cease such actions; if the mortgagor fails to do this he may request a compulsory collection of the claim secured with the mortgage even before the claim falls due.

Prohibition against antichresis

Article 152

An agreement by which a mortgagee secures the right to collect the fruits of an immovable or to exploit the immovable in some other way is null and void.

Repayment from a mortgage

Article 153

(1) If the debtor fails to pay a claim within the deadline the creditor may demand in a suit that the pledged immovable be sold.

(2) If the mortgage was created on the basis of a directly executable notarial protocol the creditor may demand that the notary establish that the claim has matured and sell the pledged immovable and repay the creditors or propose execution.

(3) With regard to the statutory or contractual deadlines the buyer of an immovable may cancel a contract on the use of the immovable (in particular a tenancy or lease contract) in writing which was made after the establishment of the mortgage, giving a notice period of one month.

Extinguishment of a mortgage

Article 154

(1) A mortgage extinguishes by deletion from the land register in which it is entered.

(2) The deletion of a mortgage may be demanded:

- if the debtor pays off the claim which is secured with it;
- if the claim secured with the mortgage expires;

- if the mortgagee renounces the mortgage;
- if the same person becomes the owner of the immovable and the holder of the mortgage on this immovable;
- if the mortgage expires by lapse of time;
- if the pledged property is sold for repayment of the secured claim.

(3) A mortgage expires ten years from the day on which the secured claim fell due.

(4) If under any title whatsoever an owner of an immovable encumbered with a mortgage receives some other immovable in compensation the mortgage shall transfer to this immovable.

Chapter 3 **LIEN ON MOVABLE (*PIGNUS*)**

Creation Article 155

(1) A lien on a movable is created on the basis of a valid contract of pledge when a pledger delivers the pledged movable into the direct possession of the lienor.

(2) A lien is also created if the pledged movable is delivered into the direct possession of a third person such that only the lienor can demand its delivery.

Good faith of the lienor Article 156

(1) A lienor in good faith acquires a lien even if the pledger did not have the right to dispose of the movable if the pledger has the movable in his possession by will of its owner.

(2) A lienor who in good faith as to the non-existence of other liens acquires a lien with the highest ranking if the lienor has the movable in his possession.

Safekeeping of pledged property Article 157

A lienor must store pledged property with the diligence of a good businessman or a good manager. The secured claim shall be increased by the amount of the necessary costs incurred by the lienor in connection with the pledged property.

Use of pledged property Article 158

(1) A lienor does not have the right to use the pledged property or to deliver it to another person for use or in pledge (secondary pledge) unless the pledger allows him to do so.

(2) A lienor who uses pledged property without the pledger's permission or delivers it to another person for use or in pledge shall be liable also for fortuitous destruction or damage to the property thereby caused.

(3) The limitation period for a pledger's claim against a lienor for reimbursement for damage as a result of the impairment of the property expires one year from the day on which the property was returned.

Fruits of pledged property

Article 159

(1) Ownership of the fruits of pledged property that are severed from the principal thing while a lien is in force is acquired by the pledger unless otherwise provided in the contract of pledge.

(2) If the lienor acquires ownership of the fruits the value of the secured claim is reduced by the value of the fruits. The value of the fruits is first deducted from the reimbursement of costs to which the lienor has a right and then from the debt interest and finally from the principal.

(3) The benefits under first and second paragraphs of this article shall also be deemed to be benefits achieved through the use of the pledged property.

Deprivation of pledged property from the lienor

Article 160

At the request of the pledger the court shall order the pledged property to be taken from the lienor and delivered to a third person to have in his possession and for his account if the lienor fails to store the pledged movable property as he should, if without the pledger's permission he uses it or gives it to another person to use, or if he uses it contrary to permission, and generally if he acts with it contrary to a contract or a law.

Defect in pledged property

Article 161

If it transpires that a pledged movable has a factual or legal defect which the lienor did not know about at the time when the contract of pledge was concluded, or if it was agreed that a defect would be remedied by the time the thing was delivered into possession, and as a result of the defect the pledged property did not provide sufficient security for repayment of the secured claim, the lienor has the right to demand from the pledger some other appropriate security.

Premature sale of pledged property

Article 162

(1) If pledged property is spoiled or if it loses its value in some other way and there is a risk of it becoming insufficient to secure the creditor's claim, the court may, upon a request from the lienor or the pledger and after hearing the other party, order the

property to be sold and determine the conditions of the sale. The sale shall be carried out by public auction or at an exchange price or market price if there is one. The proceeds of the sale, after deduction of the costs of the procedure and of the sale, are paid to the lienor on account of the secured claim, taking into account the interest at the bank discount rate in the place of fulfilment of the secured claim from the day of payment until the day on which the secured claim falls due.

(2) The court shall refuse a request from the lienor if the pledger offers to provide other suitable security for the lienor in place of the pledged property.

Rights of the pledger

Article 163

(1) At the request of the pledger the court may permit the pledged property to be sold to a specific person at a set price if it recognises that the price is reasonable and if the justified interests of the lienor are thereby protected. The proceeds of the sale, after deduction of the costs of the procedure and of the sale, are paid to the lienor on account of the secured claim, taking into account the interest at the bank discount rate in the place of fulfilment of the secured claim from the day of payment until the day on which the secured claim falls due.

(2) A pledger who needs the pledged property for his own requirements may request that the court order the lienor to return it if the lienor provides other appropriate security.

Protection of a lien

Article 164

For the duration of a lien the lienor has the same legal protection as an owner and may under the same conditions demand the return of the pledged property, the cessation of disturbance and protection of possession.

Return of pledged property

Article 165

As soon as the secured claim is paid off in full the lienor must return the pledged property to the pledger or enable the pledger to take direct possession of it from a third person.

Court sale of pledged property

Article 166

If a secured claim is not settled at maturity the lienor may ask the court to issue a decision ordering the pledged property to be sold and the payment to be made. The regulations governing execution with the sale of movable property shall apply *mutatis mutandis* to this sale.

Out-of-court sale of pledged property

Article 167

(1) The lienor and the pledger may agree in a contract of pledge that the pledged property can be sold out of court. An agreement on an out-of-court sale must be concluded in writing. In the case of contracts of pledge which under the provisions of obligational law are considered to be business contracts the existence of an agreement on an out-of-court sale is presumed.

(2) If the secured claim is not settled at maturity the lienor may sell the pledged property at a public auction or at an exchange price or a market price if there is one. The sale may be carried out as from eight days after the day on which the lienor notified the debtor of the secured claim, as well as the pledger if it is not the same person, of his intention to do so. The lienor must inform both in good time of the date and place of the sale. The lienor receives payment of his entire claim from the proceeds of the sale, together with interest and costs, and must deliver any surplus to the pledger.

(3) Any provisions of a contract of pledge providing for a different method of out-of-court sale to that set out in the previous paragraph shall be null and void.

Extinguishment of a lien

Article 168

A lien extinguishes if the lienor voluntarily returns the pledged property into the possession of the pledger.

Pledge to more than one lienor

Article 169

(1) A pledger may pledge the same movable property to more than one lienor. The second and subsequent lienors acquire a lien at the moment when the pledger notifies this to the lienor who has direct possession of the thing or for whom a third person has direct possession of the thing.

(2) If the secured claim of a lienor who has possession of a thing is paid in full he must deliver the pledged property to the next lienor. The repaid lienor has a lien for the costs of storage from the time when the secured claim was paid until the return of the property. It shall be considered that this lien is created on the same day as the lien which extinguished as a result of the payment of the secured claim.

Chapter 4

NON-POSSESSORY LIEN ON MOVABLES

Concept

Article 170

A non-possessory lien is a lien on a movable where the pledged property is not delivered into the direct possession of the lienor nor is it delivered into the direct

possession of a third person on behalf of the lienor but remains in the possession of the pledger or a third person on his behalf.

Creation of a non-possessory lien

Article 171

(1) A non-possessory lien is created with an agreement in the form of a directly executable notarial protocol.

(2) The agreement referred to in the previous paragraph must contain a designation of the lienor and the debtor of the secured claim and the pledger if he is not also the debtor of the secured claim, the details referred to in the second paragraph of Article 177, the legal basis, a description of the pledged property, the prescribed uniform identification symbol for the property, the amount and maturity of the secured claim or details from which the amount and maturity can be suitably determined, and the consent of the pledger to the establishment of the lien on the movable property and to the repayment of the secured claim upon its maturity from the pledged property.

(3) The concluding of an agreement as referred to in the first paragraph of this article shall have the effect of an attachment of movable property in an execution procedure.

(4) In cases where the object of the lien is movable property for which a register as referred to in Article 177 of this Act is kept, the lien is created with the entry of the lien in this register, which is done by the competent body at the request of a notary on the basis of the notarial protocol.

Use of pledged property

Article 172

The pledger may use the pledged property in accordance with its economic purpose or in accordance with an agreement with the lienor and does not have the right to alienate it or encumber it without the consent of the lienor.

Non-possessory lien on inventories

Article 173

(1) Inventories in a precisely determined place can also be subject to a non-possessory lien.

(2) The pledger is obliged to ensure the renewal of inventories in the normal manner and must enable the lienor to have regular supervision of the renewal of inventories and send to the lienor extracts on this from its books unless otherwise agreed by the parties.

Devastation of pledged property

Article 174

(1) If through his actions or inaction the pledger reduces the value of pledged property or in some other way worsens its condition the lienor may demand that the property be delivered into his direct possession or that of a third person on his behalf.

(2) With the delivery of the pledged property into the direct possession of the lienor or a third person a lien is acquired on the movable (*pignus*), whereby an agreement on an out-of-court sale is presumed to exist.

Payment under a non-possessory lien

Article 175

(1) If the debtor fails to settle the secured claim at maturity the pledger must deliver the pledged movable into the direct possession of the lienor.

(2) With the delivery of the pledged movable into the direct possession of the lienor a lien is acquired on the movable (*pignus*), whereby an agreement on an out-of-court sale is presumed to exist.

(3) If the pledger fails to deliver the pledged movable to the lienor the lienor may propose execution for the delivery of the property or execution by means of a sale.

Multiple pledging of the same movable

Article 176

(1) Under the conditions laid down in Article 172 movables may be placed in non-possessory pledge more than once. The pledger must inform all the previous lienors of each subsequent non-possessory pledge.

(2) If a movable is placed in non-possessory pledge to more than one lienor the payment is made upon the maturity of the first secured claim through one of them or a third person (person authorised for sale) who they appoint by agreement. If an agreement among the lienors is not possible a person is appointed at the proposal of any of the lienors by the court in a non-litigious civil procedure.

(3) The pledger must deliver the pledged movable to the person authorised for sale, who shall carry out the sale in accordance with Article 167 of this Act. After deduction of the costs of the sale the authorised person shall divide the proceeds among the lienors, taking into account the order in which the non-possessory liens were acquired and the due dates of the secured claims, whereby the payment of a claim not yet due shall take account of the interest at the bank discount rate in the place of fulfilment of the secured claim from the day of payment until the day on which the secured claim falls due.

Register of non-possessory liens

Article 177

(1) If a uniform identification of the movable property is possible a register of non-possessory liens may be set up with a special regulation. In this case the provisions of this Act on mortgages shall apply *mutatis mutandis* to a non-possessory lien.

(2) In addition to the identification of the movable property and the lien, details of the pledge and details of the creditor, debtor and pledger, if the pledger is not the same person as the debtor (personal name, residence, date of birth and personal identity number of a natural person or the name, head office address, registration number and tax number of a legal person) shall also be entered in the register referred to in the previous paragraph. The body responsible for keeping this register shall, *ex officio*, send the details of the pledge to bodies keeping the official records in which the movable property is entered in order for them to enter the details in these records and in the documents proving ownership of the movable property.

(3) The details in the register of non-possessory liens are public. The body responsible for keeping this register may also obtain the details referred to in the previous paragraph from official databases maintained by so authorised bodies and organisations in the Republic of Slovenia.

(4) If the movable property is entered in the register of non-possessory liens no one may rely on the argument that he was unaware of the details of a lien entered in this register. Anyone who relies on these details and who acts conscientiously in legal transactions shall not suffer detrimental legal consequences as a result.

(5) The Government of the Republic of Slovenia shall determine by order the types of movable property for which a register as referred to in the first paragraph of this article shall be established, the type of uniform identification symbol for the moveable property, the procedure for and content of entries in the official records and documents, the method of maintaining, linking and seeking data in the register and the tariff for entries in the register.

Chapter 5 **LIEN ON RIGHTS**

Section 1 **LIEN ON A CLAIM**

Concept Article 178

For the purpose of securing a claim a lien may be established on another claim the object of which is a charge (pledged claim).

Notification of the debtor and delivery of a document Article 179

(1) A lien on a claim is created at the moment when the debtor of the pledged claim receives notification from the pledger that the claim is pledged.

(2) The pledger must deliver to the lienor a document and other proof of the pledged claim.

Prohibition against fulfilment to the pledger

Article 180

After receiving the notification of the pledge the debtor of the pledged claim may only make valid fulfilment to the lienor.

Duty to preserve a claim

Article 181

The lienor is obliged to take all necessary steps to preserve the pledged claim.

Collection and accounting of interest

Article 182

(1) If a pledged claim confers a right to interest or to some other periodic claim it must be collected by the lienor.

(2) The sums thereby obtained are set off against the costs to which the lienor has a right, the interest owed to him and finally the principal.

Extinguishment of a secured claim

Article 183

If a secured claim extinguishes the lienor must notify the debtor of the secured claim that his lien has extinguished. After receiving this notification the debtor of the secured claim may only make valid fulfilment to the pledger.

Collection of a pledged claim

Article 184

(1) When a pledged claim falls due for payment the lienor must collect it.

(2) If the object of the pledged claim is the delivery of a thing, with the fulfilment of the pledged claim to the lienor a lien is created on the thing with which the claim was fulfilled.

(3) If the object of the pledged claim is money the lienor must, at the request of the pledger, deposit the amount collected with the court.

Payment if the object of both claims is money

Article 185

(1) If the object of the pledged and secured claims is money the lienor may retain as much as is owed to him and must deliver the remainder to the pledger.

(2) If when the pledged claim matures the secured claim has not yet fallen due for payment the lienor must reduce the secured claim by the interest payable at the bank

discount rate in the place of fulfilment of the secured claim from the day of payment of the pledged claim until the day on which the secured claim falls due.

Objections by the debtor of a pledged claim

Article 186

The debtor of a pledged claim may make the same objections against the lienor as the debtor of an assigned claim may make against the recipient in the case of the assignment of a claim.

Section 2

LIEN ON A SECURITY

Subject

Article 187

A lien may also be established on a security.

Creation of a lien

Article 188

(1) If a pledged security is issued to the bearer a lien is created when the security is delivered to the lienor.

(2) If a pledged security is issued by order or if a pledged security is registered to a name but in accordance with the law can be transferred by endorsement, a lien is created with an endorsement in which it is stated that the security is delivered in pledge (endorsement in pledge) and with the delivery of the security.

(3) If a pledged security is registered to a name a lien is created at the moment when the debtor under the security receives notification from the pledger that the claim arising from the security is pledged.

(4) The creation of a lien on a security which in accordance with the law is issued in non-materialised form is regulated by the law which sets out the method and conditions for the issuing of a security in non-materialised form.

Application of the provisions on the pledging of a claim

Article 189

The provisions of this Act regulating a lien on a claim shall apply *mutatis mutandis* to the pledging of a security.

Section 3

LIEN ON OTHER PROPERTY RIGHTS

Method of pledging

Article 190

A lien on another property right is created according to the method that applies to the transfer of this right, unless some other provisions are prescribed for a particular right.

Application of the provisions on the pledging of movable property

Article 191

The provisions on the pledging of movable property shall also apply to the pledging of other property rights, unless some other provisions are prescribed for them.

Part VII **LAND DEBT**

Concept

Article 192

(1) A land debt is the right to demand repayment of a specified cash sum from the value of an immovable ahead of other creditors with an inferior ranking.

(2) The payment of a land debt must not be bound by a condition.

Application of the provisions on mortgages

Article 193

The provisions on mortgages shall apply *mutatis mutandis* to a land debt unless otherwise provided in this part.

Creation of a land debt

Article 194

(1) A land debt is created on the basis of a unilateral legal transaction, with an entry in the land register and the issuing of a land letter.

(2) A land debt can be established by the owner of the immovable.

(3) A land debt can also be established by a mortgagee who, in agreement with the owner of the encumbered immovable, changes his mortgage into one or more land debts. The encumbrance of an immovable under land debts must not exceed the encumbrance under the mortgage. The change does not require the consent of other holders of the land debt or mortgage having the same or subsequent ranking.

Legal transaction

Article 195

(1) A unilateral legal transaction on the establishment of a land debt must be done in the form of a notarial protocol.

(2) The notarial protocol referred to in the previous paragraph must contain the name of the founder, the land register designation of the encumbered immovable and the amount and conditions attaching to the maturity of the sum.

Issuing of a land letter

Article 196

(1) A land letter is issued to the founder by the court that keeps the land register for the encumbered immovable after the land debt has been entered in the register.

(2) A land letter is a negotiable instrument to order which must contain the name of the court which issued it, all the details referred to in the second paragraph of Article 195 of this Act, the time of issue and the stamp of the court. The founder is deemed to be the first holder of the land letter.

Transfer of the land debt

Article 197

A land debt is transferred together with the land letter.

Pledging of a land debt

Article 198

A land debt is independently pledgeable.

Payment of a land debt

Article 199

(1) The owner of an encumbered immovable must pay the land debt on maturity to the entitled holder of the land letter.

(2) A land letter is an executable title.

(3) The owner of an encumbered immovable cannot demand payment of the land debt.

Extinguishment of a land debt

Article 200

(1) A land debt extinguishes with its deletion from the land register.

(2) A land debt can only be deleted from the land register upon submission of the land letter.

Part VIII

TRANSFER AS SECURITY

Chapter 1
TRANSFER OF TITLE AS SECURITY

Concept
Article 201

(1) Transfer of title as security (fiduciary transfer) is a form of security of a claim where movable property remains in the direct possession of the transferor or a third person on his behalf.

(2) It is deemed that the acquirer (fiduciary) acquired title under the resolutive condition of payment of the secured claim. Where agreed otherwise, an agreement as referred to in Article 202 of this Act shall be valid even if it does not contain the amount and maturity of the secured claim.

(3) The provisions on the transfer of title shall apply *mutatis mutandis* to a fiduciary transfer.

Agreement between parties on the transfer of title as security
Article 202

(1) An agreement between parties on the transfer of title as security must be concluded in the form of a directly executable notarial protocol.

(2) An agreement referred to in the previous paragraph must contain a designation of the fiduciary and the transferor as well as the debtor of the secured claim if the debtor is not the transferor, the legal basis, a description of the movable property and the amount and maturity of the secured claim.

Rights and obligations of the parties
Article 203

(1) An agreement as referred to in the first paragraph of Article 202 may also regulate the mutual rights and obligations of the parties.

(2) For the duration of the relationship the provisions on a non-possessory pledge of movable property shall apply *mutatis mutandis* in respect of the rights and obligations of the parties unless otherwise provided in an agreement as referred to in the first paragraph of this article.

Repayment of the fiduciary
Article 204

(1) If a secured claim is not paid at maturity the transferor must deliver the movable property into the direct possession of the fiduciary.

(2) For a suitable price the fiduciary may retain the movable property or sell it in the manner provided for in the agreement referred to in Article 202 of this Act. If the agreement does not determine the manner of the sale then the provisions on a non-possessory pledge of movable property shall apply *mutatis mutandis*. The fiduciary must deliver any excess to the transferor.

Insolvency of the fiduciary Article 205

The transferor may argue inadmissibility of execution against the fiduciary's creditors and exercise a right of exclusion in bankruptcy and composition on the fiducially transferred movable property.

Insolvency of the transferor Article 206

(1) The fiduciary may argue inadmissibility of execution against the transferor's creditors on the fiducially transferred movable property.

(2) In the event of the bankruptcy or composition of the transferor the fiduciary has a separation right in respect of the fiducially transferred movable property.

Chapter 2 **ASSIGNMENT OF A CLAIM AS SECURITY**

Concept Article 207

(1) The assignment of a claim as security (fiduciary assignment) is a form of security of a claim where the assignor assigns a claim to an assignee. Unless agreed otherwise, it shall be deemed that the acquirer acquired the claim under the resolutive condition of payment of the secured claim.

(2) The provisions on the assignment of a claim shall apply *mutatis mutandis* to a fiduciary assignment.

(3) If the same claim has been assigned as security more than once the claim shall be acquired by the person to whom it was first assigned.

Repayment of the assignee Article 208

If the secured claim is not paid at maturity the assignee may be repaid from the assigned claim. He must hand over any excess to the assignor.

Insolvency of the assignee and the assignor Article 209

(1) The provisions of Article 205 of this Act shall apply *mutatis mutandis* in the event of the insolvency of the assignee.

(2) In the event of the insolvency of the assignor the provisions of Article 206 of this Act shall apply *mutatis mutandis* only if an agreement on the assignment of the claim as security is concluded in the form of a notarial protocol.

Part IX
EASEMENT

Chapter 1
GENERAL

Concept
Article 210

Easement is the right to use another's property or to exploit a right or to demand from the owner of a property that he refrain from actions that he would otherwise have the right to carry out on his property (servient property).

Creation of easement
Article 211

A real easement is created by law, on the basis of a legal transaction or by decision of a state body.

Protection of easement
Article 212

(1) If anyone unjustifiably disturbs a person entitled to easement in the exercise of that easement the person may file a suit to request that the obstruction or disturbance cease.

(2) The first paragraph of Article 99 of this Act shall apply *mutatis mutandis* to the lawsuit referred to in the previous paragraph of this article.

Chapter 2
REAL EASEMENT

Concept
Article 213

(1) Real easement is the right of the owner of an immovable (dominant property) to carry out for the needs of that immovable certain actions on another's immovable (positive easement) or to demand that the owner of the servient property refrain from certain actions that he would otherwise have the right to carry out on his immovable (negative easement).

(2) Real easement cannot bind the owner of the servient immovable to a particular action.

(3) Real easement may also be established for a specific time or for a specific time of year.

(4) The provisions on the owner of the dominant and servient immovables shall also apply *mutatis mutandis* to a usufructuary and a holder of the right of superficies. A usufructuary and a holder of the right of superficies must not encumber the immovable for longer than the duration of their right.

Creation of real easement

Article 214

A real easement is created by law, on the basis of a legal transaction or by decision of a state body.

Creation of a real easement on the basis of a legal transaction

Article 215

(1) In addition to a valid legal transaction from which the obligation to establish an easement derives, the creation of an easement also requires the land register permission and an entry in the land register.

(2) A contract on the establishment of an easement must contain the name of the owners of the dominant and servient immovables, the land register designation of both immovables, a precise description of the easement and any compensation that must be paid by the owner of the dominant immovable. The compensation can be fixed as a one off-payment or as periodically maturing instalments.

Creation of an easement by decision

Article 216

A real easement is created on the day when the court decision or decision of an administrative body becomes final.

Acquisition by prescription

Article 217

(1) A real easement is created by prescription if the owner of the dominant property has actually been exercising easement in good faith for ten years.

(2) A real easement is created by prescription if the owner of the dominant property has actually been exercising easement for twenty years and the owner of the servient property has not opposed this.

(3) A real easement cannot be acquired by prescription if the owner of the dominant property abused the trust of the owner or direct possessor of the servient property, if the easement was exercised by force or by deception, or if the easement was permitted until revoked.

(4) A negative easement cannot be acquired by prescription.

Action for establishing easement

Article 218

(1) A person entitled to an easement may request that the existence of an easement against the owner of the servient property be established.

(2) The second paragraph of Article 92 of this Act shall apply *mutatis mutandis* to the action referred to in the first paragraph of this article.

Exercise of easement

Article 219

(1) A real easement shall be exercised in the manner which least encumbers the object of the easement.

(2) If the exercise of a real easement requires the use of a device or if a particular action is required the costs of maintenance or the costs of the action shall be covered by the owner of the dominant property.

(3) If the device is also used by the owner of the servient property or if the action is also in his interest, the costs of maintenance of the device and the costs of the action shall be covered by the owner of the dominant property and the owner of the servient property in proportion to the benefit they derive.

Extinguishment of an easement

Article 220

A real easement extinguishes on the basis of a legal transaction, on the basis of a decision or on the basis of a law.

Extinguishment on the basis of a legal transaction

Article 221

An easement may extinguish on the basis of a legal transaction between the owners of the dominant and servient immovables and with its deletion from the land register.

Extinguishment on the basis of a decision

Article 222

(1) The owner of the servient property may request the extinguishment of the easement if it becomes not beneficial for use of the dominant property or if there has been a substantial change in the circumstance in which it was established.

(2) The real easement extinguishes when the court decision or the decision of an administrative body becomes final.

Extinguishment on the basis of a law

Article 223

A real easement extinguishes:

- if the owner of the servient property opposes its exercise and the owner of the dominant property has not exercised his right for three consecutive years;
- if it is not exercised at the time necessary for its acquisition by prescription;
- if the dominant or servient property is destroyed.

Association

Article 224

(1) A real easement extinguishes if the same person becomes the owner of the dominant and the servient immovables.

(2) If the immovables once again come under the ownership of different owners the real easement shall be restored provided it has not been deleted in the interim period.

(3) A written declaration of the will of the owner which contains the land register permission is sufficient for the deletion of the real easement in the interim period.

Division of property

Article 225

(1) If the dominant immovable is divided a real easement remains on all of its parts.

(2) If the servient immovable is divided a real easement only remains on those parts on which it was exercised.

Non-genuine real easement

Article 226

An easement which by its content is a real easement may also be established for the benefit of a particular person. In these cases the provisions of this Act applying to a personal easement apply in respect of the creation and extinguishment of the easement.

Chapter 3

PERSONAL EASEMENTS

Section 1

GENERAL

Concept

Article 227

(1) A personal easement is the right of the holder to use another's property or to exploit a right and lasts until the holder's death.

(2) If a personal easement is established for the benefit of a legal person its duration may not be more than thirty years.

Types of personal easement

Article 228

Personal easements are:

- usufruct;
- use;
- habitation.

Non-transferability

Article 229

The holder may not transfer a personal easement but may transfer its exercise where this Act so provides.

Section 2

USUFRUCT

Concept

Article 230

(1) Usufruct is a personal easement which confers the right to use and enjoy another's property or right such that its substance is preserved.

(2) The object of a usufruct can be a non-consumable thing or a right from which interest or other benefits derive.

(3) The usufructuary may not transfer his right but may transfer its exercise.

Usufruct on a co-ownership share

Article 231

The object of a usufruct can also be a co-ownership share. In this case the usufructuary has the right to exercise the usufruct in the extent of the co-ownership share.

Usufruct on part of an immovable

Article 232

A usufruct can also be established on part of an immovable so that the immovable is jointly used and enjoyed by the owner and the usufructuary. In this case in their mutual relationship the usufruct shall be deemed to encumber the co-ownership share corresponding to the extent of the use of the thing to the benefit of the usufructuary. In relations with third persons the immovable shall be deemed to be encumbered as a whole.

Creation Article 233

A usufruct is created on the basis of a legal transaction or a court decision.

Creation on the basis of a legal transaction Article 234

(1) In addition to a valid legal transaction from which the obligation to establish a usufruct derives, the creation of a usufruct requires the fulfilment of the other conditions laid down by this Act.

(2) The acquisition of a usufruct on an immovable requires the land register permission and an entry in the land register.

(3) A usufruct on a movable is acquired with the delivery of the thing.

(4) A usufruct on a right is acquired with the transaction necessary for the transfer of the right.

Creation of a usufruct by court decision Article 235

A usufruct is created on the day when the court decision becomes final.

Examination of the thing Article 236

The usufructuary must inform the owner about all important circumstances concerning the thing and allow him to examine it once a year.

Costs borne by the usufructuary Article 237

(1) For the duration of the usufruct the usufructuary must maintain the thing with the diligence of a good manager in accordance with its economic purpose. The usufructuary shall bear all the costs of use as well as encumbrances and public contributions irrespective of the benefit he derives from the usufruct.

(2) If the usufructuary fails to fulfil any of the obligations under the previous paragraph and the substance of the thing is jeopardised the owner may demand appropriate security from him. If the usufructuary fails to provide the owner with such security the owner may demand the premature extinguishment of the usufruct. In this case the usufructuary has the right to compensation for the premature extinguishment, which shall be determined by the court taking into account the condition of the thing and the expected duration of the usufruct.

Extraordinary repairs

Article 238

(1) If the thing requires repair exceeding the bounds of ordinary maintenance due to *force majeure* or because it is worn out the usufructuary must inform the owner of this without delay.

(2) If in the case referred to in the previous paragraph the owner carries out the repair at his own cost the usufructuary owes interest to the owner on the value of the work carried out in order to return the condition of the thing to what it was when the usufruct was established. The interest falls due for payment at the end of each calendar year and for the last year upon the extinguishment of the usufruct.

(3) If in the case referred to in the first paragraph the owner does not wish to carry out the repair within a reasonable period the usufructuary may carry it out at his own cost. The reimbursement of these costs may be demanded upon the extinguishment of the usufruct in accordance with the rules applying to a possessor in good faith.

Improvements

Article 239

For the duration of the usufruct the usufructuary must permit the owner of the thing to carry out improvements to the thing at his own cost. For the period when the usufructuary's right is restricted as a result of the execution of this work the owner shall owe the usufructuary monetary compensation.

Return of the thing

Article 240

(1) Upon the extinguishment of the usufruct the possessor must return the thing to its owner.

(2) If it is not possible to return the thing in the condition it was in at the moment the usufruct was established the owner may demand compensation for loss as a result of the deterioration. The usufructuary shall not be liable for deterioration resulting from the normal use of the thing or *force majeure*.

Extinguishment of a usufruct

Article 241

(1) A usufruct extinguishes by expiration, when the usufructuary gives notice or upon the death or dissolution of the usufructuary.

(2) Notice is a unilateral declaration by the usufructuary that he is waiving his right. If the object of the usufruct is an immovable the usufruct extinguishes with its deletion from the land register.

(3) A usufruct extinguishes if the thing is destroyed. If a new thing or right takes the places of a destroyed thing then the usufruct transfers to that thing or right.

Non-genuine usufruct

Article 242

(1) Consumable things and rights which do not give interest or benefits may also be subject to usufruct.

(2) In the case referred to in the previous paragraph it shall be considered that the monetary value of a thing or right which upon extinguishment of the usufruct is returned to the owner was given in usufruct. Where specifically agreed the usufructuary must return the revalued principal.

(3) The provisions of this Act relating to a usufruct shall apply *mutatis mutandis* to a non-genuine usufruct.

Limitation of claims

Article 243

All claims for compensation arising from the relationship between an owner and a usufructuary shall lapse one year after their creation.

Section 3

USE

Concept

Article 244

(1) Use is a personal easement which gives the right to use the thing of another person in accordance with its economic purpose for the requirements of the holder of the easement in such manner that its substance is preserved.

(2) Only non-consumable things may be subject to use.

Extent of the right of use

Article 245

(1) The holder of the right of use may use the thing in the extent deriving from the legal title which is the basis for its establishment.

(2) The holder may not transfer the use to a third person.

Application of the provisions on usufruct

Article 246

(1) The provisions of this Act on usufruct shall apply *mutatis mutandis* to the personal easement of use.

(2) If the extent of the use is specified such that the thing may be used jointly by the owner and by the holder of the right of use then the provisions of this Act on usufruct on part of an immovable shall apply *mutatis mutandis*.

Section 4

HABITATION

Concept

Article 247

(1) Habitation is a personal easement which gives the right to use the residence or part thereof of another person for the requirements of the holder of the easement and his family in such manner that its substance is preserved.

(2) The holder of habitation has the right to use the common parts of a residential house.

(3) The exercise of habitation cannot be transferred to a third person.

Application of the provisions on usufruct

Article 248

The provisions of this Act on usufruct shall apply *mutatis mutandis* to the personal easement of habitation.

Part X

ENCUMBRANCE

Concept

Article 249

An encumbrance is a right on the basis of which the owner of an encumbered immovable is bound to a future charge or service.

Creation

Article 250

(1) An encumbrance is created on the basis of a legal transaction or a law.

(2) An encumbrance may be established for the benefit of a specific person or for the benefit of the owner of a specific immovable.

Creation of an encumbrance on the basis of a legal transaction

Article 251

In addition to a valid legal transaction from which the obligation to establish an encumbrance derives, the creation of an encumbrance also requires the land register permission and an entry in the land register.

Creation of an encumbrance by law

Article 252

An encumbrance is created by law at the moment when the conditions determined by the law are fulfilled.

Extent of a guarantee

Article 253

The owner of an encumbered immovable is liable to the extent of the immovable for all the obligations arising from the encumbrance.

Division of an immovable

Article 254

(1) If an immovable encumbered with an encumbrance is divided each owner shall be liable as a joint and several debtor.

(2) If an immovable whose owner is the holder of the encumbrance is divided the encumbrance shall remain for the benefit of each individual part of the immovable.

Application of provisions

Article 255

The provisions of this Act on easements shall apply *mutatis mutandis* to an encumbrance. However, the provisions applying to mortgages shall apply *mutatis mutandis* to individual fulfilments.

Part XI

RIGHT OF SUPERFICIES

Concept

Article 256

(1) A right of superficies is the right to own a built structure above or beneath the immovable of another person.

(2) A right of superficies may not last more than ninety-nine years.

(3) A right of superficies is transferable. The provisions applying to the transfer of title to immovables shall apply *mutatis mutandis* to the transfer of a right of superficies.

Creation of a right of superficies

Article 257

(1) In addition to a valid legal transaction from which the obligation to establish a right of superficies derives, the creation of a right of superficies also requires the land register permission and an entry in the land register.

(2) A contract on the establishment of a right of superficies must contain the name of the owner of the immovable, the land register designation of the immovable, a precise description of the right of superficies, the duration of the right of superficies and the compensation which the holder of the right of superficies must pay to the owner of the immovable.

(3) A legal transaction which is the basis on which a right of superficies is established must not contain a resolutive condition.

Divided co-ownership of a building

Article 258

A building which is built on an immovable encumbered with a right of superficies may be split up into divided co-ownership provided the conditions laid down in this Act are fulfilled. In this case the owners of the individual parts have a right of superficies in accordance with their ideal shares.

Rights of the holder

Article 259

(1) For the duration of the right of superficies the holder of the right has the right to use and enjoy the immovable.

(2) If the right of superficies relates to a building beneath an immovable an agreement must be reached in the contract on the establishment of the right of superficies as to the manner of use and maintenance of the land surface above the building.

Extinguishment

Article 260

(1) A right of superficies extinguishes with the deletion of its entry from the land register.

(2) The deletion of the entry of a right of superficies may be demanded upon the expiry of the time for which the right of superficies was established.

Premature extinguishment of a right of superficies on the basis of a legal transaction

Article 261

(1) A right of superficies may extinguish prematurely on the basis of a legal transaction with which the owner of the immovable and the holder of the right of superficies agree on the extinguishment.

(2) The provisions of this Act regulating the creation of a right of superficies shall apply *mutatis mutandis* to the contract on extinguishment. If a lien is established on a right of superficies a written declaration from the lienor confirming that he consents to the extinguishment is required in order for the contract to be valid.

Premature extinguishment of a right of superficies as a result of a violation

Article 262

(1) The owner of an immovable may require that a right of superficies extinguish if the holder of the right of superficies does not pay the compensation or if he exercises the right of superficies in excess of the agreed extent.

(2) Upon the extinguishment of the right of superficies the court shall set appropriate compensation which the owner of the immovable must pay to the holder of the right of superficies.

Consequences of extinguishment

Article 263

(1) Upon the extinguishment of the right of superficies the building becomes an element of the immovable.

(2) The owner of the immovable must pay an agreed compensation to the holder of the right of superficies upon extinguishment, which must not be less than half of the increase in the market value of the immovable.

Pledging of a building

Article 264

(1) A building which is built on an immovable encumbered with a right of superficies may be pledged.

(2) Upon the extinguishment of the right of superficies the lienor acquires a lien on the claim of the holder of the right of superficies for payment of compensation.

Right of superficies as a special right of use

Article 265

A right of superficies may also be established as a special right of use provided this does not interfere with the general use of property in the public domain.

Part XII

TRANSITIONAL AND FINAL PROVISIONS

Existence of rights

Article 266

(1) Real rights acquired before this Act entered into force shall remain valid with the content laid down in this Act.

(2) Liens acquired before this Act entered into force shall remain valid with the content with which they were established.

Validity of legal transactions

Article 267

(1) Legal transactions validly concluded before this Act entered into force shall remain valid even if they do not fulfil the formal requirements under this Act.

(2) If a legal transaction which represents a legal title for an entry in the land register was validly concluded before this Act entered into force, the entry on the basis of this legal title shall be carried out according to the rules in force before this Act entered into force.

Continuation of procedures

Article 268

All procedures commenced before this Act entered into force shall be concluded in accordance with the provisions of the previous regulations unless otherwise provided in this Act.

Duration of prescription

Article 269

(1) The provisions of this Act shall apply with regard to a prescriptive period which began to run before this Act entered into force.

(2) With regard to the duration of the prescriptive period a possessor in good faith and a statutory possessor in good faith under the Basic Property Relations Act are equated with a proprietary possessor in good faith under this Act.

Divided co-ownership

Article 270

(1) Divided co-owners who acquired property held in divided co-ownership prior to the entry into force of this Act and who have not concluded a contract on mutual relations must conclude a contract on mutual relations within one year of this Act entering into force.

(2) If the co-ownership shares of the common parts have not yet been determined they must be determined in the contract referred to in the previous paragraph.

(3) If a contract on mutual relations is not concluded within the time limit referred to in the first paragraph of this article each of the divided co-owners may propose that the content of the contract be determined by the court in a non-litigious civil procedure.

Two or more users of the same immovable

Article 271

(1) If, in accordance with the regulations in force before the entry into force of this Act, the land and the building on the land are objects of ownership, on the day this Act enters into force the building shall become an element of the immovable if the owner of the land and of the building are one and the same person.

(2) In the case referred to in the previous paragraph, when the owner is not the same the building shall become an element of the immovable on the day this Act enters into force and the owner of the building acquires a right of superficies on the immovable which lasts as long as the building stands. The owner of the immovable and the holder of the right of superficies must regulate their mutual relations with a contract as referred to in the second paragraph of Article 257 of this Act within three years of its entry into force.

(3) In the case referred to in the previous paragraph a right of superficies is acquired on property in the public domain as a special right to use property in the public domain.

(4) If an agreement is not concluded within the time limit referred to in the second paragraph of this article each of the owners may request that the content of the agreement be determined by the court in a non-litigious civil procedure. In determining the content the court shall take into account the circumstances in which the building was erected and the relationship between the owners before the entry into force of this Act. In setting compensation the court must take account of the provisions of the law regulating expropriation.

Executive regulation

Article 272

The executive regulation referred to in the third paragraph of Article 119 shall be issued by the minister with responsibility for justice in agreement with the minister with responsibility for housing affairs within six months of the entry into force of this Act.

Repeal Article 273

- (1) With the entry into force of this Act the following shall be repealed:
- Article 31, Article 34 (2) and Article 38 of the Act Regulating the Recording of Immovables, the State Border and Territorial Units (Uradni list RS, no. 52/00);
 - Article 121, Article 122, Article 123 (1), Article 124 (2,3), Article 127, Article 136, Article 137, Article 140, Article 143, Article 144, Article 148 (1) and Article 149 of the Non-Litigious Civil Procedure Act (Uradni list SRS, no. 30/86);
 - Article 12, Article 13, Article 14, Article 15, Article 17, Article 22, Article 23, Article 24, Article 25, Article 26, Article 27, Article 31, Article 32, Article 33, Article 35, Article 36 and Article 38 of the Housing Act (Uradni list RS, nos. 18/91, 13/93, 9/94, 23/96 and 1/00);
 - Act Regulating the Procedure with Found Property (Uradni list RS, no. 31/76).

(2) With the entry into force of this Act the appropriate provisions of this Act shall apply in non-litigious civil procedures in place of the repealed provisions of the Non-Litigious Civil Procedure Act.

Cessation of use of the provisions of other laws Article 274

(1) With the entry into force of this Act the Basic Property Relations Act (Uradni list SFRJ, nos. 6/1980, 20/1980 and 36/1990) shall cease to be applied.

(2) With the entry into force of this Act the provisions of chapter 23 (Articles 249 to 255) of the Execution and Protection of Claims Act (Uradni list RS, no. 51/98) on the creation of a lien shall cease to be applied, except for the provisions on immovables not yet entered in the land register, which shall be applied until their entry in the land register.

(3) With a proposal for entry of an immovable in the land register the owner must also propose the entry of a lien which was created under the provision of the previous paragraph, and all other liens created on this immovable before the entry into force of this Act. If he fails to do this and it is evident from the document which is the basis for the entry that a lien has been established on the immovable, the court shall make the entry of this lien *ex officio*.

(4) The entry of a non-possessory lien created before the register referred to in Article 177 of the law was established must be requested by the notary within three months of its establishment. In the request he must also state the prescribed uniform identification symbol for the movable. It shall be deemed that an entry made within this time limit takes effect from the day the non-possessory lien was created.

(5) With the entry into force of this Act the provisions of chapter XXVIII (Articles 966 to 996) of the Obligations Act (Uradni list SFRJ, nos. 29/78, 39/85 and 57/89) shall cease to be applied.

Application of Article 153 Article 275

The provision laid down in the second paragraph of Article 153 on a notarial sale of a pledged immovable shall be applied as from the enactment of a law setting out the rules governing a notarial sale of a pledged immovable.

Vacatio legis
Article 276

This Act shall enter into force on 1 January 2003.