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# A C T

## ON OWNERSHIP AND OTHER REAL RIGHTS

### ZAKON O VLASNIŠTVU I DRUGIM STVARNIM PRAVIMA

#### Part One

#### GENERAL PROVISIONS ON THINGS AND REAL RIGHTS

#### Ownership and Other Real Rights

#### Article 1

- (1) Any natural person or legal entity may be the person having the right of ownership and other real rights: servitudes, real burdens, the right to build and liens on anything that may be the subject matter of such rights, unless provided otherwise by law.
- (2) There is only one kind of the right of ownership.
- (3) The right of ownership and other real rights may be taken away or limited against the owner's will only subject to the conditions and according to the modality laid down by law.
- (4) Where the owner has to endure a sufferance or miss out on something with respect to the thing he owns, the same should apply to the person authorised to another real right on the same thing if such person derives his right from the right of the owner, unless provided otherwise by law.

(5) This Act regulates in general the belonging of things to persons; the rules of this Act shall be also applicable to the belonging of things subject to some particular piece of legislation, unless contrary to such legislation.

(6) The statutory provisions regulating the right of ownership and owners shall also apply accordingly to all other real rights, unless there is a particular provision regarding such real rights or unless arising otherwise from their legal nature.

### **Subject Matter of Ownership and Other Real Rights**

#### **Article 2**

(1) Any movable (chattels) or immovable (real property) thing may be the subject matter of the right of ownership and other real rights, save for those not having the required capacity.

(2) Within the meaning of this Act, things are the corporeal parts of nature, different from people and used by people. Anything that is extended equal status by law is also regarded as a thing.

(3) Real property are parcels of the earth's surface, together with everything that is permanently affixed to land on or below the earth's surface, unless provided otherwise by law.

(4) Chattels are things that can be moved from one location to another without jeopardising their substance. Things movable by nature are regarded as real property in the legal sense if they are part of an immovable thing or if extended equal status as real property by law.

(5) Within the meaning of this Act, the forces of nature are regarded as things if they are subject to human control.

(6) Certain kinds of rights or anything else may be extended equal status as things by law; in such case, they are regarded as movable things. They are regarded as real property only if they are connected to the ownership of immovable things, or are a burden thereon, or if proclaimed to be real property by law.

(7) In case of doubt whether a thing is movable or immovable, it is deemed movable.

### **Capacity of Things**

#### **Article 3**

(1) All things have the capacity of being the subject matter of the right of ownership and other real rights, except those which cannot belong to an individual as the result of their natural characteristics or by the operation of law.

(2) Those parts of nature which in view of their characteristics cannot be in the control of any natural person or legal entity individually, but are used by all, such as the air and water in rivers, lakes and the sea, as well as the seashore (common things), do not have the capacity of being the subject matter of the right of ownership and other real rights.

(3) The Republic of Croatia takes care, administers and is responsible for common things, unless a particular piece of legislation provides otherwise.

(4) From a legal standpoint, buildings and other structures erected on a common thing based on a concession are not part of such common thing, and they form a distinct real property for the duration of the concession concerned.

### **Things of Interest to the Republic of Croatia**

#### **Article 2**

(1) Things designated as things of interest to the Republic of Croatia by the Constitution of the Republic of Croatia, consequently enjoying its special protection, and which are not common things, have the capacity of being the subject matter of ownership and other real rights.

(2) Owners and persons authorised to other rights on things under paragraph 1 of this Article may exercise their rights in accordance with the procedure laid down by law for their use and utilisation, and in view of the resulting limitations imposed on them, they are entitled to compensation provided by law.

### **Things and Component Parts**

#### **Article 5**

(1) The subject matter of the right of ownership is an individually specified thing.

(2) Anyone who has the right of ownership or any of the real rights to a thing also has such right to its component parts, unless provided otherwise by law.

(3) The component part of a thing is each of its parts, everything that is joined with it on a relatively permanent basis, as well as the fruits derived from such thing until parted from it. The component part of a thing is also everything appurtenant to it (appurtenances).

### **Parts of a Thing**

#### Article 6

(1) A part of a thing which cannot be physically separated from it without being destroyed itself or without destroying the thing (a material part) may not be an independent subject matter of real rights, unless provided otherwise by law.

(2) Parts of a thing which are not material (separable parts) are subject to the same rights as the entire thing, unless one of the parts is subject to a right in favour of another person based on a particular legal foundation. The burden of proof lies with whoever claims there is such right on a separable part.

(3) Regardless whether a thing is physically divisible or not, it may be legally partitioned into materially equal parts, the size of which is determined by computation *pro rata* to their share in the entire thing (proportional shares), unless provided otherwise. Each proportional share of a thing is its separated part.

(4) The acquirer of an entire thing or real rights to such thing who did not know and did not have to know there is somebody else's right to one of its separable parts different from the right to the entire thing shall be deemed to have acquired the entire thing, that is, the right thereto, regardless of the right of such other person. In the said case, the right of the other person shall be deemed to have ceased, and the issue of the right of such person to require compensation of the seller shall be examined according to the law on civil obligations.

(5) The separation of a part from the entire thing shall not result in the termination of the rights existing until such time, unless there is a particular provision regarding the matter.

### **Appurtenances**

#### Article 7

- (1) Appurtenances are movables the purpose of which as designated by the owner is to serve the purpose of the main thing on a permanent basis, and which are located in such spatial relationship to the main thing that is in conformity with the purpose. Any particular thing that is not regarded as appurtenance in trade shall not be an appurtenance.
- (2) Transitory use of a thing to serve the purposes of another thing shall not result in such thing becoming an appurtenance.
- (3) Transitory termination of using an appurtenance to serve the purposes of the main thing, as well as transitory termination of the spatial relationship to the main thing, shall not result in the termination of such capacity of the appurtenance.
- (4) If there are machines and similar equipment the purpose of which is a particular production or trade activity, they are deemed to be intended to permanently serve the purpose of the building the permanent purpose of which is the activity concerned (business building) as the main thing.
- (5) It is deemed that machines and cattle intended for further agricultural production, as well as agricultural products and seeds needed for further agricultural production, for the duration of the time period during which it may be expected that they or similar products will be obtained by such production, as well as the existing fertilisers and fuels, are intended to permanently serve the purpose of the real property that is permanently intended for agricultural production as the main thing.

### **Benefits**

#### Article 8

- (1) Benefits are fruits of a thing or right, as well as other advantages resulting from the use of a thing or right.
- (2) The fruits of things are products that a thing yields naturally or as the result of someone's work, as well as everything else the thing yields in view of its purpose.
- (3) The fruits of a right are the contributions the right gives in view of its purpose, as is the case with rights giving the right to the acquisition of fruits or other parts of a thing – received parts of a thing.
- (4) Fruits are also contributions that a thing or right yields by mediation of a legal relationship, such as rentals and interests.
- (5) Benefits belong to whomever the thing or right that yields them belongs, unless they belong to someone else based on a particular legal foundation. Any person referring to the existence of such legal foundation has the burden of proof.
- (6) Any person who is bound to surrender the fruits of a thing or right is authorised to require compensation for the costs incurred as the result of gathering the fruits, provided that a prudent administrator would have had them, however, never more than the value of the fruits he is bound to surrender.

### **Of Real Property in Particular**

#### Article 9

- (1) A single real property consists of the land plot, including everything that is reasonably permanently affixed to it on the surface or below it; however, when several land plots are registered in the land register in the same land register file, they are legally unified into a single unit (registered land unit), which as such forms a single piece of real property.
- (2) Grass, trees, fruits and all usable things growing from the earth on its surface are parts of the real property until they are separated from the ground.
- (3) Anything that is erected on, above or below the surface, and the purpose of which is to remain there permanently, or anything that is built into the real property, added to it or built onto it, or joined to the real property in any other way, is part of such real property until it is separated from it. However, those buildings and other that is joined with the land for only transitory purposes are not part of the land.

(4) Buildings and other structures permanently connected to the land if they are legally separated from it by a real right which authorises its holder to own such a building or other structure on somebody else's land are not part of the land, and the same applies accordingly to buildings and other structures which are legally separated from the land or a common thing by a concession based on law authorising its holder to own such a building or another structure thereon.

(5) Machines and similar equipment which would otherwise be part of real property are not regarded as its part, but as independent things if upon consent of the owner of real property it has been registered in the land register that they are owned by another person. The recordation has effect until it is deleted from the land register; its effect terminates even if the recordation is not deleted five years after making the entry, but the time limit is stayed during bankruptcy and execution proceedings.

(6) Rights in favour of real property are regarded as a component part of the real property.

## **Part Two**

### **POSSESSION**

#### **Title 1**

#### **GENERAL PROVISIONS**

##### **Possessor**

##### **Article 10**

(1) Any person having factual power over a thing is its possessor.

(2) Anyone enforcing his factual power either personally or through an assistant is an immediate possessor.

(3) When a person has a thing in possession as a usufructuary, lien creditor, lessee, guard, borrower or in any other similar capacity where he is authorised or bound to have the thing in possession for a period of time, then such other person is also the possessor (mediate possessor). If the mediate possessor has the same kind of relationship towards a third party, the third party is also a mediate possessor.

(4) Any person having factual power in relation to only a part of some thing, albeit the part could not be an independent subject matter of real rights, like a room or another space in an apartment and other, is also regarded as a possessor.

(5) Factual enforcement of the rights of real servitudes regarding real property (possession of a right) equals possession of a thing, so the provisions on the possession of a thing are applied accordingly to the possession of a right, unless contrary to the nature of the right or the provisions of law.

(6) Several people having possession on the same thing or right are co-possessors.

##### **Independent Possessor**

##### **Article 11**

(1) Any person who has a thing or right in possession while recognising a better right of the mediate possessor is a non-independent possessor; any person who has a thing in possession as if he were its owner or who has a right in possession as if he were the person having the right is an independent possessor.

(2) Possession shall be deemed independent unless proved otherwise.

(3) Anyone may take valid acts in legal transactions while relying on the fact that the independent possessor of a movable thing is its owner, unless he knows or had to know that was not the case.

### **Assistant in Possession**

#### Article 12

- (1) A person who does not exercise any kind of power over a thing does not have possession.
- (2) A person who is employed or has a similar kind of relationship or acts complying with someone else's instructions regarding a thing or right in someone's household, and who therefore executes exclusively someone else's factual power, does not have possession, but is only the possessor's assistant in possession.

### **Title 2**

#### ACQUISITION

### **Original and Derivative Acquisition**

#### Article 13

Possession is gained when the acquirer establishes his factual power over a thing, either by a unilateral act (original acquisition of possession) or by having it transferred to him (derivative acquisition of possession).

### **Surrender**

#### Article 14

- (1) Possession is transferred by surrendering either the thing itself or by surrendering the means to be used by the acquirer to exercise his power over the thing, and the surrender is deemed executed as soon as the acquirer finds himself in the position to exercise his power over the thing subject to the will of the transferor.
- (2) When possession is transferred to a person who is not present, the surrender is deemed executed when the thing is received by the acquirer himself or by the person appointed by the acquirer to represent him or by the person appointed to represent the acquirer by the operation of law, and in the case of surrender to a transporter only if the transporter works for the account of the acquirer.
- (3) If for goods surrendered to a transporter or warehouse worker securities are issued that replace such goods in legal transactions, the surrender of such securities means the surrender of such goods; when a person receives such securities in good faith, and the other person receives the goods in good faith – it is deemed that the latter has taken possession of the goods.

### **Surrender by Declaration of Will**

#### Article 15

- (1) Based on a declaration of will to the effect that possession of a thing is to be surrendered to an acquirer, the acquirer gains immediate possession only if he is already in the position to exercise his power over the thing.
- (2) Based on a declaration of will to the effect that possession of a thing is to be surrendered to an acquirer, possession may be transferred to him by having the former possessor retain the thing, and transfer to the acquirer or establish for the acquirer a right that the former possessor is to surrender the thing; accordingly, the thing may be surrendered to a third party, and the acquirer gains the right to have the third party surrender the thing to him.
- (3) Surrender of possession by a declaration of will that possession is to be surrendered to the acquirer shall have effect towards third parties only if the third parties have been informed about it or if they are otherwise aware of it.

### **Acquiring Possession of a Right**

#### Article 16

- (1) If the possessor of a piece of real property does something unilaterally regarding the real property of another that such other possessor should not suffer, and suffers it nonetheless, the possessor of the former real property as dominant tenement shall have assumed original acquisition of possession of the right of real servitude against the other real property as servient tenement.
- (2) If the possessor of a piece of real property voices a unilateral prohibition to the possessor of another real property to do something that the latter could otherwise do, and the latter possessor

does not do so for the said reason, the possessor of the former real property as dominant tenement shall have assumed original acquisition of possession of the right of negative servitude against the other real property as servient tenement.

(3) If the possessor of a piece of real property agrees with the possessor of another real property to do something regarding the latter real property that its possessor should otherwise not have to suffer, and he suffers it nonetheless, possession of the right of positive servitude against the latter real property as servient tenement shall be deemed to have appeared in favour of the former real property as dominant tenement by derivation from the possession of the latter real property.

(4) If the possessor of a piece of real property agrees with the possessor of another real property not to do something on the real property that he has in possession that he could otherwise do, possession of the right of negative servitude against the other real property as servient tenement shall be deemed to have appeared in favour of the former real property as dominant tenement by derivation from the possession of the other real property.

(5) In the events referred to in paragraphs 3 and 4 of this Article, possession of the right of real servitude is deemed to have been surrendered to the acquirer.

(6) Possession of the rights of real servitudes established in favour of particular real property as dominant is transferred to the acquirer together with the possession of such dominant tenement when it is surrendered to the possession of another; however, the person who assumes original acquisition of possession of the real property does not acquire possession of the right of real servitude existing in its favour automatically.

### **Inheriting Possession**

#### Article 17

(1) The testator's possessions of things and rights are transferred to his heir because of the testator's death and at the moment of his death, such as existing at the time of the testator's death.

(2) When following the testator's death his possessions are transferred to two or more of his coheirs, they all become co-possessors of each individual possession, and they shall exercise the possessions as such, except if it was the will of the testator or if the probate court decides that the execution is to be entrusted to someone else.

(3) Transfers of the testator's possessions to his heir or heirs do not impinge upon other possessions of the same thing or right.

### **Title 3**

#### QUALITY OF POSSESSION

### **Lawful, Truthful and Fair Possession**

#### Article 18

(1) Possession is lawful if the possessor has a valid legal foundation for the possession (the right to possession).

(2) Possession is truthful if it was not obtained by force, covertly or by fraud, or by abusing someone's trust. Possession obtained by force, covertly or by fraud, or by abusing someone's trust, becomes peaceful when the right of the person to protect his possession taken away from him in the described manner terminates.

(3) Possession is fair if at the time of acquisition the possessor did not know and in view of the circumstances did not have any reason to suspect that he did not have the right to such possession; however, his fairness terminates as soon as the possessor finds out that he is not entitled to the right to possession.

(4) If a legally effective decision is rendered in a dispute concerning the right to possession, stating that the possessor is not entitled to possession, his possession is unfair as of the moment of receiving the complaint concerned; the same applies accordingly in the case of a final decision on the right to possession by another competent authority or court in another procedure.

(5) Possession is deemed fair unless proved otherwise.

(6) Fairness and truthfulness of possession by a legal entity are examined on the basis of the fairness and acts of the natural person authorised to execute acquisitions or acts relating to

possession on behalf of the legal entity, whereas fairness and truthfulness of possession by persons having a legal representative are examined based on the fairness and acts of their representative.

#### **Title 4**

### **PERMANENCY AND PROTECTION**

#### **Principle of Permanency**

##### **Article 19**

(1) Possession lasts as long as the possessor's factual power over the thing lasts; however, it neither terminates nor is interrupted if the nature of the disturbance or failure to exercise the possessor's power was only temporary.

(2) It is deemed that after acquisition possession lasts without interruptions, and any person asserting that possession terminated or was interrupted has to prove the occurrence of circumstances resulting in termination.

#### **Arbitrary Obstruction of Possession**

##### **Article 20**

(1) Arbitrary possession is prohibited; regardless of the nature of possession, no one has the right to obstruct possession arbitrarily, even if he deems to have a better right to it.

(2) Any person who takes away possession from the possessor against his will or who interferes with his possession is regarded as having arbitrarily obstructed his possession.

(3) A person whose possession was taken away from him by force, covertly or by fraud, or by abusing his trust, may not re-take possession arbitrarily after his right to protect his possession terminates.

(4) If the act of taking away or interfering with possession is permitted by law or by a decision of the court or another body, rendered pursuant to a law permitting such an act, it is not arbitrary obstruction of possession. However, arbitrary obstruction of possession is also the act of taking away or interfering with possession in social, public or similar interest if not permitted by law or by the operation of law.

#### **Right to Protect One's Possession**

##### **Article 21**

(1) Any person whose possession was arbitrarily obstructed by another, either by having interfered with his possession or by having taken it away, has the right to protect his possession.

(2) Even the possessor who acquired possession arbitrarily by taking it away from another by force, covertly or by abusing his trust has the right to protect his possession; he is not entitled, though, to protect it against the person from whom he had taken it away arbitrarily, however, he shall be allowed to protect it against such person as well after his possession becomes peaceful.

(3) The right to protect one's possession terminates on expiration of the term of thirty days from the day on which the party whose possession was obstructed finds out about the act of obstruction and about the perpetrator, and at the latest one year after the date on which obstruction began.

(4) The right to protect one's possession is exercised either in a special procedure in court (procedure for obstruction of possession) or by self-help.

(5) Possession that had been taken away from a possessor shall be deemed not to have terminated and not to have been interrupted if the possessor re-established it or obtained its re-establishment by exercising the right to protect his possession.

#### **Court Protection**

##### **Article 22**

(1) Possessors whose possession was obstructed arbitrarily are authorised to protect their possession in court, requiring the court to determine the act of obstructing their possession, order the re-establishment of possession as at the time of obstruction, and prohibit such or similar obstruction in the future.

(2) The court extends this kind of protection in a special summary proceeding (procedure for obstruction of possession), based on the latest state of possession and obstruction, regardless of



the right to possession, the legal foundation, the possessor's fairness, and the extent to which the obstruction would be in social, public or similar interest.

(3) The right to take possession-related acts may be voiced and it may be discussed only further to an objection that the taking away, that is, obstruction of possession was not arbitrary.

#### Article 23

(1) The mediate possessor is also authorised to seek protection of possession, where in the case when the immediate possessor cannot or will not re-take immediate possession taken away from him, the mediate possessor may require the surrender of things to himself.

(2) The mediate possessor is not authorised to file a motion for the protection of his mediate possession against obstruction committed by the immediate possessor if in order to take a decision on the matter it would be necessary to discuss their legal relationship.

#### Article 24

(1) Any co-possessor is authorised to protect his co-possession in court in case of arbitrary obstruction by a third party, and in case such arbitrary obstruction was made by other co-possessors only if they excluded him from his former co-possession completely or if they materially limited his former way of exercising factual power.

(2) A co-possessor is not authorised to place a motion for the protection of his co-possession against obstruction made by another co-possessor if in order to take a decision on the matter it would be necessary to discuss their legal relationship.

#### Article 25

(1) Heir or coheirs are authorised to protect possession passed from testator to heirs against arbitrary obstruction by a third party.

(2) Where the subject matter of possession is administered by an executor or custodian of the estate based on his authority to do so, such executor or custodian is authorised to seek protection of the possession that was passed from testator to heir or heirs.

(3) The provision of paragraph 2 of this Article does not impinge upon the right to protection of each individual heir or coheir; however, he may seek restitution of possession that was taken away only against the executor or custodian of the estate.

#### Article 26

The right to possession may be established and realised in court or before another competent authority, irrespective of the duration and outcome of the related procedures concerning the protection of possession.

### **Permissible Self-help**

#### Article 27

(1) Any person who has the right to protect his possession may protect his possession even by force within the time limits laid down in Article 21 paragraph 3 of this Act against the person who took away his possession arbitrarily or against the person interfering with his unobstructed possession if that is necessary because court protection would be too late, and the danger is immediate, provided that such person protecting his possession does not apply force greater than required under the circumstances in order to protect his possession (permissible self-help).

(2) The possessor's assistant in possession may also apply permissible self-help in place of the possessor.

(3) If the possessor realises his right to protect his possession by using self-help where the conditions laid down in paragraph 1 of this Article are not satisfied, he shall have protected his possession; however, he shall be held responsible for any resulting damages.

## **Title 5**

### **TERMINATION**

#### **Termination of Possession of Things**

##### **Article 28**

- (1) Possession of things is deemed terminated when the thing is destroyed, lost, and there is no prospect that it might be found, and when the possessor abandoned the thing of his own free will.
- (2) Possession by a former possessor is deemed terminated when possession is acquired by a person who shall not enforce the former possessor's power over the thing or when the thing concerned was taken away by another person, and the former possessor did not exercise his right to protection.

#### **Termination of Possession of a Right**

##### **Article 29**

- (1) Possession of a right is deemed terminated when the real property on which the content of the right was exercised is destroyed or if the possessor waived his possession of such right.
- (2) Possession of a right does not terminate by failure to exercise the content of the right of real servitude as long as the possessor may exercise it if he so chooses; it does terminate, however, when the possessor of a servient tenement ceases to do as he did until such time, ceases to suffer the exercise of the content of the right of servitude on his real property, that is, ceases to omit to do as he omitted to do until such time if the possessor of the right does not realise protection of his possession.
- (3) Possession of a right of real servitude terminates with respect to the former possessor at the same time as the termination of his possession of the real property in the favour of which he exercised it.

## **Part Three**

### **RIGHT OF OWNERSHIP**

#### **Title 1**

#### **OF OWNERSHIP IN GENERAL**

##### **Rights of the Owner**

##### **Article 30**

- (1) The right of ownership is a real right on a particular thing authorising the holder to use the thing and any benefits arising from it as he sees fit, and to exclude any person from it, unless that is contrary to such other person's rights or limitations imposed by law.
- (2) Within the limitations laid down in paragraph 1 of this Article, the owner has, *inter alia*, the right to possession, use, utilisation and disposition of the thing he owns.

##### **General Limitations**

##### **Article 31**

Ownership is binding, and the owner is bound to contribute to the greater good, so in general in exercising his right he is bound to be considerate to general and other people's interests that are not in contradiction to his right, in particular:

- neither the owner nor anyone else may exercise his right with the sole purpose of harming or bothering another person,
- the owner is not authorised to prohibit works by another person on the thing that he owns if such works are necessary to remedy impending damages, which would be disproportionately greater than the damage that the owner would suffer as the result of the works; he is only authorised to require compensation for the damages suffered,
- the owner of real property is not authorised to prohibit works by another person at a height or depth at which he has no justified interest to exclude them.

##### **Particular Limitations**

##### **Article 32**

- (1) The owner of a thing may not exercise his right of ownership in excess of the limitations imposed on all owners of such things based on this or any other particular piece of legislation with

the aim of protecting the interests and security of the state, nature, human environment and human health.

(2) The owner of a thing that was proclaimed to be of interest to the Republic in a particular piece of legislation pursuant to the Constitution, and with respect to which a special way of its use and utilisation by its owner and by persons authorised to other rights on it is laid down, is bound to exercise his right of ownership accordingly; however, he is entitled to compensation for the limitations imposed on his right of ownership.

(3) If it is laid down by law that the owner is bound to take certain acts with respect to the thing he owns in order to protect the interests and security of the state, nature, cultural monuments, human environment or human health, but he may not be forced to take such acts, the authorities in charge of local self-government units and local self-government and administration units are authorised to take temporary control of the thing (sequestration) by applying the rules on temporary custody of the estate where the heirs are unknown or where their residence is unknown, unless a particular piece of legislation provides otherwise.

(4) In the execution of temporary control, the authorities may subject the thing to a lease agreement.

(5) The lease agreement is concluded for a fixed period of time.

(6) In the event referred to in paragraph 4 of this Article, the rent may be used only for the purpose of maintaining the thing or satisfying another obligation because of which the temporary control of the thing was established.

(7) The owner is entitled to re-take possession of the thing even before the expiration of the contractual period if he pays the full amount of invested funds or satisfies another obligation because of which the temporary control of the thing was established.

### **Compensation**

#### Article 33

(1) The right of ownership may be taken away in the interest of the Republic of Croatia (complete expropriation) or limited by establishing a right on the owner's thing in favour of another person (incomplete expropriation), in which case the owner is entitled to compensation in line with the regulations on expropriation.

(2) If the capacity of certain kinds of things to be the subject matter of the right of ownership is taken away by the operation of law, the former owners of such things shall be subject to the same legal effect as if complete expropriation of the things had been executed.

(3) If the owner is subject to limitations resulting from the protection of the interests and security of the Republic of Croatia, nature, human environment or human health with respect to a thing he owns, which require of him, but not of all other owners of such things, to make a bigger sacrifice or which place him in a position similar to the one in which he would be in the case of expropriation - he is entitled to the same compensation as in the case of expropriation.

(4) If the reason for expropriation is not realised within the prescribed, that is, reasonable term, the person whose property was expropriated has the right to require restoration of a prior legal and factual status to the greatest possible extent; however he may then keep as much of the received compensation as is the amount of his loss compared to the situation that would exist based on the ordinary progression of things had there been no expropriation.

### **Limitations Resulting from Legal Transactions**

#### Article 34

(1) Unless provided otherwise, the owner may impose limitations, conditions or time limits on his right for any purposes other than those that are prohibited, and he may also encumber it.

(2) Any legal transaction in which the owner prohibits the alienation or encumbrance of the thing he owns is binding on the owner. Such prohibition shall have effect towards third parties if it is in favour of the spouse, child, parent, adopted child or adopted parent, and if it is also entered in the land register or in a public register, failing which a thing subject to the prohibition may not be acquired.

(3) Any legal transaction in which the owner lays down a condition or time limit on the right of ownership is binding on the owner. The limitation that takes the form of a condition or time limit shall have effect towards third parties if it is entered in the land register or in a public register, failing which a thing subject to the prohibition may not be acquired.

(4) The owner whose right of ownership is to terminate on fulfilment of a particular condition or expiration of a time limit (previous owner) is bound to be considerate to whomever is waiting to become the owner following such performance (contingent owner), and transfer the ownership to such person once the time limit expires or once the condition is fulfilled, where their mutual relationship shall be examined as if the preliminary owner had been the usufructuary. Where ownership is subject to a condition or time limit towards third parties, the right of ownership shall pass to the contingent owner on fulfilment of the condition or expiration of the time limit, unless provided otherwise by law, and any legal disposition of the thing made by the previous owner shall lose effect.

(5) The owner who receives or retains the right of ownership of a particular thing for the purpose of securing the fulfilment of a claim is bound not to use and dispose of the thing except in order to settle the claim; if the claim is not satisfied on its maturity, he is authorised to settle the claim out of the thing in accordance with the rules on out-of-court settlements of claims secured by a lien. Limitations on the right of ownership the aim of which is to secure a claim shall have effect towards third parties if they are entered in the land register or in a public register, failing which a thing subject to the prohibition may not be acquired.

(6) The owner's limitations, conditions, time limits and encumbrances, even when they have effect towards third parties, shall have no effect on other people's rights already existing on the thing, unless their holders provide their express consent in writing, and they shall neither have effect on the rights that third parties who did not know and could not know about the limitations, conditions, time limits and encumbrances acquire in legal transactions.

**Of Ownership of the Republic of Croatia and Other Bodies Governed by Public Law in Particular**  
Article 35

(1) The Republic of Croatia and other bodies governed by public law who are holders of the right of ownership have the same position with respect to ownership in legal relations as private owners, unless provided otherwise by law.

(2) The Government of the Republic of Croatia or any body authorised by the Government of the Republic of Croatia disposes of, administers and uses things owned by the Republic of Croatia, unless provided otherwise by law. With respect to things owned by the local self-government units and the local self-government and administration units, they are disposed of, administered and used by the authorities concerned, unless provided otherwise by law.

(3) The purpose of things that are owned by the Republic of Croatia is laid down by law or by the competent state authority pursuant to law.

(4) Everyone has the right to use things that are owned by the Republic of Croatia and that are intended to be used by all (public things subject to common use) in a way determined in order to achieve such purpose by the body or institution entrusted with the administration, that is, the body competent to determine the purpose that administers them directly. Unless provided otherwise by law, public things subject to common use are governed by the rules applicable to common things.

(5) Things that are owned by the Republic of Croatia and that are intended for direct enforcement of the rights and duties of the Republic of Croatia, its bodies and institutions (public things subject to public use) are used in accordance with their purpose by the bodies and institutions entrusted with their administration by the body competent to determine the purpose, unless such body retained them for its own direct use.

(6) The right of ownership of things that are owned by the Republic of Croatia and that are not intended for common or public use is exercised by the body competent to determine the purpose, unless such body entrusted the exercise to another body, institution or person, and the net income generated by the things represents income of the state budget.

(7) Any person deciding on common things or things that are owned by the Republic of Croatia or administering them is bound to act as a prudent administrator and is responsible for them.

(8) The right of ownership held by the local self-government units and the local self-government and administration units shall be governed accordingly by the rules on ownership held by the Republic of Croatia, unless provided otherwise by law or unless it ensues otherwise from the nature of such persons. The same applies to the right of ownership held by institutions and legal entities extended equal status as institutions.

## **Title 2**

### **CO-OWNERSHIP**

#### *Section 1*

#### **General Provisions**

#### **Co-ownership Shares**

##### Article 36

(1) If several persons have the right of ownership of a particular thing, by each being entitled to a part of the right of ownership, which is calculated arithmetically *pro rata* to the entire right of ownership of the thing, they are all co-owners of the thing, and the parts of the right of ownership that belong to them are their co-ownership shares.

(2) In case of doubt as to the size of co-ownership shares, they are deemed to be equal.

#### **Proportional Share of a Thing**

##### Article 37

(1) If a thing is held in co-ownership, the thing is deemed to be legally partitioned into equal portions (proportional shares) the size of which is determined based on the size of the co-ownership shares concerned.

(2) The proportional share of a thing is inseparable from the co-ownership share determining it.

(3) In legal transactions, the proportional share of a thing is regarded as an independent thing; everything provided for things also applies to proportional shares, unless there are particular provisions regulating the matter.

(4) Each co-owner is the owner of a proportional share of the thing that corresponds to his co-ownership share, and with respect to such part he has powers belonging to the owner, provided that he can exercise them in view of the nature of the proportional share.

(5) Co-owners may freely dispose of their respective proportional shares of a thing, that is, their co-ownership shares, according to the rules applicable to the owner's legal dispositions of things, provided that by doing so they do not impinge upon other people's rights. If a co-owner is to sell his part, other co-owners do not have the right of first refusal, unless they are entitled to such right based on a particular legal foundation.

(6) Co-owners have the right to impose all requirements arising from their right of ownership regarding their proportional shares on anyone, including other co-owners.

#### **Exercising the Right of Ownership on the Entire Thing**

##### Article 38

(1) Unless provided otherwise, co-owners do not need consent by other co-owners to exercise all powers that they enjoy as holders of the partial right of ownership over the entire thing, unless such actions would be in violation of the rights of other co-owners.

(2) Fruits and other benefits derived from the entire thing, including any costs and burdens, are partitioned amongst the co-owners *pro rata* to the size of their co-ownership shares, unless they agree otherwise.

(3) Each co-owner has the right to require at any time the settling of accounts and the division of all benefits.

(4) Each co-owner of a piece of real property who has the appropriate co-ownership share has the right to require at any time the establishment of ownership on a particular part in favour of his co-ownership share of the real property if the conditions under which it may be established are satisfied.

*Section 2*  
**Administration**  
**Right to Administration**

Article 39

- (1) Co-owners have the right to participate in the decision-making process regarding everything that concerns the thing under their co-ownership (administration) with other co-owners.
- (2) If a co-owner enters a transaction regarding a co-owned thing without the required consent by other co-owners, the rules on administration without an order are applicable.

**Operations of Ordinary Administration**

Article 40

- (1) Co-owners decide on operations regarding ordinary administration of the thing by a majority vote.
- (2) A majority vote is calculated on the basis of co-ownership shares, and not of the number of co-owners.
- (3) If a majority vote cannot be reached, and the taking of an operation pertaining to ordinary administration is necessary to maintain the thing, the court renders a decision at the request of any of the co-owners.
- (3) Any co-owner against whose will the majority of other co-owners decided to undertake a transaction or if the decision was made by the court has the right to require security for future damages. Any person bound to provide such security should fulfil the obligation by giving a piece of property as a lien, and a guarantee only if the court deems that a lien would be an excessive burden.
- (5) The court makes the decision concerned in non-adversary (inquisitorial) proceedings if there is no dispute as to the identity of co-owners or the size of their co-ownership shares.

**Extraordinary Operations**

Article 41

- (1) All co-owners have to provide their consent for the taking of operations exceeding the framework of ordinary administration, in particular changes relating to the purpose of the thing, major repairs, additional construction works, adaptation, alienation of the entire thing, lease for a period exceeding one year, a mortgage against the entire thing or a lien in the case of chattels, real and personal servitudes, real burdens or the right to build on the entire thing.
- (2) In case of doubt whether the operation exceeds the framework of ordinary administration, it is deemed that it does.
- (3) If co-owners cannot come to an agreement, the co-owner who proposed the operation foreseeably beneficial to all may require termination of co-ownership even if he could not require it otherwise at that precise point in time.

**Decision on Enforcing Possession and Owner's Powers**

Article 42

- (1) All co-owners have the right to co-possession, however, they may decide to distribute amongst themselves the possession of a thing and/or the enforcement of all or some of the owner's powers regarding the thing.
- (2) Adoption of the decision referred to in paragraph 1 of this Article is an operation that is part of ordinary administration, and this also includes any decisions on amending and repealing previous decisions.

**Decision on Establishing Floor Ownership**

Article 43

- (1) If a piece of real property is comprised of land with a building, the co-owner whose co-ownership share in such real property is big enough is authorised to establish and connect the ownership of a particular part of such real property to his co-ownership share (floor ownership) subject to a permission by other co-owners, and subject to further conditions laid down in Part Three Title 4 of this Act.

(2) The establishment of ownership of a particular part of real property does not impinge upon co-ownership; however, the enforcement of powers and duties of co-owners with whose co-ownership shares floor ownership is connected focuses primarily on such particular part of real property, limiting at the same time the enforcement of powers by other co-owners of real property on such particular part, according to the provisions of Part Three Title 4 of this Act.

(3) If floor ownership is established on at least one particular part of real property, legal relations between co-owners of the real property, both amongst themselves and towards third parties, are regulated primarily according to the provisions of Part Three Title 4 of this Act and the related legislation, and only subordinately according to the general rules on co-ownership included in this Title of the Act, unless provided otherwise.

(4) Co-owners of real property may agree to limit their co-owner's rights by connecting the ownership of a particular part of real property to a particular co-ownership share (floor ownership) of the co-owned real property, even if the co-ownership share is not big enough as required for an appropriate co-ownership share according to the provisions of Article 74 paragraphs 1 and 2 of this Act.

(5) A declaration of will by all co-owners to establish ownership of a specific particular part of real property in favour of a co-ownership share is deemed their agreement to partition the possession of the thing and enforce their co-owner's powers until the establishment of ownership of such particular part.

(6) The same rules that apply to land with a building on it apply accordingly to the right to build if there is a building erected on it.

#### **Administrator**

##### Article 44

(1) Co-owners may agree to entrust the administration of the thing to a particular person as the administrator who shall act as their power of attorney holder. They may appoint one person or several people from amongst their ranks to be the administrator, and they may also entrust the administration to any other natural person or legal entity having business capacity.

(2) Any co-owner who has a co-owned thing or its independent part in his possession based on a decision passed by all co-owners to partition the possession of the thing and enforce their co-owner's powers is deemed to have been entrusted with the ordinary administration of the thing, unless all co-owners agreed otherwise.

(3) If there are several administrators, they pass decisions by a majority vote, unless all co-owners agreed otherwise.

(4) Decisions on the appointment and scope of work of the administrator are within the competence of extraordinary administration, however, if co-owners cannot agree on the issue, each of them may require that the court make the decision on the matter in place of them in a non-adversary (inquisitorial) proceeding.

#### **Legal Position of the Administrator**

##### Article 45

(1) The administrator receives orders from co-owners, and their rights, duties and termination of their relationship with him are governed by the rules on orders, unless provided otherwise, where:

- co-owners who together hold a majority of co-ownership shares may cancel the contract with the administrator, provided that it is not for a fixed term, subject to a three-month notice period, which begins on the first day of the month following such termination of the contract,
- co-owners who together hold a majority of co-ownership shares may cancel the contract with the administrator appointed for a term longer than five years on expiration of such five-year term, without mentioning any reasons for the termination,
- if there is an important reason to do it, co-owners who together hold a majority of co-ownership shares may relieve the administrator off his duty at any time,
- in the case of gross negligence by the administrator, the court shall replace him at the request of any co-owner and appoint another administrator; the person relieved off his duty may never be appointed administrator of the same thing again,

- any administrator whose contract is not for a fixed term is authorised to terminate the contract subject to a three-month notice period, which begins on the first day of the month following such termination of the contract.

(2) If the administrator's term in office terminates pursuant to a decision made by some of the co-owners who did not have the consent of all co-owners, such co-owners are bound to take actions necessary to ensure administration of the thing in accordance with the presumed will of all co-owners until a decision on further administration is passed, for which they are responsible to the other co-owners.

*Section 3*  
**Protection**  
Article 46

(1) Any co-owner has the right to impose requirements on other co-owners arising from his co-ownership regarding the entire thing.

(2) Any co-owner has the right to impose on any person those requirements regarding the entire thing that may be imposed by the owner of a thing, where he may require of a third party to surrender a thing to possession only in accordance with the law on civil obligations governing indivisible obligations.

*Section 4*  
**Termination**  
**Right to Terminate**  
Article 47

(1) Co-owners have the right to terminate co-ownership if that is possible and permissible; such right is not barred by the statute of limitations.

(2) Co-owners may require termination at any time, except when such termination would be detrimental to the interests of other co-owners; however, such a requirement may be made even at such time if in view of the circumstances it cannot be reasonably expected that the circumstances are to change soon to the extent that the termination would not be detrimental to the interests of other co-owners. The court competent to conduct termination proceedings renders the decision on the objection that the requirement of termination may not be made.

(3) Co-owners may not waive their right to terminate in advance; however, they may agree to impose limitations on the right to terminate.

(4) Agreements imposing limitations on the right to terminate are not binding on heirs; however, if limitations on the right to terminate are registered in the land register, they shall be binding on everyone.

**Exercising the Right to Terminate**  
Article 48

(1) Any co-owner may exercise his right to terminate by requiring either full or partial enforcement with respect to co-owners with whom the right is shared or with respect to things and rights with respect to which co-ownership is terminated.

(2) The co-owner may exercise his right to terminate either in agreement with all co-owners with whom co-ownership is to be terminated (voluntary termination) or in court (court termination), unless provided otherwise by law.

(3) In the case of court termination, the court renders its decision in a non-adversary (inquisitorial) proceeding, unless provided otherwise by law.

**Method of Termination**  
Article 49

(1) Co-owners determine the method of termination by agreement, to the extent possible and permissible.

(2) Where a statutory provision prohibits the partition of a co-owned thing, the prohibition does not cover termination by payment or civil termination, save if it is expressly extended to cover them as well.



(3) Co-owners may agree to choose a person who is to decide about the method of termination in their stead.

(4) If co-owners cannot come to an agreement on any issue regarding termination, each of them is entitled to request the court to settle the matter.

#### **Method of Court Termination**

##### Article 50

(1) In the case of court termination, the court is primarily bound by strict statutory provisions, and subordinately by a valid agreement existing between the parties on the method of termination, if any, and if possible and permissible, as well as by the right to terminate by payment to which a co-owner would be entitled based on a legal transaction or law.

(2) If the court is not bound regarding the method of termination within the meaning of paragraph 1 of this Article, the court shall partition the divisible chattels physically, and the real property geometrically.

(3) In the case of geometric partition of real property, the court may establish servitudes and real burdens on its other parts, if this is deemed necessary for the use or utilisation of the part being separated by such partition.

(4) If the partition under paragraph 2 of this Article is not possible without substantially diminishing the value, the court shall decide to have the thing sold at a public auction or in another appropriate way, and to distribute the proceeds of such sale *pro rata* to the co-ownership shares (civil termination).

#### **Right to Terminate by Payment**

##### Article 51

(1) Any co-owner has the right to terminate by payment if that is expressly provided by law or determined in a legal transaction, or if he makes it probable that there is a particularly serious reason to do it, and the court shall determine that he should have the entire thing and that he should pay to other co-owners the value of their shares within the term which the court determines depending on the circumstances of the case.

(2) In the event under paragraph 1 of this Article, until payment other co-owners shall hold a lien on the thing that was ordered to belong to the co-owner seeking termination. If the co-owner seeking termination does not execute payment within the time limit set by the court, they may require performance or payment out of the value of the lien, and they may also require nullification of the decision on termination by payment.

(3) Co-owners whose co-ownership shares make at least nine tenths together do not have to make probable the particularly serious reason mentioned in paragraph 1 of this Article.

#### **Termination of Co-ownership on Several Things**

##### Article 52

(1) Where co-owners wish to terminate co-ownership on several things at the same time, further to a request from each of them the court may decide that each one of them is to have a particular thing or several things, *pro rata* to their co-ownership shares and taking into account their needs, instead of partitioning each of the things.

(2) The court shall comply with any request to terminate referred to in paragraph 1 of this Article that is justified in view of the circumstances.

(3) If the things that belong to a particular co-owner based on such termination exceed the value of his co-ownership share, such co-owner is bound to pay the difference to the other co-owners. The payment of such difference is governed accordingly by the rules on the right to terminate by payment.

#### **Termination by Establishment of Floor Ownership**

##### Article 53

If co-owners agree to limit their co-owner's rights instead of partitioning the real property by connecting the ownership on a particular part of the co-owned real property to a particular proportional share (establishment of floor ownership), it is deemed that such decision is their decision on the method of termination, and the rules on termination apply accordingly.

### **Termination Costs**

#### Article 54

Termination costs are borne by the co-owners *pro rata* to their co-ownership shares, unless provided otherwise by law or an agreement between the co-owners.

### **Legal Effects of Termination**

#### Article 55

- (1) Each co-owner who participated in the termination acquires the right of ownership and/or another right based on the agreement on termination or a legally effective court decision on termination, according to the modality laid down by law, where such right of ownership or another right is derived from his co-ownership share with which he participated in the termination, and which terminates at the same time.
- (2) The modality of acquisition and termination of the right of ownership provided by law, that is, the modality of acquisition and termination of co-ownership and other real rights based on an agreement or a court decision referred to in paragraph 1 of this Article, is the surrender of chattels into independent possession, that is, the registration of rights on real property in the land register, unless there are particular provisions regulating the matter.
- (3) In the case of court termination, any co-owner who participated in such termination shall be able to require enforcement of the decision on termination, regardless further to whose motion the court adjudicated.
- (4) After the termination, all co-owners who participated in the termination are held jointly and severally liable for any material and legal defects of what each of them acquired or should have acquired pursuant to paragraph 1 of this Article.

### **Other People's Rights**

#### Article 56

- (1) Termination may not be detrimental to the rights of third parties and the rights of co-owners who did not participate in the termination, and where termination is not complete, including those things and rights with which the participants did not participate in the termination.
- (2) All liens, servitudes and other real rights encumbering a particular thing before the termination may also be enforced against it after the termination. However, where the enforcement of a real servitude relates only to a part of the thing concerned, such right terminates with respect to other parts.
- (3) If a servitude or real burden gives the right to benefits, in partitioning the dominant tenement any authorised person, and in partitioning the servient tenement any obligor may require that the court regulate the enforcement equitably.

#### *Title 3*

### **Joint Ownership**

#### **Non-determined Shares in Ownership**

#### Article 57

- (1) A thing is jointly owned if there is ownership of two or more persons (joint owners) on an undivided thing who all have a share in the thing; however, the size of their shares is not determined, albeit determinable.
- (2) A thing may be jointly owned only pursuant to law.
- (3) Where pursuant to law a thing is jointly owned by two or more joint owners, the fact that such thing is registered in the land register or anywhere else as the property of only one of them has no effect, save towards third parties whose trust in trade is protected.
- (4) In case of doubt whether persons are co-owners or joint owners of a thing, they are deemed to be co-owners.

### **Joint Owners' Shares**

#### Article 58

- (1) A joint owner may transfer his share in joint ownership either fully or partially only to another joint owner of the same thing, otherwise he may not duly dispose of his share in legal transactions *inter vivos*.

- (2) The share of a joint owner in joint ownership passes to his heirs.
- (3) The responsibility of a person for his debts includes also his responsibility following from his share in joint ownership.

### **Enforcement of Joint Ownership**

#### Article 59

- (1) A joint owner is authorised to enforce all owner's powers regarding a jointly-owned thing only together with all other joint owners, unless provided otherwise by this or any other law or agreement by and between the joint owners.
- (2) Fruits and other benefits derived from a jointly-owned thing belong to the joint owners of the thing in the same way as the thing itself.
- (3) Joint owners are held jointly and severally liable for any and all costs and burdens relating to the thing they hold in joint ownership.
- (4) Any joint owner is authorised to require that the joint right of ownership on real property is entered in the land register in favour of all joint owners as their joint ownership, and accordingly that joint ownership on chattels is entered in the public register concerned, if maintained for such chattels.

### **Administration of a Jointly-owned Thing**

#### Article 60

- (1) Any joint owner has the right to participate in decision-making relating to anything that concerns a jointly-owned thing (administration of a thing) together with other joint owners.
- (2) Joint owners manage the jointly-owned thing together (jointly) by passing decisions by mutual agreement, unless decision-making has been entrusted to an administrator.

### **Dispositions of Jointly-owned Things**

#### Article 61

- (1) Joint owners administer the jointly-owned thing together (jointly); individual joint owners may dispose of the thing only pursuant to the powers given to them by all other joint owners.
- (2) Without prejudice to the provision of paragraph 1 of this Article, and with the aim of protecting trust in legal trade, a third party may acquire the right of ownership based on a legal transaction not concluded with all joint owners:
  - on chattels, where the thing was acquired in a pecuniary transaction in good faith,
  - on real property, subject to the conditions on the protection of confidence in the land register, provided that ownership was not entered in the land register as joint ownership.
- (3) The provisions of paragraph 2 of this Article apply accordingly to the acquisition of other real rights on the jointly-owned thing.

### **Protection**

#### Article 62

- (1) Any joint owner has the right to impose on other joint owners such requirements regarding the jointly-owned thing that follow from his joint ownership.
- (2) Any joint owner has the right to impose on any person those requirements regarding the entire thing that may be imposed by the owner of the thing, where he may require surrender of the thing to possession from a third party only in accordance with the law on civil obligations governing indivisible obligations.

### **Right to Partition**

#### Article 63

- (1) Joint owners have the right to partition the thing they own to the extent possible and permissible; such right is not barred by the statute of limitations.
- (2) Any joint owner is authorised to require at any time that joint ownership be partitioned by determining the co-ownership share that he is entitled to out of his share in joint ownership. On determining his co-ownership share, he becomes a co-owner with the rest, who in the remaining part remain joint owners, until their shares are partitioned as well.

(3) The size of the co-ownership share to belong to the former joint owner following partition is determined based on an agreement by and between all joint owners; otherwise it is the court which adopts a decision about it at the request of any of the joint owners.

(4) The court decides on the size of a co-ownership share according to the standards set by the law for determining the size of the corresponding case of joint ownership and, in case of doubt, it shall be deemed that no joint owner has more rights than the others.

(5) In determining such shares, those shares in joint ownership that have been duly assigned by certain joint owners to others shall also be taken into account.

(6) If it is prohibited by law to partition a jointly-owned thing, the prohibition relates exclusively to the physical partition of the thing, unless it is expressly laid down with respect to partition by determining co-ownership shares or extended to cover other methods of partition.

#### **Other People's Right to Partition**

##### Article 64

The following parties have the right to require that joint ownership be partitioned by determining the co-ownership share belonging to a particular joint owner out of his share in joint ownership:

- creditors with respect to the share of their debtor,
- heirs with respect to the testator's share,
- anyone with respect to the share of any of the joint owners, if such party has an inherent legal interest in such share.

#### **Subordinate Application of the Rules on Co-ownership**

##### Article 65

With respect to things concerning joint ownership that are not regulated by this or any other law, or that do not follow from the nature of such ownership, the rules laid down for co-owners shall apply accordingly to the rights and duties of joint owners.

### **Title 4**

#### **OWNERSHIP OF PARTICULAR PARTS OF REAL PROPERTY**

##### *Section 1*

##### **General Provisions**

#### **Co-ownership of the Entire Real Property and Ownership of a Particular Part**

##### Article 66

(1) Ownership of a specific particular part of real property (floor ownership) arises and remains inseparably connected to the appropriate co-ownership share (proportional share) of the real property on which it is established.

(2) Ownership of a specific particular part of real property authorises the co-owner on whose co-ownership share it is established to exercise all his owner's powers and duties while managing the particular part of real property in place of all co-owners as if the particular part were under his sole ownership and, unless provided otherwise, to do with such part and benefits derived from it as he sees fit and to exclude anyone else from it.

(3) Ownership of a particular part may be established on the appropriate co-ownership share of real property that consists of land with a building or of the right to build with a building.

(4) Where ownership of a particular part of real property is established on one of its co-owned parts, legal relations regarding the real property are governed by particular rules in this Title of the Act, and subordinately by the general rules on co-ownership.

#### **Particular Part of Real Property and its Appurtenances**

##### Article 67

(1) Ownership of a particular part may be established on a part of co-owned real property which is an independent use unit, suitable for independent exercise of the co-owner's powers, such as an apartment or another independent space.

(2) Another independent space includes in particular independent business premises, independent garages or clearly demarcated places in the building where motor vehicles are kept.

(3) Next to an apartment or another independent space, ownership of a particular part of real property may extend to accessory parts, such as open balconies, terraces, cellars or attics, gardens, places to leave up to two motor vehicles per apartment or another independent space.

(4) In order for ownership of a particular part of real property to extend to a part accessory to it, it has to be clearly bordered off from other parts of the real property and available from the boundary of the real property or its common parts or from the apartment or an independent space the accessory part of which it would be.

(5) The rules applicable to appurtenances apply accordingly to accessory parts.

(6) Ownership of a particular part of real property may not exist on the parts of real property that serve as common or the purpose of which prevents their exclusive use in favour of a specific particular part of real property; in case of doubt, it is deemed that it serves as common and that its purpose prevents its exclusive use in favour of a specific particular part.

### **Appropriate Co-ownership Shares**

#### Article 68

(1) Ownership of a specific particular part of real property may arise from and be established only on a co-ownership share of real property which is at least as big to correspond to the relationship between the useful value of such independent part and the useful value of all apartments and other premises on the real property (appropriate co-ownership share).

(2) Whether a co-ownership share is an appropriate share in the sense that ownership of a specific particular part of real property could arise from and be established on it is determined in the form of a court decision, unless provided otherwise by this Act.

(3) If all co-owners of real property decide to limit their co-owner's rights by connecting the ownership of a specific particular part of real property to the appropriate co-ownership share, and if they draw a deed to that effect, that shall be deemed to be the appropriate share out of which may arise and on which may be established ownership of a specific particular part of real property, regardless of the size of such co-ownership share.

### **Inseparability**

#### Article 69

(1) Ownership of a particular part of real property is inseparably connected to the appropriate co-ownership share of real property, and it may be limited, burdened, alienated, transferred in the event of death and subjected to execution proceedings only together with such appropriate co-ownership share.

(2) Entries in the land register on the appropriate co-ownership share extend to the ownership of a particular part of real property even when they precede it in the order of priority.

(3) In the event of an involuntary auction against a co-ownership share of real property on which the ownership of a particular part is established, all limitations arising out of ownership of the particular part of real property pass to the purchaser, regardless of the place in the land register and without being counted in the highest bid.

### **Several Authorised Persons on One and the Same Particular Part**

#### Article 70

(1) If two or more persons acquire an appropriate co-ownership share of real property with the ownership of a specific particular part as co-owners or joint owners, regardless of the foundation for such acquisition, they shall be able to enforce all rights and duties regarding the ownership of such particular part of real property only under joint and several liability; accordingly, in their relations with third parties and other co-owners of the same real property they shall be regarded as one person both with respect to the administration of the real property and with respect to other rights and obligations laid down in this Title of the Act.

(2) Anything that is provided in Part Three Title 4 of this Act regarding co-owners on whose share the ownership of a specific particular part of real property is established also applies to all persons referred to in paragraph 1 of this Article, where they are jointly regarded as such co-owner.

(3) Mutual relations between persons referred to in paragraph 1 of this Article are examined, depending on the type of participation of such persons in co-ownership of the appropriate co-

ownership share, according to the rules on co-ownership or joint ownership, but never contrary to the rule referred to in paragraph 1 of this Article.

*Section 2*

***Establishing Ownership of a Particular Part***

**Motion for Establishment**

Article 71

(1) Ownership of a specific particular part of real property shall be established on a specific co-ownership share if the co-owner of such real property who has at least the appropriate co-ownership share files such a motion and if all preconditions laid down by law are satisfied.

(2) Ownership of a specific particular part of real property shall also be established at the motion of joint owners who have under joint ownership at least the appropriate co-ownership share of real property, if all preconditions laid down by law are satisfied, where after the establishment they shall be governed by the provisions of Article 70 of this Act.

(3) Ownership of a specific particular part of real property shall also be established at a joint motion of several co-owners of real property if their co-ownership shares are at least the same as the appropriate co-ownership share, and all preconditions laid down by law are satisfied, where after the establishment they shall be governed by the provisions of Article 70 of this Act.

(4) Ownership of a specific particular part of real property shall also be established at the motion of landowners, that is, holders of the right to build partitioning the real property into co-ownership shares that are appropriate shares for the establishment of ownership of particular parts, if all preconditions laid down in Article 75 of this Act are satisfied.

**Method of Establishment**

Article 72

(1) Ownership of a specific particular part of real property is established by the entry in the land register as the right connected to the specific co-ownership share of real property.

(2) Ownership of a specific particular part of real property shall be entered in the proprietorship register on the co-ownership share of the co-owner in whose favour the ownership of a particular part was established, indicating the particular part of real property and the accessory parts to which it extends, and the property register shall include an annotation: Floor Ownership.

**Legal Foundation**

Article 73

(1) Ownership of a particular part of real property is established on the basis of a written approval by all co-owners of real property.

(2) No co-owner of real property may deny his approval to the establishment of ownership of a particular part to another co-owner who has the appropriate co-ownership share, unless the establishment of new ownership of the particular part in favour of such co-owner would result in the revocation or limitation of the rights to which he is entitled on the basis of his previously established ownership of the particular part.

(3) Ownership of a particular part may not be established until the competent administrative authority confirms that a specific apartment or another space in a specific building and on a specific land plot is an independent use unit.

(4) Ownership of a particular part may not be established until the court decision determining the useful values of such apartment or another space and the useful values of all apartments and other rooms of the real property as a whole becomes legally effective, unless this Act provides that a legally effective court decision determining useful values is replaced by the co-owner's document.

**Appropriate Share and Useful Values**

Article 74

(1) Whether a co-ownership share of real property that belongs to a person requiring the establishment of ownership on a specific particular part of real property is appropriate is evaluated depending on whether such co-ownership share, in relation to the ownership of the real property as a whole, is equal or bigger than the relationship between the useful value of the apartment, that is, another independent space regarding which the establishment of ownership of the particular

part is required, in relation to the useful value of all apartments and other rooms of the real property as a whole.

(2) The court determines useful values in a decision which is rendered in a non-adversary (inquisitorial) proceeding, based on the following rules:

- the useful value of an apartment or another space is calculated on the basis of the useful surface area of the apartment or another space and the relevant additions or deductions which result from differences which augment or diminish the value in relation to other apartments or spaces, and which, based on the understanding in trade and experience, arise from purpose, position etc., and were not incurred at the cost of only one co-owner,
- in calculating the useful value, any differences which augment or diminish the value are ignored if together they would justify an addition or deduction of less than 2% of the useful surface area of the apartment or another space,
- the useful surface area is the total floor surface area of an apartment or another independent space, decreased by the width of walls interrupting it,
- in calculating the useful surface value, neither the cellar and attic space not suitable for habitation or business purposes, nor staircases, open balconies and terraces shall be taken into account; the same applies to other parts of real property which are an appurtenance of the apartment or another independent space in accordance with the provisions of Article 67 paragraphs 3 through 5 of this Act,
- as a rule, the useful surface area is calculated according to the building plan approved by the authorities; however, if someone makes it probable that there are significant deviations from the plan, the useful surface area shall be calculated according to the actual situation.

(3) Without prejudice to the provisions of paragraph 2 of this Article, if the co-owners of real property have agreed to limit their co-owner's rights by connecting the ownership of a specific particular part of real property to a specific co-ownership share, such co-ownership share is deemed to be the appropriate share, and the legally effective court decision determining useful values is replaced by the document of all co-owners on such decision.

#### Article 75

(1) The owner of land with a building, that is, the person having the right to build with a building may have his right of ownership partitioned into co-ownership shares by a declaration of will made at the land registry court, and by doing so with each of such parts establish the right of ownership on a specific apartment or another particular part of the building.

(2) Partitioning of the right of ownership into co-ownership shares produces legal effects following its entry in the land register; in order for the right of ownership on particular parts of the building in favour of the co-ownership share created by such partition to be established, conditions under which it is possible to establish the right of ownership on particular parts of a building have to be satisfied, where the legally effective court decision determining useful values is replaced by the appropriate provision of the landowner or the person having the right to build.

(3) If the landowner or the person having the right to build partitions his real property on which a building is yet to be erected into co-ownership shares, he may declare his will that the right of ownership on a specific apartment or another particular part of the building if it is erected is to be connected to each of them, where the ownership of a particular part shall be established only if the building is erected and subject to the conditions laid down in paragraph 2 of this Article.

(4) If the seller determined the way in which the real property is to be administered, such decision shall also have effect towards third parties if it is entered in the land register.

#### Subsequent Changes to Useful Values

##### Article 76

(1) Although already established, the useful value shall be determined once again at the request of any authorised person if the circumstances changed in one of the ways provided for in Article 77 or 78 of this Act.

(2) The court re-determining a particular useful value shall also determine whether and to what extent the sum of all useful values of the apartments and other independent parts of the real property is to be changed.

#### Article 77

(1) At the request of any co-owner of real property, and after the construction works are completed at the request of anyone who wishes to acquire ownership of a particular part, the court shall re-determine the useful value if the circumstances changed in the following sense:

- the determined useful value of an apartment or another space which was determined prior to the completion of construction works changed before the completion of construction works by at least 2% as the result of actions for which a building permit is required, where the application for re-determination may be submitted only within one year of the legal effectiveness of the use permit,  
- after the completion of construction works, the determined useful value of an apartment or another space changed substantially as the result of construction works carried out on the real property for which a building permit is required, where the application for re-determination may be submitted only within one year of the legal effectiveness of the use permit.

(2) If the useful value is re-determined because of the changes referred to in paragraph 1 of this Article, co-owners have to take over or transfer those co-ownership shares that are needed in order to have each floor owner have at least the share which is necessary after the determination of useful values for the establishment of his right of ownership on a particular part (appropriate co-ownership share).

#### Article 78

(1) The useful value shall also be re-determined if the previously determined value changed as the result of changes to the state of the apartments or other spaces that share immediate borders or as the result of transferring the subordinate parts of a particular part of the building to another, if the application for re-determination of useful value is filed by the owners of particular parts carrying out the changes or transfers.

(2) In the event referred to in paragraph 1 of this Article, the useful value of apartments or other spaces to which the change or transfer refers shall be determined in such a way that the sum of their useful values is the same before and after the change or transfer.

(3) If the useful value is re-determined in the event referred to in paragraph 1 of this Article, the co-owners whose useful value increases have to provide full compensation to the co-owners whose useful value of their shares decreases.

#### Section 3

### ***Enforcing the Powers regarding a Particular Part Administration in Place of All Co-owners***

#### Article 79

(1) Any co-owner on whose co-ownership share the ownership of a specific particular part of real property is established administers the particular part in place of all co-owners, where he is authorised to perform all owner's powers and duties as if the particular part were his sole property and, unless provided otherwise, to do with such part as he sees fit and to exclude everyone else from it.

(2) Any co-owner on whose co-ownership share the ownership of a specific particular part of real property is established is entitled to all fruits and other benefits derived from such part, unless they belong to someone else based on another legal foundation.

### **Duty of Maintenance**

#### Article 80

(1) Any co-owner on whose co-ownership share the ownership of a specific particular part of real property is established is bound to take care and maintain the apartment or another independent space and the related equipment, especially the lighting, gas, water, heating and sanitary equipment, as well as any other appurtenances of such particular part so that other co-owners do not suffer any damages.



(2) The co-owner who had the duty of maintenance is held liable for all damages incurred to the other co-owners in relation to the performance of the duties referred to in paragraph 1 of this Article. If several co-owners had such duty, they are held liable jointly and severally for such damages.

(3) Any co-owner on whose co-ownership share the ownership of a specific particular part of real property is established is bound to allow access to the apartment or room and their usage if that is necessary to maintain the common parts of real property; other co-owners are held jointly and severally liable for the compensation of any material damages that he incurred.

### **Residential Lease and Business Lease**

#### Article 81

(1) Any co-owner on whose co-ownership share the ownership of a specific particular part of real property is established is authorised to conclude a residential lease contract or a business lease contract for such part, be it the entire part or some of its parts, without having to ask other co-owners for an approval, unless agreed and registered otherwise in the land register.

(2) Relations between co-owners on whose co-ownership share the ownership of a specific particular part of real property is established and persons using or utilising such particular part as tenants, residential lessees, business lessees and other, are governed according to the law on civil obligations, unless regulated in a particular piece of legislation.

### **Change of Status**

#### Article 82

(1) Any co-owner on whose co-ownership share the ownership of a specific particular part of real property is established is authorised to bear the cost of carrying out any modifications in the apartment or in another independent space, including changing the purpose of the object, without having to ask other co-owners for an approval, in accordance with the building laws, provided that he complies with the following rules:

- the changes may not cause any damages to the building and other parts of real property or violate those interests of other co-owners that deserve protection; they especially may not alter the outside appearance of the building or cause any danger to the safety of people, the building or other things,
- if in order to carry out the changes it is necessary to encroach on the common parts of real property, this is permissible only if the change is usual or serving an important interest of the owner of the particular part, and otherwise each co-owner may prohibit it; however, the installation of conduits for lighting, gas, energy, water and telephone and similar equipment, or the placement of radio or television antennae that are needed in view of the technical conditions if it is not possible or permitted to connect to the existing antenna, may not be prohibited,
- for the purpose of changes on one's own share, it is not permitted to encroach on the parts of real property that are owned as a particular part by another co-owner without his approval; however, such co-owner shall be bound to endure the effects of somebody else's modifications if they do not violate his right to the particular part on a material and permanent basis, and he shall also have to endure what is appropriate based on the weighing of everyone's interests,
- the owner of a particular part carrying out the changes on his part is bound to provide reasonable compensation to the person whose rights were violated even when such person was bound to sufferance.

(2) If an approval by the authorities is required for changing the purpose referred to in paragraph 1 of this Article, those co-owners who have to endure the change are not authorised to deny their approval when it is needed and they are held liable for damages they would cause by such denial.

(3) The provisions of paragraph 1 of this Article relating to apartments and other independent rooms also apply to all accessory parts which are their appurtenances, and the provisions also apply in the case of transferring the accessory parts serving only one apartment or room to another apartment or room.

(4) Any damages suffered by other co-owners in connection with changes carried out by the co-owner on whose co-ownership share the ownership of a specific particular part of real property is

established, if they were not bound to sufferance, are borne by the co-owner; in the case of several co-owners, they are held jointly and severally liable for the damages.

### **Reasonable Security**

#### Article 83

(1) If in view of the circumstances there is serious danger that damages will result from what the co-owner is doing or has already done in the performance or abuse of his powers without the approval of all others, each of the co-owners of real property as a whole is authorised to require reasonable security of him.

(2) The taking of any actions that the co-owner is bound or authorised to perform in accordance with law may not be conditional on the provision of security.

(3) The court decides on the application for security referred to in paragraph 1 of this Article in a non-adversary (inquisitorial) proceeding, unless provided otherwise or unless there is another procedure pending regarding what the co-owner did or is doing in which it is possible to determine the provision of reasonable security.

### **Costs of the Particular Part**

#### Article 84

(1) Any co-owner on whose co-ownership share the ownership of a specific particular part of real property is established bears the costs of maintaining such part and all public obligations and burdens relating to the ownership of such part, unless provided otherwise by law.

(2) If the person bound to make occasional payments for public utilities in connection with the use of a particular part of real property (the supply of electricity, gas, thermal energy, waste disposal, etc.) is not another person, the co-owner on whose co-ownership share the ownership of such particular part of real property is established is bound to make such payments to the suppliers or providers of the services concerned.

(3) If the obligor referred to in paragraph 2 of this Act is a person using or exploiting the particular part of real property based on a residential lease contract, business lease contract or another contract with the co-owner on whose co-ownership share the ownership of such particular part is established, such co-owner guarantees the performance of the obligation to the supplier.

*Section 4*  
**Enforcing the Powers regarding Real Property as a Whole**  
**Administration by All Co-owners**

Article 85

- (1) Real property as a whole on whose one or more co-ownership shares the ownership of a specific particular part is established is administered by the co-owners according to the general rules on administering a co-owned thing, unless provided otherwise by this Act.
- (2) Co-owners are bound to participate in the administration of real property, appoint a person to perform the activities of a joint administrator and establish joint reserves.
- (3) If the appropriate co-ownership share on which the ownership of a specific particular part of real property is established is acquired by two or more persons as co-owners or joint owners, all such persons are to participate in the administration as if they were all a single co-owner of the whole thing, where the rules of the law on civil obligations relating to joint and several liability of creditors or debtors apply accordingly.
- (4) Co-owners adopt decisions on taking ordinary and extraordinary administration actions in writing, where mutual relations may be stipulated in a written agreement (owners' agreement).

**Ordinary Administration**

Article 86

Ordinary administration of the real property as a whole includes in particular:

- regular maintenance of the common parts and equipment in the real property, including construction-related changes required for maintenance purposes,
- creating reasonable joint reserves for foreseeable future expenses,
- taking loans to cover maintenance costs not covered by the reserves, and which are needed to carry out proper maintenance activities repeating at intervals longer than one year,
- reasonable security for the real property,
- appointment and recall of the joint administrator,
- determining and changing the house rules,
- concluding residential lease contracts and business lease contracts, as well as cancelling apartments and other independent spaces of the real property with respect to which the ownership of a particular part is not established, where it is permitted to cancel a residential lease for a parking place in a joint garage or joint parking lot as soon as any of the co-owners needs it, with a notice period of three months, even if stipulated otherwise in a contract or provided otherwise by law.

**Extraordinary Administration**

Article 87

- (1) Save for those activities that are otherwise also regarded as extraordinary, the approval of all co-owners of real property is needed to adopt a decision on making improvements to the common parts and equipment in the real property.
- (2) Without prejudice to the provision of paragraph 1 of this Article, the approval by all is not necessary if all co-owners who together hold the majority of co-ownership shares decide to proceed with the improvements, and that they shall bear the cost or that the cost is to be covered from the reserves, without jeopardising the capacity to pay ordinary maintenance requirements, and if the improvements shall not be overly detrimental to the co-owners who were outvoted.

**Right of Each Co-owner**

Article 88

Each co-owner of real property is authorised, independent of others, to request the court to determine in a decision:

- a deadline within which one of the activities referred to in Article 86 of this Act should be carried out, regarding which a decision was passed by a majority vote,
- the creation of reasonable joint reserves or a reasonable increase, that is, decrease of the reserves determined by a majority vote in line with the rule that in determining reserves and contributions

for the reserves, next to foreseeable expenses, the proprietary situation of all co-owners should be taken into account,

- that the co-owner, if he should not be able to pay a part of the costs for the job of maintaining the real property as a whole which takes place at intervals longer than one year, and which is not covered by the reserves, is to be permitted to pay such amount in monthly instalments over a period not longer than ten years, and that such payment should be secured by a mortgage against his co-ownership share, with the usual rate of interest that is imposed on a debt secured by a mortgage,
- the conclusion of reasonable insurance against fire or third-party liability,
- the appointment of a joint administrator or replacement of the administrator grossly violating his duties,
- the repeal or amendments to the provisions of the house rules that were passed by a majority vote if they are offensive to the protection-worthy interests of the co-owner or if it would be unfair to impose on him the performance of such provisions,
- the cancellation of a lease contract regarding a place in the joint garage or parking lot, because of the needs of such co-owner, but only if he is at the same time the owner of a particular part of the building.

### **Cost of the Real Property as a Whole**

#### Article 89

- (1) The cost of maintaining and making improvements to the real property is borne by all co-owners of the real property *pro rata* to their co-ownership shares, unless provided otherwise.
- (2) Contributions for joint reserves for the coverage of the cost of maintaining and making improvements to the real property and for the repayment of loans to cover such costs are borne by all co-owners *pro rata* to their co-ownership shares, unless provided otherwise.
- (3) Co-owners may agree on a different mechanism for the distribution of costs and contributions to the joint reserves than in paragraphs 1 and 2 of this Article, specifically:
  - through a decision passed by a majority of co-ownership shares in the case of costs for maintaining equipment in the real property that is not beneficial to a more or less equal degree to all co-owners, such as the cost of the elevator, central heating, etc., if such decision is justified by the varying ability of individual co-owners to use the equipment and the inability to determine actual consumption by each co-owner,
  - through a written decision by all co-owners regarding all other costs of maintaining and making improvements to the real property and contributions to the joint reserves.
- (4) Each co-owner may request the court to determine whether the method of distributing costs is in line with the rule referred to in paragraphs 1 and 2 of this Article and whether the decision referred to in paragraph 3 of this Article is valid, and where there is no valid decision on the distribution of maintenance costs for the equipment that is not beneficial to a more or less equal degree to all co-owners, to determine the mechanism for distributing the cost in view of the varying ability to use the equipment.
- (5) Provisions of the co-owners on the mechanism for distributing the costs referred to in paragraph 3 of this Article, provided that the co-owners' signatures are legalised by a notary public, as well as legally effective court decisions determining the mechanism for distributing the costs at a fair price, shall be recorded in the land register on request.
- (6) If the costs of the real property are settled out of the joint reserves in accordance with its purpose, they shall not be distributed amongst those co-owners who paid their contributions into the reserves.

### **Joint Reserves**

#### Article 90

- (1) Joint reserves referred to in Article 85 paragraph 2 of this Act represents ear-marked joint property of all co-owners, the purpose of which it is to cover the cost of maintaining and making improvements to the real property and to repay loans for the coverage of such costs.

- (2) Joint reserves consist of monetary contributions that the co-owners paid on the basis of decisions passed by a majority of co-ownership shares or decisions made by the court on request of a co-owner in view of the foreseeable expenses and taking into account the proprietary situation of all co-owners.
- (3) Joint reserves are administered by the co-owners concerned or the real property administrator as property separated from the property of any co-owner, invested in a way to bear fruit.
- (4) Only those payments from the reserves that are made in order to cover the cost of maintaining and making improvements to the real property or to repay a loan taken in order to cover such costs are permissible; execution against joint reserves is permissible only to settle such claims.
- (5) The administrator whose term in office expired is bound to file a report on the state of reserves without any delay and pass the balance to the new administrator; if the court relieves the administrator off his duty, it shall instruct him to pass the balance to the new administrator under the threat of execution proceedings.
- (6) Any co-owner who alienated his co-ownership share in real property does not have the right to request repayment of the contribution he paid into the joint reserves: the amount remains in it as a contribution of the co-ownership share concerned.

### **Benefits**

#### Article 91

- (1) Fruits and other benefits of apartments and other independent spaces in the real property with respect to which the ownership of a particular part is not established belong to all co-owners of the real property *pro rata* to their co-ownership shares; however, such fruits and other benefits belong to each co-owner who is at the same time the owner of a particular part of the real property only to the extent his co-ownership share exceeds the appropriate co-ownership share.
- (2) Fruits and other benefits of real property not covered by the provision of paragraph 1 of this Article belong to all co-owners *pro rata* to their shares.
- (2) Any and all provisions of legal transactions that would be contrary to the provisions of paragraphs 1 and 2 of this Article are null and void.

### **Duty to Report a Damage**

#### Article 92

- (1) Each co-owner is authorised and bound to report to the joint administrator without any delay the damage he has learnt about on parts or equipment in the real property that such joint administrator administers, as well as the damage on such particular parts of the real property on which the ownership is established in favour of a specific co-ownership share if they pose a threat to other parts of the real property.
- (2) If there is a danger of damages, each co-owner is authorised to take any necessary measures without the approval by all other co-owners.

### **Administrator's Duties and Powers**

#### Article 93

- (1) The administrator, regardless whether he was appointed by the co-owners or the court, administers the real property and the related joint reserves as the representative of all co-owners, in their stead, where in relations towards third parties any limitations imposed on him by a legal transaction do not apply.
- (2) In administering the real property, the administrator is authorised to act in procedures in court and before other authorities on behalf of all co-owners, including the power to empower professional representatives for such procedures.
- (3) The administrator's relationship with the co-owners regarding his administration of the real property is governed according to the general rules on representation and the special rules on the administrator appointed by co-owners, unless it follows otherwise from the position given to the administrator based on the provisions of Part Three Title 4 of this Act.
- (4) The administrator is bound to protect the interests of all co-owners of the real property to the greatest possible extent, to follow the instructions of the majority in performing the activities pertaining to ordinary administration and to take the activities pertaining to extraordinary

administration only on the basis of an approval obtained from all co-owners or court decisions replacing such approval; in addition, he is bound in particular:

- to duly present to each co-owner a report on his activities in the previous calendar year and to make the documents on which the report is based available in an appropriate manner by 30 June of each year at the latest,
- to prepare an overview of the planned maintenance activities and improvements, as well as the foreseeable costs and burdens in the following calendar year, and to display them in the house in an appropriate manner by the expiry of the current calendar year at the latest,
- to gather several bids for maintenance activities that repeat themselves at intervals longer than one year, as well as for any major improvement works.

(5) The co-owners on whose behalf the administrator administers the real property are bound to notify the residential and business lessees in an appropriate manner about the change of the administrator or changes relating to his powers that concern them as well; what the non-notified residential and business lessees would perform for a person who is no longer an administrator or who is no longer authorised to receive performance is deemed to be duly performed and releases the obligors from their obligation, however, only if they did not know of the change.

#### *Section 5*

### ***Termination of Ownership on a Particular Part Destruction of an Object***

#### *Article 94*

Ownership of a particular part of real property terminates if the apartment or another independent space that was the subject matter of such ownership ceases to be suitable for independent performance of the co-owner's powers on a permanent basis, and ownership of accessory parts ceases simultaneously.

#### **Deletion**

#### *Article 95*

(1) Save in the event referred to in Article 94 of this Act, ownership of a particular part of real property terminates once the deletion of the entry by which the ownership of the specific particular part of real property was established as the right connected to the specific co-ownership share of real property is entered in the land register.

(2) For the entry of deletion referred to in paragraph 1 of this Article based on a waiver, the approval by all co-owners and registered authorised persons whose rights burden the appropriate co-ownership share is required.

### **Termination of Co-ownership**

#### *Article 96*

When the former co-owner of real property ceases to be the co-owner of an appropriate co-ownership share, the ownership of a particular part established on such appropriate share also terminates; however, termination of ownership of a particular part does not result in the termination of co-ownership on the real property.

### **Exclusion from Co-owners' Community**

#### *Article 97*

Each of the co-owners of real property that is comprised of land with a building or the right to build with a building has to act particularly considerately towards the others in enforcing his right, as to the contrary the other co-owners may obtain his exclusion from the co-owners' community, under the conditions laid down in Articles 98 and 99 of this Act.

### **Exclusion upon Majority Request**

#### *Article 98*

(1) Co-owners who together hold the majority of co-ownership shares may decide to request exclusion from the co-owners' community of a particular co-owner on whose appropriate co-

ownership share the ownership of a particular part of real property is established, provided that there is one of the reasons for it laid down in paragraphs 3 or 4 of this Article.

(2) Where ownership of particular parts is established on more than one half of co-ownership shares of a piece of real property, co-owners who together hold the majority of co-ownership shares may decide to request exclusion from the co-owners' community of any particular co-owner, provided that there is one of the reasons for it laid down in paragraphs 3 or 4 of this Article.

(3) The decision on excluding a particular co-owner may be made:

- if the co-owner fails to comply with the duties arising from the community, especially if he fails to pay any amounts due before the closure of the hearing that precedes the first-instance judgment, and if it was disputable how much he was bound to pay and the court rendered an interim judgment, until the closure of the first-instance hearing that follows after the interim judgment,
- if he uses parts of the real property that he owns as particular parts or parts that are also used by other co-owners in a way that is substantially detrimental to the interests of other co-owners,
- if by his careless, rude or improper behaviour he makes life burdensome to other co-owners or if he commits a criminal act against property, morals or the physical integrity of any other co-owner or any other person living in the house, and the acts are not so insignificant to be ignored.

(4) The acts and behaviour of the co-owner's spouse and other family members living with him, as well as persons using parts of the real property with his approval, and whom he failed to prevent to the extent possible, are taken as the acts by such co-owner.

(5) Co-owners who decide to request exclusion of a particular co-owner in a complaint shall require of the court to establish the existence of the reason for such exclusion and decide that the respondent is bound to alienate his co-ownership share and abandon the possession, because to the contrary, upon the claimant's request, which may not be filed within a term less than three months of the legal effectiveness of the judgment, the respondent's co-ownership share shall be sold at a public auction.

(6) Upon the acquisition of the excluded co-owner's co-ownership share by another person, the community with the excluded co-owner terminates.

#### **Exclusion upon Minority Request**

##### Article 99

(1) Should a co-owner of real property, albeit unprovoked, cause harm to another co-owner by his careless, rude or improper behaviour, if he makes the life of such co-owner burdensome or if he commits a criminal act against his property, morals or the physical integrity of any of his household members, and the acts are not so insignificant to be ignored, the co-owner who was harmed in such manner, although he might not have received sufficient support from other co-owners to adopt the majority decision referred to in Article 98 paragraphs 1 and 2 of this Article, may require in a complaint that the co-owner concerned refrain from such acts in the future.

(2) The acts and behaviour of the co-owner's spouse and other family members living with him, as well as of persons using parts of the real property with his approval, and which he failed to prevent to the extent possible, are taken as the acts by such co-owner.

(3) If the acts continue even after the judgment by which the court decided that the respondent had to refrain from them becomes legally effective, the co-owner who was harmed may file a complaint referred to in Article 98 paragraph 5 of this Act on his own, in which case the provisions usually applicable to a complaint filed by co-owners who made the decision to request exclusion shall apply accordingly.

#### **Title 5**

#### **NEIGHBOURING RIGHTS**

#### **General Provisions**

##### Article 100

(1) Neighbouring rights are powers provided by the provisions of this or another law to the owner of real property for the purpose of mutual considerate performance of the right of ownership, which authorise him, in connection with the performance of his right of ownership, to request the

person who is the owner of another real property to endure a sufferance, omission or performance in his interest of acts regarding such person's real property provided by law.

(2) Where the provisions of this Act order the owner to a sufferance, omission or performance for the purpose of mutual considerate performance of the right of ownership, the owners of other real property having a justified interest are authorised to require that of him as their right, and exercise such right in a court procedure, unless another protection method is foreseen. People who are in possession of real property based on a right derived from the owner's right are authorised to make such a request in the same way as the owner.

(3) Neighbouring rights may be enforced only to the extent and in the manner that is least limiting, burdensome or annoying with respect to the person who is bound to a sufferance, omission or performance.

(4) The sufferance, omission and performance that may be required of the owner of real property may be requested in his stead from the person in possession of the real property based on a right derived from his.

(5) The provisions governing the neighbouring rights of landowners apply accordingly to the owners of other real property, including those co-owners on whose co-ownership shares the ownership of a particular part of real property is established, unless contrary to law or the nature of real property.

### **Common Fences**

#### Article 101

(1) Fences between adjoining properties (walls, picket fences, fences, hedges and other obstacles) and things that serve as boundary marks are common fences and they are co-owned by the neighbours on both side of the boundary, unless proved (especially by marks, signs, emblems or other proof) that they are the property of one of the neighbours.

(2) Co-ownership of things that serve as common fences or boundary marks is not divisible until the things concerned lose that purpose.

(3) A common fence may be used by each of the neighbours on his side of the fence up to one half of its width, he may build a blind door or place built-in wardrobes etc. However, he may not do anything that would jeopardise the fence or that would prevent his neighbour from using it on his side of the fence up to one half.

(4) The cost of maintaining a common fence is borne by its co-owners in equal parts, and they are held jointly and severally liable for any damages that might be incurred to third parties as the result of the fence not being maintained in the condition that is usual in view of the purpose of the fence and the fenced-off real property, and the circumstances existing at the location.

### **Fences under Sole Ownership**

#### Article 102

(1) Any fence that is located exclusively on the real property of one owner is not co-owned by the neighbours, but is under sole ownership of the person owning the land.

(2) Each owner is bound to fence off his space and separate it from the neighbour's space on the right side of his main entrance, looking from the path, unless provided otherwise by law or if local customs provide differently.

(3) The owner of a fence is bound to duly maintain it if there is a danger of causing damages to the neighbour; however, as a rule, he is not bound to re-build a wall that came down, unless that is required of him pursuant to the provision of paragraph 2 of this Article.

### **Boundary**

#### Article 103

(1) If boundary marks between two properties are damaged, regardless of the cause of such damage to the extent that the boundaries may become non-identifiable, or if the boundaries are no longer identifiable or are disputable, each of the neighbours has the right to request that the court reconstruct or correct the boundary in a non-adversary (inquisitorial) proceeding (boundary regulation procedure).



- (2) The court shall reconstruct or correct the boundary according to the cadastral map if that is possible and if the parties give their approval.
- (3) If it is not possible to act further to the provision of paragraph 2 of this Article, the court shall reconstruct or correct the boundary according to an agreement reached between the neighbours whose boundary is in question, and if an agreement is not reached, according to the most recent peaceful possession, and if it is not possible to establish it, based on a fair evaluation.
- (4) Parallely with adopting the decision referred to in paragraphs 2 or 3 of this Article, the court shall mark the boundary on the site with boundary marks.
- (5) As of the moment the court marks the boundary with boundary marks, it is deemed that there is ownership up to such boundary, and whoever claims otherwise bears the burden of proof.
- (6) After the court reconstructs or corrects a boundary in the boundary regulation procedure, anyone may try to prove ownership in an action and request that the boundary be marked accordingly; however, any neighbour who participated in the boundary regulation procedure may not make such a request after the expiration of six months from the date of legal effectiveness of the decision rendered in the boundary regulation procedure.

#### **Tree on the Boundary (Boundary Tree)**

##### Article 104

- (1) The tree belongs to the person on whose land the tree is growing on, regardless of the direction in which the tree overhangs, the direction in which the roots grow or the branches hang.
- (2) If the tree straddles a boundary, ownership is shared by the neighbours on both sides of the boundary.
- (3) The provisions relating to trees apply accordingly to other plants as well.

#### **Branches and Roots**

##### Article 105

- (1) The owner may remove the veins and roots of other people's trees and other plants from his land and cut off the branches of other people's trees, as well as a part of the trunk in the air space above his real property, and keep them for himself or use such parts of the tree of another.
- (2) The owner of the neighbouring land has the right to request compensation for any damages caused by the veins, roots or branches of the tree of another on his real property, which would not have happened if their owner had acted with due care.
- (3) If a particular regulation prohibits the owner from acting further to the provision of paragraph 1 of this Article, he is still entitled to compensation referred to in paragraph 2 of this Article.
- (4) The provisions of paragraphs 1 and 2 of this Article do not apply in the event of adjoining forests and woodlands.

#### **Access to the Property of Another**

##### Article 106

- (1) If an animal, a swarm of bees or a thing enters the property of another, but does not become connected to it by ceasing to exist independently, the owner of the things may access the land of another within a reasonable term in order to take them back.
- (2) The owner of the property may prohibit access to his property in the event referred to in paragraph 1 of this Article only if he hands over the things to their possessor without any delay.
- (3) If the animal, the swarm of bees and other things that had entered the property of another, or if their taking or returning caused damages to the owner of the property that the things had entered or if as the result the owner of the property incurred costs that were necessary, he is entitled to keep the thing until the damage and costs are fully compensated.

#### **Using the Property of Another to Execute Works**

##### Article 107

- (1) The owner of a piece of real property on which works that are needed in order to use or exploit such real property have to be executed may use the land of another in order to execute such works, erect the scaffolding etc., if such acts cannot be performed in another way.

(2) Any person using the real property of another for the purposes referred to in paragraph 1 of this Article is bound to restore such real property to its previous condition and compensate any damages according to the general regulations on liability for damages.

(3) Adequate compensation is paid for the use of land referred to in paragraph 1 of this Article upon the request of the owner of the real property that was used temporarily. Such compensation may not be less than the one he would be entitled to in the case of incomplete expropriation of his land.

### **Placing Conduits and Other Equipment**

#### Article 108

The placement of conduits and other equipment (such as electricity, sewage, gas, water, heating, telecommunications etc.) on the property of another without the permission of its owner is possible in the interest of the Republic of Croatia pursuant to the statutory provisions regulating incomplete expropriation, and in someone's private interest according to the provisions on the establishment of servitudes relating to conduits and other equipment by a court decision, unless provided otherwise by law.

### **Digging underneath the Property of Another**

#### Article 109

(1) The owner is not permitted to dig on his land or do anything on his property that can be reasonably expected to jeopardise the stability of the property of another.

(2) The owner of a piece of real property whose stability is jeopardised may request the works referred to in paragraph 1 of this Article to be terminated unless all measures which can be reasonably expected to eliminate the danger to the stability of his real property, including the placement of mechanisms, if necessary, have been undertaken.

(3) If the measures referred to in paragraph 3 of this Article cannot be carried out successfully without placing special mechanisms on the property the stability of which is jeopardised, its owner may require the prohibition of actions that pose a threat to the stability of his real property.

(4) The owner of a piece of real property who placed special mechanisms in order to ensure stability of the property of another is held liable for any resulting damages, and the neighbour whose property is jeopardised is authorised to require maintenance of the mechanisms in a good functioning order.

### **Emissions**

#### Article 110

(1) No one may exploit or use a piece of real property in a way that as the result smoke, unpleasant odours, soot, sewage waters, earthquakes, noise etc. reach the property of another, either by accident or by forces of nature, if they are excessive in view of the purpose appropriate in view of the real property in question considering the place and time, or if they cause more substantial damages or if they are impermissible based on the provisions of a particular piece of legislation (excessive indirect emissions).

(2) The owners of properties exposed to excessive indirect emissions are authorised to request the owner of the real property from which such emissions originate to eliminate the causes of the emissions and to compensate the resulting damages, as well as not to do in the future on his real property what was the cause of the excessive emissions until he takes all measures required to eliminate the possibility of excessive emissions.

(3) Without prejudice to the provision of paragraph 2 of this Article, where excessive emissions are the product of activities for which there is a permission by the competent authority, the owners of the exposed property do not have the right to request the owner not to do the activity for as long as the permission is in force; however, they are authorised to require compensation of damages caused by the emissions, as well as the taking of appropriate measures to prevent excessive emissions in the future, that is, the occurrence of damages, or to minimise them.

(4) Unless there is a special legal foundation, the owner of a piece of real property is not bound to suffer harassment by having someone emitting smoke, unpleasant odours, soot, sewage waters, earthquakes, noise etc. (direct emissions) directly onto his real property by

special machines or in another way, and he is authorised to require an end to such harassment and the payment of compensation of any damages that he suffered as the result.

(5) The owner whose real property is in a foreseeable danger of being exposed to direct or indirect emissions from the property of another which he would not be bound to suffer is authorised to require the ordering and enforcement of purposeful preventive measures.

#### **Building in Danger of Falling**

##### Article 111

When a building or another part of someone's real property is in danger of falling either completely or partially, and the neighbouring property is in danger, the neighbour whose property is in danger has a right of action to compel the owner to take all measures needed to prevent the damage from occurring and to request sufficient security as compensation of future damages.

#### **Prohibition to Change the Natural Flow of Water**

##### Article 112

(1) The owner of a piece of real property may not change the direction or the power of waters flowing naturally over his land or through it (subterranean waters) in a way that would be detrimental to another piece of land.

(2) The owner is bound to use land lying along the shore, watercourse and lake so that it does not obstruct waters flowing naturally, does not jeopardise the condition or use of the water-bed, the shore and the water-management structures on the shore and next to the shore, and does not prevent their maintenance.

(3) The owner of a lower estate may not create or place obstacles to prevent waters flowing naturally from a higher estate to his property, and the owner of a higher estate may not do anything arbitrarily that would be especially burdensome on the lower estate.

#### **Leading off Rainwater from the Roof**

##### Article 113

The owner of a piece of real property is bound to take all measures needed to prevent rainwater from pouring from his building onto the real property of another.

### **Title 6**

#### **ACQUISITION OF OWNERSHIP**

#### **Legal Foundations of Acquisition**

##### Article 114

(1) Ownership may be acquired by a legal transaction, by a decision of the court or another competent authority, by inheritance or by the operation of law.

(2) The right of ownership is acquired pursuant to paragraph 1 of this Article if all conditions provided by law are satisfied.

##### *Section 1*

#### **Acquisition by Legal Transaction**

#### **General Provisions**

##### Article 115

(1) Ownership passes from the former owner to the acquirer by a valid legal transaction the aim of which is the acquisition of ownership, according to the modality laid down by law.

(2) Ownership may not be acquired by a legal transaction beyond the framework of the seller's powers to dispose of the thing, unless the acquisition of ownership enjoys protection in good faith.

(3) Any legal transaction the aim of which is to acquire ownership of a piece of real property should be in writing in order to be valid, next to other conditions.

(4) The acquisition of ownership by a legal transaction has no impact on the rights of third parties on the thing, unless provided otherwise by law in order to protect the person who in good faith relied on the information in the land register or other public records the purpose of which is to make any relevant data available.

##### *a/ Acquiring Chattels*

#### **Surrender to Independent Possession**

#### Article 116

- (1) Ownership of chattels is acquired by the surrender of the thing to independent possession of the acquirer based on a valid declaration of will of the former owner to the effect that his right of ownership should pass to the acquirer, unless provided otherwise by law.
- (2) If the thing is surrendered to independent possession of an acquirer in a way that it remains in immediate possession of the seller, the transfer of ownership shall not have impact on the rights that any third parties would acquire on the thing if at the moment of acquisition they did not know and did not have to know that ownership had been transferred to someone else.

#### **Multiple Sale Contracts**

##### Article 117

- (1) If several people conclude legal transactions with the seller with the aim of acquiring ownership of one and the same chattel, ownership shall be acquired by the person to whom the thing was surrendered, provided that all other conditions for the acquisition of ownership are also satisfied.
- (2) In the event referred to in paragraph 1 of this Article, relations between the seller and the persons with whom he concluded legal transactions, but who did not acquire ownership of the chattel concerned are regulated by the law on civil obligations.

#### **Acquisition by Non-owners**

##### Article 118

- (1) Any person who acquires independent possession of a chattel in good faith by a legal transaction for consideration concluded in order to acquire the right of ownership with a possessor to whom the thing does not belong or who is not authorised to dispose of it in legal transactions, is deemed to have acquired ownership of the thing.
- (2) The acquirer referred to in paragraph 1 of this Article acquires ownership at the moment of acquiring independent possession if the thing was surrendered to him to immediate possession or if he already has it from before. However, if the thing is surrendered to him to independent possession by a declaration of will, he shall acquire the right of ownership only after the thing is surrendered to him to immediate possession.
- (3) The acquirer is deemed to be in good faith if at the moment of concluding the transaction and at the moment of accepting the thing to immediate possession he did not know and in view of the circumstances did not have sufficient reason to doubt that the thing belonged to the seller.
- (4) The provision of paragraph 1 of this Article does not apply if the thing was stolen from its owner or the person through whom he had possession or if he lost it or misplaced it; save for the acquisition of ready cash, bearer securities or at a public auction.
- (5) The rights of third parties burdening a chattel cease following the acquisition of ownership from a seller to whom the thing does not belong; however, the rights of third parties that the acquirer knew about or had to know about at the time of acquiring ownership do not cease.

#### *b/ Acquiring Real Property*

#### **Entry of Ownership in the Land Register**

##### Article 119

- (1) Ownership of a piece of real property is acquired by a legally regulated entry of the acquirer's ownership in the land register based on a valid declaration of will of the former owner to the effect that his right of ownership should pass to the acquirer, unless provided otherwise by law.
- (2) The provisions of this Act on the acquisition of ownership of a piece of real property by an entry in the land register apply accordingly to any changes and to the termination of ownership based on legal transactions.
- (3) The manner of creating and keeping the land register and the manner of making entries are regulated by the provisions of land registry law.

#### **Acquisition by Registration**

##### Article 120

(1) Ownership of a piece of real property is acquired by registration in the land register, unless provided by law that ownership of a piece of real property is acquired by another entry in the land register.

(2) For ownership to be registered, a document has to be drawn concerning the legal transaction which forms the basis for the acquisition of ownership, the content and form of which have to be in line with the rules of land registry law.

(3) The registration has effect as of the moment of submitting an application for registration to the court.

(4) Ownership of a piece of real property that is not entered in the land register is acquired by depositing with the court a legalised document suitable for registering the right in the land register, by which the former owner permits registration of the right of ownership of another, and the rules on acquisition by registration shall apply accordingly.

#### **Acquisition by Conditional Registration**

##### Article 121

(1) If not all requirements laid down by land registry law for the entry of registration are satisfied, and an application for registration of the right of ownership has been filed, the acquisition of the right of ownership shall be registered conditionally if at least those conditions under which the said rules permit conditional registration are satisfied.

(2) Ownership shall be acquired by conditional registration, provided that the conditional registration in question is subsequently justified.

(3) Conditional registrations are justified in the manner and within time limits provided by land registry law.

(4) If a conditional registration is subsequently justified, ownership is deemed acquired as of the moment of submitting the application for registration of the right of ownership in the land register.

(5) In the event referred to in paragraph 1 of this Article, ownership of those pieces of real property that are not entered in the land register is acquired by depositing with the court a legalised document suitable for conditional registration, as governed accordingly by the rules on acquisition by conditional registration.

#### **Protecting Confidence in the Land Register**

##### Article 122

(1) The land register is deemed to reflect the factual and legal situation of a piece of real property truthfully and completely, and any person who in good faith relies on the information in the land register, not knowing that what is entered in the land register is not complete or is different from the situation outside the land register, enjoys protection regarding such acquisition in accordance with law.

(2) The acquirer was in good faith if at the time of concluding the transaction and at the moment of applying for entry he did not know and in view of the circumstances did not have sufficient reason to doubt that the thing belonged to the seller.

(3) Absence of good faith cannot be voiced against any person solely for the reason that he did not investigate the situation outside the land register.

#### **Effect of Confidence in Truthfulness**

##### Article 123

(1) By the entry, the acquirer acquires a piece of real property as from its owner if, having relied on the information in the land register, he acquires the real property in good faith from a person who was entered as owner of the real property, although he was not, and if his entry is not deleted by reason of invalidity.

(2) The deletion referred to in paragraph 1 of this Article may be requested by reason of untruthfulness (invalidity) of the predecessor's entry in a complaint for deletion before the expiration of three years of the application for the predecessor's entry; however, the person who was duly notified of the predecessor's untruthful entry may request deletion of the entry by reason of untruthfulness of the predecessor's entry only if within the time limit for appeal he applied for recordation that the entry is disputable and immediately, and at the latest within 60 days of the

expiration of the time for appeal, submitted a complaint against the people who acquired the right by the disputed entry or obtained further entries in the land register based on the disputed entry.

### **Effect of Confidence in Completeness**

#### Article 124

(1) The acquirer who, having relied on the information in the land register, acquired the right of ownership of a piece of real property in good faith is deemed to have acquired the real property as if there were no rights, burdens or limitations of another on it if they were not entered at the time, or as if it were not evident from the land register that their entry had been requested.

(2) The acquirer who, although having relied on the information in the land register, made an acquisition in good faith does not enjoy protection of his confidence in completeness referred to in paragraph 1 of this Article regarding the rights, burdens and limitations that exist by the operation of law and which are not entered in the land register.

### **Multiple Sale Contracts**

#### Article 125

(1) If several people conclude legal transactions with the seller with the aim of acquiring ownership of one and the same piece of real property, ownership shall be acquired by the person who was the first one to apply for entry in the land register in good faith, provided that all other conditions for the acquisition of ownership are also satisfied.

(2) Deletion of the entry of ownership of the person referred to in paragraph 1 of this Article and registration in his favour may be requested by the person from whom the seller alienated the real property and surrendered it to independent possession if he proves that the acquirer failed to act in good faith, because at the moment of concluding the legal transaction with the seller the acquirer knew that the real property had been validly alienated from another and surrendered to independent possession. An application for deletion may be filed within three years of the entry the deletion of which is requested.

(3) Relations between the seller and those people with whom he concluded legal transactions, but who did not acquire ownership of the real property concerned, are regulated by the law on civil obligations.

#### *Section 2*

### ***Acquisition by Decision of the Court or Another Authority***

#### **Effect of the Decision**

#### Article 126

(1) Ownership is acquired by a decision of the court or another authority in the events provided by law and in the manner and according to the conditions provided by law.

(2) The right of ownership is acquired at the moment the court decision becomes legally effective, that is, the decision by another authority becomes final, unless provided otherwise by law or unless arising otherwise from the objective because of which the decision was adopted.

(3) Real rights on the thing concerned that belonged to other persons do not terminate following the acquisition of the right of ownership by a decision of the court or another authority, save for those specified in the decision or a particular piece of legislation, or which cannot continue to exist because of the nature of the thing.

### **Of Real Property in Particular**

#### Article 127

(1) Any person who acquires the right of ownership of a piece of real property by a decision of the court or another authority is authorised to obtain entry of the acquired right of ownership in the land register.

(2) Ownership of a piece of real property acquired by a decision of the court or another authority may not oppose the right of the person who, having relied on the information in the land register, had entered his right on the real property in good faith before the right acquired by the decision of the court or another authority was entered.

#### *Section 3*

***Acquisition by Inheritance***

Article 128

- (1) The heir acquires ownership of the things he inherited at the moment of opening the inheritance, unless provided otherwise by law.
- (2) The heir is authorised to obtain entry of his right of ownership of a piece of real property in the land register.
- (3) Real rights on the thing concerned that belonged to other persons do not terminate following the acquisition of the right of ownership by inheritance, save for those provided by law or which cannot continue to exist because of the nature of the thing.
- (4) All provisions relating to inheritance apply accordingly to universal succession.

*Section 4*

***Acquisition by Operation of Law***

*a/ In General*

**Effect of Statutory Conditions**

Article 129

- (1) If provided by law that ownership is to be acquired on fulfilment of certain conditions that are neither a legal transaction nor a decision of the court or another authority based on which ownership is acquired nor inheritance, the person with respect to whom the conditions are satisfied acquires the right of ownership at the moment of fulfilling the conditions.
- (2) Unless provided otherwise by law, all real rights that until such time existed on the thing concerned terminate following the acquisition of ownership by the operation of law, save for those rights that the acquirer knew about or had to know about.
- (3) Relations between the former owner and those people whose rights on the thing concerned terminated because of the acquisition of the right of ownership by the operation of law are examined according to the rules of the law on civil obligations, unless there is a particular provision regarding the matter.

**Of Real Property in Particular**

Article 130

- (1) Any person who acquires the right of ownership of a piece of real property by the operation of law is authorised to obtain entry of the acquired right of ownership in the land register.
- (2) Ownership of a piece of real property acquired by the operation of law may not oppose the right of the person who, having relied on the information in the land register, had entered his right on the real property in good faith before the right acquired by the operation of law was entered.

*b/Acquisition by Taking as One's Own and by Finding a Movable*

**Taking as One's Own**

Article 131

- (1) Any person who takes independent possession of a chattel that is not owned by anyone with the aim of taking it as one's own shall acquire ownership of such thing, unless provided otherwise by law.
- (2) With respect to chattels not owned by anyone and which can be obtained or used only with a special permission issued by the competent authority, ownership may be acquired by taking as one's own only if the person concerned has such permission.
- (3) Things that pursuant to a particular piece of legislation may be owned solely by the Republic of Croatia or by local administration and self-government units may not be acquired by taking as one's own, save for things the purpose of which it is to be taken as one's own (e.g. minerals, fish, water from the watercourse etc.), in which case any person who has the authority to execute the taking as one's own by law or by a permission issued based on law, acquires ownership of what he took as his own on the basis of and within the limits of the authority, unless provided otherwise by law.
- (4) The right of ownership by taking as one's own may not be acquired on a piece of real property that is not under anyone's ownership.

### **Abandoned Things**

#### Article 132

- (1) In addition to things that originally do not belong to anyone, things abandoned by their owner are also regarded as no one's if the owner has thus waived his right of ownership.
- (2) Chattels are deemed no one's as of the moment their owner abandons possession of the chattel with the intention of waiving ownership.
- (3) The property of another may not be acquired by taking as one's own; in case of doubt, it is deemed that the thing concerned belongs to someone; however, it is deemed that a tamed animal is no one's if it goes missing on its own for forty-two days, and that a swarm of bees whose owner did not collect/gather them for two days is no one's.
- (4) An abandoned co-ownership share of a chattel adheres to the shares of other co-owners *pro rata* to their co-ownership shares.

### **Of Abandoned Real Property in Particular**

#### Article 133

- (1) A piece of real property belongs to no one only when the right of ownership is deleted in the land register based on a waiver of ownership in the form of a document suitable for land registry entry.
- (2) An abandoned piece of real property becomes the property of the Republic of Croatia by the operation of law, unless provided otherwise by law.
- (3) Special regulations regulate when it is deemed that land which is completely uncultivated or buildings that are dilapidated because they have not been repaired for a long time are abandoned and when the Republic of Croatia is to assume ownership of them.

### **A Lost Item and the Finder**

#### Article 134

- (1) Any item lost or misplaced by the owner or stolen from him does not cease to be his property as the result of being lost, misplaced or stolen, and the finder is bound to hand it over without any delay to the person who lost it, that is, to the owner if he can identify him based on markings on the item or based on other circumstances, and the owner is not difficult to reach.
- (2) Any finder who fails to hand over the item he found to whomever lost it, that is, its owner, is bound to hand it over without any delay to the nearest lost and found office or to the person on whose premises, in whose means of transport or similar he found it, and such person shall hand it over to the nearest lost and found office on behalf of the finder; the finder is not bound to hand over the thing to the nearest lost and found office only if its value is negligible according to general opinion.

### **Lost and Found Office**

#### Article 135

- (1) The lost and found office has to receive any item that was found, to keep it for the person who lost it, that is, its owner, and to take all measures to keep it safe.
- (2) The lost and found office shall entrust all items that it will not or cannot keep to a reliable guard.
- (3) If the item is perishable or if costs have to be incurred for keeping or maintaining it that are disproportionate to its value, the item shall be sold at a public auction and the proceeds shall be deposited with the court.

### **Returning an Item**

#### Article 136

- (1) If the person who lost the item or who is its owner comes forward within a period of one year of the publication of the notification and proves that he lost the item, that is, that he is its owner, the item or the proceeds of the sale shall be handed over to him as soon as he repays any costs incurred in connection with the item, as well as the finder's fee.
- (2) If it is not certain to whom of several persons the found item should be handed over, and if the circumstances do not indicate another person, the person who lost the item after having it in immediate possession shall have priority.



(3) The lost and found office has to notify the finder immediately about the handover of the item to the person who proved that he had lost it, that is, that he was its owner, and give him the finder's fee.

#### **Finder's Fee**

##### Article 137

- (1) The finder is entitled to a finder's fee of 10% of the trade value of the item and to the compensation of any necessary costs that he incurred in relation to the found item.
- (2) The finder is also the person who first spotted the item and tried to reach it, although another got hold of it first. Several people who found an item together are entitled to the finder's fee, divided into equal parts.
- (3) The person who has to pay the finder's fee may ask for the amount of the finder's fee to be reduced equitably if the finder's fee would represent a disproportionately high benefit in view of the circumstances of the finder and the person bound to pay the finder's fee, as well as the circumstances under which the item was lost and found.
- (4) If the value of the found item cannot be estimated or if the item has value only for its owner or the person who lost it, the finder may ask for an equitable amount of the finder's fee to be determined.
- (5) The person owing the costs and the finder's fee may be released from his obligation by waiving the item, and it shall then be deemed that such person did not come forward at all.

#### **Handing over the Item to the Finder**

##### Article 138

- (1) If the person who lost an item or the owner do not come forward within one year of the date of publication of the notification concerned or if they fail to prove the right to the item or if they refuse to receive it, the found item or the proceeds of the sale shall be handed over to the immediate possession of the finder.
- (2) If the person who lost the item or the owner come forward at a later date, the finder has to return the item with any benefits that he may have generated or the money he may have received for it with any interest thereon, on deducting any necessary costs that he may have incurred, and the person to whom the item has been returned shall pay the finder's fee.

#### **Acquiring Ownership of Items Found**

##### Article 139

- (1) The finder may acquire ownership of an item found or the money received for it subject to the conditions for acquiring an item by occupancy, where his possession of the item found is fair if he does not know and does not have to know to whom the item belongs.
- (2) The finder who failed to adhere to the provisions of Articles 134 through 136 and Article 138 paragraph 2 of this Act may not acquire ownership of the item concerned by occupancy and is not entitled to the finder's fee.

#### **Finding a Treasure**

##### Article 140

- (1) Treasure within the meaning of this Act means money, valuables and other items of value hidden for such a long time that their owner can no longer be identified.
- (2) The finder is bound to take possession of the treasure found on behalf of the Republic of Croatia, which thus becomes the property of the Republic of Croatia if it indeed does not have an owner.
- (3) The finder is bound to immediately notify the nearest lost and found office about the treasure found and surrender it to the lost and found office, and until such surrender take measures necessary to prevent the treasure from being destroyed, damaged or alienated.
- (4) The lost and found office is bound to immediately notify the competent state authority for the protection of cultural monuments or the archive about the treasure or archives material of general cultural interest, which are authorised to take possession of the items and safeguard them, unless provided otherwise by law.

(5) The finder and the owner of the piece of real property in which the treasure was found have the right to a reasonable fee from the Republic of Croatia, which may not be less than the amount of the finder's fee that would be given for an item found or more than the value of the treasure found, and they are also entitled to compensation of any costs they incurred.

(6) One half of the fee referred to in paragraph 5 of this Article belongs to the finder, and the other to the owner of the real property; however, if any of them tried to conceal the finding of the treasure, he shall not be entitled to the fee or the compensation.

(7) The Republic of Croatia may be released from the obligation to pay the finder's fee and the compensation of costs for the treasure by waiving the thing and surrendering the treasure to the independent copossession of the finder and the owner of the real property, in which case the provisions of this Act on surrendering an item to the finder and on acquiring ownership of items found shall be applicable accordingly.

(8) The provisions on the right of the owner of the real property to the fee apply accordingly to the person having the right to build if the treasure was found in a building that is a component part of the land on which such holder has the right to build.

*c) Acquisition of Fruits*

**Acquisition by Separation**

Article 141

(1) Fruits and products separated from a thing belong to the owner of the thing even after such separation, unless provided otherwise.

(2) If another person holds in possession as an independent possessor a thing that belongs to another from which fruits or products were separated, by such separation such other person becomes the owner of the separated fruits or products, but only if at such moment he was a fair possessor of the thing belonging to another.

(3) Without prejudice to the provisions of paragraphs 1 and 2 of this Article, the owner or the independent possessor of a thing does not acquire ownership of the fruits and products separated from the thing if ownership is acquired by another person according to the rules referred to in Articles 142 and 143 of this Act.

**Acquisition by Limited Real Right**

Article 142

(1) Any person who is the owner of the fruits or other products of a thing belonging to another based on his limited real right shall become the owner of such fruits or other products as soon as they are separated from the owner's thing; however, if his right authorises him only to assume ownership of the fruits or products of a thing, they shall become his only when he gathers them himself.

(2) If the fruits or products are separated from a thing which is in possession of another person as if he were the holder of a limited real right based on which such person would have the right of ownership of the fruits or other products of the thing, by such separation the person shall have become the owner of the separated fruits or products, but only if at such moment he was a fair possessor of the thing of another.

(3) The holder of a limited real right on a thing or another person who has the thing in possession as if he were the holder of such right does not acquire ownership of the fruits and products separated from the thing if ownership is acquired by another person according to the rules referred to in Article 143 of this Act.

**Acquisition by Obligatory Right**

Article 143

(1) Any person who is entitled to the fruits and other parts of a thing which belongs to another and which was surrendered to his possession based on an obligatory right, and the thing is in his possession at the moment of separating the fruits or parts from the thing, shall have assumed ownership of them by the act of such separation; if he does not have the thing in possession at such time, he shall acquire them only when he takes possession of them.

(2) If a thing from which fruits or products were separated is in possession of another person as if he were the holder of an obligatory right based on which he would be entitled to ownership of the fruits or other products of the thing, by such separation such person shall have become the owner of the separated fruits or products, but only if at such time he was a fair possessor of the thing of another.

#### **Fruits of Animals**

##### Article 144

(1) Fruits of animals and all other benefits derived from animals belong to the owner or any other person according to the rules laid down in Articles 141 through 143 of this Act.

(2) A person whose animal impregnates the animal of another does not have the right to such offspring or to an award unless provided otherwise by law or custom.

#### **Fruits of the Earth**

##### Article 145

(1) If an island should appear in the middle of a watercourse that is not a common thing, and if nothing else is provided in a particular piece of legislation, legally the island shall be the component part of the lands lying in parallel with the island along both banks of the watercourse for the length of the lands, and the width up to one half of the watercourse.

(2) If in the event referred to in paragraph 1 of this Article the island appeared on one of the halves of the watercourse, the owner of the nearer bank shall have an exclusive right to it.

(3) The provisions on the acquisition of islands that have appeared in a watercourse do not apply to islands created after the water dries out or splits into several backwaters or if the lands are flooded, as in such case the rights existing until such time remain unaltered.

##### Article 146

(1) If a watercourse changes the direction in which it flows, owners of the land on the banks having an inherent interest therein have the right to bear the cost of restoring the direction of the flow within three years' time, unless that would be contrary to the watercourse regulation plan or the provisions of a particular piece of legislation.

(2) If the previous direction of the flow is not restored, the owners of the land who suffer damages as the result of the new direction have the right to compensation from the abandoned riverbed or from its value, unless provided otherwise in a particular piece of legislation.

(3) Except in the case of compensation under the provision of paragraph 2 of this Article, an abandoned riverbed belongs to the owners of the banks in accordance with the rules on acquiring ownership of islands, unless provided otherwise in a particular piece of legislation.

##### Article 147

(1) If a watercourse rips a part of the land and annexes it to another land, the owner of the ripped piece of land may have such piece of land returned/restored within one year's time.

(2) On expiration of the time limit referred to in paragraph 1 of this Article, the ripped piece of land that was not returned/restored shall become a part of the land to which it was annexed, and the right of ownership of the land shall extend to such piece as well.

(3) The soil that a watercourse leaves as sediment on a bank belongs to the owner of the land lying on the bank.

#### **Processing, Joining, Mixing and Blending with the Material of Another**

##### Article 148

(1) Any person who processes, joins, mixes or blends the chattels of another with his own or if that happens without his will shall not be deemed to have acquired any right to the property of such other person, unless he has a legal foundation for acquisition.

(2) If the things that were processed may be restored to their previous condition without excessive costs, that is, if the things that were joined, mixed or blended may be separated without incurring excessive costs, each person shall receive his own property, and the rules of the law on civil obligations shall be used to determine whether and who has the right to require compensation, and from whom.

(3) If a person processed, joined, mixed or blended the things of another with his own, thus creating a new thing of special artistic or other cultural value that would be ruined by restoring the previous condition of the processed, that is, by separating the joined, mixed or blended things, such person has the right to request the court to decide not to allow the restoration of previous condition, that is, the separation of the things.

### **Unintentional Co-ownership**

#### Article 149

(1) If restoration to the previous condition of the processed, joined, mixed or blended things or their separation is not possible or permissible, and according to general opinion a new thing has been created, provided that there is no legal foundation under which the thing would belong to someone else, it shall belong to all participants in the form of co-ownership, according to the ratio of the value of their things and useful work invested at the moment of creating the new thing, and the rules of the law on civil obligations shall be used to determine whether and who has the right to require compensation, and from whom.

(2) The co-owner whose thing was transformed into a new thing through the fault of the other co-owners shall have the right to dissolve such co-ownership by keeping the entire thing for himself and by compensating to the others the value of their shares or by assigning it to them for a consideration; if none of the parties can be blamed, the person whose thing was the most valuable has the right to purchase the entire thing.

### **Becoming Part of the Main Thing**

#### Article 150

(1) If restoration to the previous condition or separation is not possible without excessive costs, and the result is not a new thing, but another thing which has become part of the main thing, thus becoming its component part, or if the work or funds of another have been invested in it, ownership of the main thing shall continue, but shall extend to everything that has become part of the thing or has been invested in it, and the rules of the law on civil obligations shall be used to determine whether and who has the right to require compensation, and from whom.

(2) If the owner of a piece of land constructs a building on it using the material of another, and if he builds into his piece of real property a thing that belongs to another and that may not be separated from it without excessive costs, or if it is built in by someone else, ownership of the real property shall extend to such material and built-in things as well, and the former owner of the material or the built-in things shall have the right to claim compensation according to the rules of the law on civil obligations.

(3) The provision of paragraph 2 of this Article also applies accordingly to the person having the right to build who constructed a building by using the material of another or in whose building either he or someone else built in something that belongs to another.

### **Effect on Limited Real Rights**

#### Article 151

(1) When a chattel ceases to exist independently as the result of processing, joining, mixing or creating a blend, building by using the material of another or its building-in into such person's real property, all limited real rights on such real property terminate also, except those the nature of which permits that they have as subject matter the compensation to which the former owner is entitled.

(2) Any residential leases and business leases on the thing terminate simultaneously with the thing referred to in paragraph 1 of this Article.

(3) The rules of the law on civil obligations regulate whether the persons whose rights terminated according to the provisions of paragraphs 1 and 2 of this Article have the right to claim compensation, and from whom.

### **Building on the Land of Another**

#### Article 152

(1) A building erected on the land of another without the knowledge or permission of the owner of such land shall be the property of the owner of the land.

(2) The owner has the right to require that the land with the building be passed to his possession, and the builder shall be able to claim compensation from the owner if he is authorised to do so according to the rules of the law on civil obligations.

(3) The owner of land having an inherent interest therein may require restoration to the previous condition instead of exercising the right referred to in paragraph 2 of this Article, and in that case the builder shall be bound to comply with the requirement without claiming any compensation; however, he shall be authorised to take for himself all material that was his.

(4) The right of the owner to compensation from the builder is evaluated according to the rules of the law on civil obligations.

(5) Within the meaning of this Act, a building means any structure which is reasonably permanently affixed to the plot of land on its surface or below it, provided that the building is in the condition to be used for the purposes for which such buildings are usually used.

### **Fair Builder and Unfair Owner**

#### Article 153

If the owner of land knew about the construction works and did not immediately prohibit further works to a fair builder, the plot of land with the building constructed on it shall belong to the builder, and the former owner of the land shall only have the right to require compensation of the market value of the land.

### **Unfair Builder and Owner of the Land**

#### Article 154

(1) If the builder was not fair, the building became the property of the owner of land even if he did not immediately prohibit further construction; however, in that case the owner of land has no right to require restoration to the previous condition.

(2) In the event referred to in paragraph 1 of this Article, the builder is authorised to bear the cost of restoration to the previous condition and to take for himself his material that he built into the building, but not after the expiration of the time limit within which, following the legal effectiveness of the court decision, he should surrender the possession of the land with the building on it to the owner voluntarily.

### **Crossing the Boundary by Construction Works**

#### Article 155

(1) If a boundary was crossed as the result of construction works and if the works encroached upon a part of the neighbouring land next to the boundary, the owner of such neighbouring land has the right to require restoration to the previous condition.

(2) Until restoration to the previous condition is fully performed, it is deemed that until revocation the owner of the building received a real servitude to have the part of his building on the neighbouring land.

(3) The owner of the land on which a part of the building of another was erected has the right to compensation in the form of annuity in the amount of rent for the land that was encroached upon, which the everyday owner of the building is bound to pay to the everyday owner of the encumbered land for as long as there is the part of the building on such land; the foregoing does not impinge upon the right to compensation of incurred damages.

(4) The owner of the land on which a part of the building of another was erected has the right to require that the owner of the building buys the entire land at a market price; the owner of the building who was a fair builder may also require the same thing, provided that the owner of the

land required restoration to the previous condition, and such restoration is not possible without substantial damages to other parts of the building or excessive costs.

#### **Additions, Adaptations and Investments**

##### Article 156

(1) Ownership may not be acquired as the result of carrying out additions to or on, or adaptations of buildings or rooms in co-owned, joint or someone else's buildings, or by annexes, building-in or investments in such buildings or rooms, unless provided otherwise by the owner of the piece of real property where such additions to or on, or annexes were performed.

(2) The rules of the law on civil obligations regulate whether the person who made an addition to or on, or who made an adaptation of a building or room referred to in paragraph 1 of this Article, or who invested in such a building or room is entitled to compensation.

#### **Building on the Right to Build of Another**

##### Article 157

Where construction works were carried out on a piece of land burdened by the right to build of another, the holder of such right is entitled to the rights and obligations of the owner of the land referred to in Articles 152 through 155 of this Act.

#### **Sowing and Planting**

##### Article 158

(1) Plants that grow roots on a piece of land are the property of whomever owns the land, regardless to whom the seeds or seedlings belong, and the relationship with the owner of the seeds or seedlings shall be examined pursuant to the rules of the law on civil obligations.

(2) The provision of paragraph 1 of this Article regarding plants that have grown roots also applies to those that cannot be separated from the piece of real property without excessive costs.

#### *d/ Acquisition by Occupancy*

##### Article 159

(1) Ownership of a thing by occupancy is acquired by independent possession of the thing if the possession concerned has the qualities laid down by law and was uninterrupted for the period of time laid down by law, and the possessor is capable of being the owner of such a thing.

(2) The independent possessor whose possession of a chattel is lawful, truthful and fair acquires ownership by occupancy on expiration of three years, and such possessor of a piece of real property on expiration of ten years of uninterrupted independent possession.

(3) The independent possessor of a chattel whose possession is at least fair acquires ownership by occupancy on expiration of ten years, and such possessor of a piece of real property on expiration of twenty years of uninterrupted independent possession.

(4) The independent possessor of a thing which is owned by the Republic of Croatia, the counties, local self-government units and local self-government and administration units or any legal entities extended equal status as the former, as well as things which are owned by the church or other legal entities not seeking profit for themselves, but serving various charity or other generally useful purposes, shall acquire ownership by occupancy of the things only after having had lawful, truthful and fair, or at least fair, uninterrupted independent possession for at least double the time period referred to in paragraphs 2 and 3 of this Article.

#### **Flow of Time**

##### Article 160

(1) Time needed for occupancy begins on the day on which the possessor assumes independent possession of a thing, and ends on expiration of the last day of the time needed for occupancy.

(2) The time during which predecessors of the present possessor had uninterrupted possession as lawful, fair and truthful independent possessors, that is, fair independent possessors is also included in the time needed for occupancy.

(3) An heir becomes a fair possessor as of the moment the inheritance is opened even if the testator was an unfair possessor, but not if the heir knew or had to know that.

(4) Where with respect to a fair possessor whose possession is not lawful and truthful the time period over which his predecessor had possession of the thing lawfully, fairly and truthfully is

included in the time period for occupancy, he shall acquire the right of ownership on expiration of the time period needed for a fair possessor to acquire a thing by occupancy.

(5) Where with respect to a lawful, fair and truthful possessor the time period over which his predecessor had possession of the thing fairly, but not lawfully and truthfully is included in the time period for occupancy, he shall acquire the right of ownership on expiration of the time period needed for a fair possessor to acquire a thing by occupancy, unless he has already acquired the thing because his lawful, fair and truthful possession lasted over a period of time necessary for a lawful, fair and truthful possessor to acquire the right of ownership by occupancy.

(6) The provisions on termination or stay of limitation periods on claims apply accordingly to the termination or stay of time limits for occupancy.

#### *Title 7*

### ***Protection of Ownership***

#### **Owner's Application for Restitution of a Thing**

##### Article 161

(1) The owner is entitled to require of any person who has his thing in possession to surrender the possession of the thing.

(2) The owner's right referred to in paragraph 1 of this Article is not barred by the statute of limitations, unless provided otherwise by law.

(3) A person who alienated a thing on his own behalf at a time when the thing was not his, although he acquired ownership later, does not have the right referred to in paragraph 1 of this Article.

#### **A True Owner's Complaint**

##### Article 162

(1) In order to exercise his right in a court proceeding or in a proceeding before another competent authority to require of the person who has his thing in possession to surrender the thing to his possession, the owner has to prove that the thing he wants is his property and that it is in the possession of the respondent.

(2) The owner has to describe the thing he wants, voicing its characteristics that make it different from other identical things; accordingly, he may not require things such as ready cash mixed with other ready cash or bearer securities mixed with other bearer securities, if there are no circumstances based on which the claimant can prove his right of ownership and based on which the respondent had to know that he had no right taking the thing as his own.

(3) Any respondent who keeps secret from the court that he has a thing in possession, and who proves that he has it in possession, has to hand over the thing to the claimant's possession for that reason only; however, he keeps the right to require the thing back in an owner's complaint; any person claiming to possess a thing, although he does not, thus deceiving the claimant, is held liable for all resulting damages.

(4) The respondent who had a thing in possession and who abandoned such possession after receiving a complaint against him has to bear the cost of handing over the thing to the claimant who would not want to hold to the real possessor, that is, he has to compensate the full value of the thing.

#### **Possessor's Objections**

##### Article 163

(1) The possessor has the right to refuse to surrender a thing to its owner if he has a right authorising him to possess the thing (right to possession).

(2) The possessor has the right to refuse to surrender a thing to its owner if his right to possession derives from a mediate possessor who has the right to possession of the thing, except if the possessor obtained possession from a mediate possessor who was not authorised to give it to him.

(3) If the possessor of a thing that was alienated by assignment requires that the possessor surrender the thing to its owner, he may also voice objections relating to his right to possession against the new owner that he would otherwise voice against the assignor.

(4) If the respondent is a non-independent possessor, he may defend himself against a requirement to surrender possession of a thing by appointing a mediate possessor whose better right he recognises and from whose possession he derives his possession.

#### **Legal Position of a Fair Possessor**

##### Article 164

(1) The fair possessor of a thing belonging to another which he does not have the right to possess has to surrender such thing to the owner or to the person designated by the owner; however, he is not bound to provide compensation for having used it or having benefited from it to the extent appropriate in view of the right to possession he believed to have been entitled to, neither does he have to provide compensation for anything damaged or destroyed.

(2) If the owner requires that the possessor surrender the thing, the fair possessor may require compensation for the costs that he incurred as necessary and beneficial, and keep the thing until the owner provides compensation.

(3) Any cost by which the fair possessor changed the purpose of the thing is not beneficial if such change is not beneficial to the owner.

(4) Not even the fair possessor may require compensation of costs that were neither necessary nor beneficial; however, if no compensation is offered to him before returning the thing he may remove and take for himself what he added to the thing through the costs, provided that this may be done without damaging the thing itself.

(5) The value of fruits and other benefits of the thing shall be deducted from the costs that are being justifiably claimed by the possessor.

(6) Costs and the value of fruits are calculated according to prices applicable at the moment of giving the compensation.

(7) The right to compensation of necessary and beneficial costs becomes barred by the statute of limitations three years following the surrender of the thing.

#### **Legal Position of an Unfair Possessor**

##### Article 165

(1) The unfair possessor of a thing that belongs to another has to surrender such thing to the owner or to the person designated by the owner, and compensate all damages on the thing and all benefits he enjoyed for the duration of his possession, including those that the thing would have yielded had he not neglected them.

(2) The owner's requirement to receive compensation referred to in paragraph 1 of this Article becomes barred by the statute of limitations three years following the surrender of the thing to the owner.

(3) The unfair possessor is entitled to receive compensation of costs if even the owner would have them as necessary; the right, however, becomes barred by the statute of limitations three years following the surrender of the thing.

(4) The unfair possessor is not authorised to keep the thing until he receives compensation of the costs that he requires to be compensated, but has to surrender the thing without any delay.

(5) The possessor is authorised to remove and take for himself what he added, thus incurring the cost which is not compensated, but only if he can do so without causing damages to the thing.

(6) As of the moment the fair possessor becomes unfair, his rights and obligations are governed according to the rules laid down for an unfair possessor; they are also governed according to the same rules with respect to what the fair possessor did with the thing that was inappropriate in view of the right to possession he believed to be entitled to.

#### **Owner's Complaint by Presumed Owner**

##### Article 166

(1) Any person who in a court proceeding or in a proceeding before another competent authority proves the legal foundation and the truthful method of his acquisition of the thing shall be deemed the owner of the thing (presumed owner) in relation to the person who is in possession of the thing without a legal foundation or based on a weaker legal foundation.



(2) On request, the possessor having no legal foundation for possession or having a weaker legal foundation, because his possession is unfair or unlawful, or because he cannot name his predecessor or can name only a suspect one, or because he acquired possession of the thing free of charge, and the person requiring possession acquired it for a consideration, shall surrender possession to the presumed owner upon his request; however, the possessor having an equally strong legal foundation as the presumed owner shall not be bound to surrender possession of the thing.

(3) The presumption of ownership has no effect towards a person who was not a fair possessor of the thing.

(4) Instead of proving the right of ownership, the presumed owner has to provide proof of facts on which he bases his presumption of ownership and of facts on which the foundedness of his requirement towards the possessor of the thing from paragraphs 1 and 2 of this Article depends; the owner's complaint by a presumed owner, the possessor's objections and the legal position of a fair or unfair possessor when bound to surrender the thing concerned to the owner are governed accordingly by the same rules as the true owner's complaint, unless provided otherwise by law or unless contrary to the legal nature of the complaint by the presumed owner.

### **Protection against Harassment**

#### *Article 167*

(1) If a third party unlawfully harasses the owner in another way than by taking away the thing concerned, the owner may require in court the harassment to stop.

(2) In order to exercise his right referred to in paragraph 1 of this Article in a court proceeding or in a proceeding before another competent authority, the owner has to prove that he is the owner of the thing and that the third party is harassing him in the exercise of his powers on the thing; if the person claims to have the right to carry out whatever is regarded as harassment by the owner, such person has the burden of proof.

(3) If damages are incurred as the result of harassment referred to in paragraph 1 of this Article, the owner is entitled to claim compensation according to the general rules governing compensation of damages.

(4) The right to protection, in addition to the one who proved that the thing is his ownership, is also enjoyed by the person who proves the legal foundation and the truthful method of assuming possession of the thing (presumed owner) in a court proceeding or in a proceeding before another competent authority; however, the person who was not a fair possessor of the thing does not have the right to protection of ownership against harassment. The rules governing the owner's complaint by the presumed owner apply accordingly to the right to protection of the presumed owner.

### **Protection against Violations by Entry in the Land Register**

#### *Article 168*

If any person violates the owner's right of ownership by invalid entry in the land register, the owner has the right to protect himself against such act according to the provisions of land registry law governing the protection of land registry rights.

#### *Title 8*

### ***Termination of Ownership***

#### **Destruction**

#### *Article 169*

(1) The right of ownership terminates if the thing that was the subject matter of the right is destroyed; however, if there are any remains of the thing, the owner retains his right of ownership on them.

(2) The right of ownership also terminates when the thing becomes a component part of another thing by becoming its part which is not legally separated from it on a special legal foundation.

### **Placing a Thing out of Trade**

#### Article 170

The right of ownership terminates pursuant to a legal provision by which a thing that was the subject matter of the right of ownership may no longer be the subject matter of ownership, in which case the former owner is exposed to legal effects as if the thing had been subjected to complete expropriation.

#### **Acquisition by Another**

##### Article 171

The right of ownership terminates completely when another person assumes ownership of a thing by original acquisition, while in the case of transition of ownership to another person it terminates only for the former owner.

#### **Waiver**

##### Article 172

- (1) The right of ownership of a chattel terminates if the possession of such chattel is abandoned, as such abandonment means waiver of the right of ownership.
- (2) The right of ownership of a piece of real property terminates by waiver only when the right is deleted in the land register on the basis of a declaration on waiving ownership, given in the form of a document suitable for land registry entry, unless provided otherwise by law.
- (3) If the right of ownership is entered in the land register, it terminates only by its deletion.

#### **Termination by the Operation of Law**

##### Article 173

- (1) The right of ownership terminates in cases provided by a particular piece of legislation, under the conditions and as determined by such law.
- (2) If the right of ownership of a piece of real property terminates pursuant to a particular piece of legislation without being deleted in the land register, such termination of the right of ownership may not be detrimental to those who did not know and did not have to know about it, and the fact that one did not investigate the situation outside the land register may not be voiced against anyone.

#### **Part Four**

#### **SERVITUDES**

#### **Title 1**

#### **OF SERVITUDES IN GENERAL**

#### **Right of an Authorised Person**

##### Article 174

- (1) Servitudes are limited real rights over the property of another authorising the holder of such right(s) to use the property in a specific manner (servient tenement), regardless of who the owner might be, and its everyday owner is bound to sufferance or omission as the result.
- (2) The way in which the holder of a servitude is authorised to use the servient tenement is determined at the moment of establishing such servitude; if the servitude is to be established based on a legal transaction, the person to whom the servient tenement belongs determines the way in which the holder of the servitude is authorised to use the servient tenement according to his own free will or based on an agreement with the acquirer; if it is established based on a court decision or a decision by another authority, it is determined in such decision; otherwise, it is determined by law.
- (3) Servitudes have contents with which they are established, unless they are lawfully changed at a later date; any person claiming the content has changed has the burden of proof.

#### **Purpose**

##### Article 175

- (1) Any servitude has to have a reasonable purpose.
- (2) If the purpose of a servitude is better and more beneficial administration of a piece of real property, the servitude is real; otherwise it is personal.

#### **Holders of Servitudes**

##### Article 176

A piece of real property may be burdened with a servitude either in favour of the everyday owner of a particular real property (dominant tenement) or the person having the right to build on it, or in favour of a particular person.

### **Enforcing Powers**

#### Article 177

- (1) The holder of a servitude may enforce powers vested in him based on his right according to his own will, however, not by extending them, but by constricting them to the extent permitted by the nature and purpose of the servitude.
- (2) The holder of a servitude has to act considerately in enforcing his powers, burdening the servient tenement as little as possible.
- (3) The owner of a servient tenement may not do anything that would prevent or make the enforcement of the servitude excessively burdensome; however, he is not bound to do anything by himself, unless provided otherwise.

### **Changing the Way of Enforcement**

#### Article 178

- (1) The holder of a servitude may change the way of enforcing his powers regarding the content and place of enforcement on the servient tenement according to his own will, unless the change would be materially different from the way in which he enforced them until such time.
- (2) If the present way of enforcing powers would change materially, the change is permitted only in agreement with the owner of the servient tenement, and if such change would hinder the performance of other real rights on the thing in question, it is permitted in agreement with the holders of such other rights as well.
- (3) The provisions on establishing servitudes based on legal transactions apply accordingly to the change referred to in paragraph 2 of this Article.

### **Transfer to Another Location**

#### Article 179

- (1) Servitudes are a burden on the entire servient tenement; however, if they are continually enforced only against a part of such servient tenement, the owner of the servient tenement may require the enforcement to be transferred to another location equally suitable to the holder, if the enforcement on the present location has become especially burdensome for the owner.
- (2) The cost of transferring a servitude is borne by the owner of the servient tenement.
- (3) The owner's right referred to in paragraph 1 of this Article may not be either excluded or limited in a legal transaction.

### **Enforcing Several Servitudes on One and the Same Servient Tenement**

#### Article 180

- (1) There may be several servitudes on one and the same piece of real property, and a newer servitude may not limit the enforcement of those preceding it in the order of priority.
- (2) If a servitude or another real burden granting the right to benefits has the same order of priority, and the enforcement of one hinders the enforcement of another, each holder may file a motion with the court to regulate the enforcement equitably in the interest of all holders.
- (3) No one may have a servitude on the right of servitude of another.

### **Cost of Maintenance**

#### Article 181

- (1) The cost of maintaining and repairing the servient tenement is borne by the holder, unless provided otherwise.
- (2) If the owner also uses the servient tenement, he has to bear proportionately the cost referred to in paragraph 1 of this Article; however, he may be released from the obligation if he assigns the servient tenement to the holder, even if against his will.
- (3) The holder who has a device in the servient tenement, used to enforce his servitude, he is bound to duly maintain the device, in line with the interests of the owner of the servient tenement.

(4) The cost of maintaining the device referred to in paragraph 3 of this Article is borne by the holder; however, if the device is also beneficial to the owner of the servient tenement, he is also bound to participate in the cost of maintaining it proportionately to the extent of the benefit, unless agreed otherwise.

### **Inseparability**

#### Article 182

- (1) Servitudes may not be separated arbitrarily from the servient tenement or transferred to another holder or thing.
- (2) Servitudes are transferable only with the servient tenement, and personal servitudes also with the dominant tenement.

### **Effect of Partition**

#### Article 183

- (1) Servitudes are indivisible; any increasing, decreasing or fragmenting of the servient tenement, including the change of form, surface area or degree of construction on the cadastral plot that is the servient tenement cannot change or partition the servitude on such estate, unless provided otherwise by law.
- (2) If a servitude is enforced only against a specific part of the servient tenement, and if such servient tenement is to be partitioned, a motion may be filed to repeal the servitude existing against other parts of the servient tenement.
- (3) In the event of partitioning a piece of real property that is a dominant tenement in the favour of which there is a real servitude, such servitude shall remain in favour of all parts; however, it may be enforced only so that it does not result in an increase of the total burden on the owner of the servient tenement; however, if the purpose of the servitude was to serve the needs of only one part which became separated, a motion may be filed to have it repealed against the other parts.

### **Apparent Servitudes**

#### Article 184

- (1) Powers such as are granted by a servitude may be granted even until repeal (apparent servitudes), in which case the powers and duties shall be evaluated until such repeal by applying the rules on servitudes.
- (2) Any deviations from the nature of a servitude are not presumed: any person claiming there have been deviations has the burden of proof.

### **Statutory Servitudes**

#### Article 185

If a particular piece of legislation provides that under certain conditions certain servitudes encumber those things regarding which the conditions are met (statutory servitudes), such limitations are statutory limitations to the right of ownership, and they are not governed by the rules on servitudes, unless provided otherwise by law.

## **Title 2**

### **REAL SERVITUDES**

#### *Section 1*

### **General Provisions**

### **Dominant Tenements and Servitudes**

#### Article 186

- (1) A real servitude is a real right of the everyday owner of a piece of real property (dominant tenement) to use the real property of another in a specified manner (servient tenement) for the purposes of his own real property, and the everyday owner of which has to endure the sufferance or omit to take certain actions regarding his real property that he would otherwise be entitled to do.
- (2) A real servitude established in favour of a piece of real property as dominant may not be separated from the ownership of the real property, and it is its appurtenance, transferable only with such real property.

(3) A real servitude may also exist in favour of real properties that are public things subject to common use or public use, unless contrary to their legal nature.

(4) If a dominant tenement is owned by several co-owners or joint owners, each of them is entitled to an equal right of enforcement of real servitudes in favour of the dominant tenement, and if a servient tenement is owned by several co-owners or joint owners, each of them has to suffer that the person having the servitude burdening their real property use such real property in the authorised manner, that is, each of them has to omit to do actions regarding the servient tenement that would be contrary to the right of real servitude of such other person.

### **Right to Build on Dominant Tenement**

#### Article 187

Provisions relating to the owner of a dominant tenement apply accordingly to the person having the right to build, unless provided otherwise or arising otherwise from the nature of the right.

### **Content of the Powers**

#### Article 188

(1) The owner of a dominant tenement and the owner of a servient tenement may establish real servitudes of any content that is possible, as long as it is not prohibited, thus creating either a condition that lasts and where performance by the holder is not necessary to enforce the powers arising from the servitude, or enforcing the servitude by repeating human actions, consecutively or for a specific period of time or at a specific time of the year, unless provided otherwise by law.

(2) A servitude may be established to serve a dominant tenement intended for agriculture; in the case concerned it is a rural (rustic) servitude, otherwise it is an urban servitude.

(3) Rural (rustic) servitudes may be established in order to serve real properties intended for agriculture, such as in particular: 1. the right-of-way, or as the right of transit passage, the right to drive cattle, or as the right of carriage-way over the servient tenement; 2. the right to water, or as the right to draw water, the right to water cattle, or the right of water supply, that is, the right of leading off or leading water; 3. the right of pasture; 4. timber easement, or the right to cut and remove timber or to gather sticks/wood, acorns; or other.

(4) Urban servitudes may be established in order to serve a piece of real property with a building which authorise the owner of the real property to exercise his right over the neighbour's real property as a servient tenement, which the neighbour is bound to suffer, such as in particular: 1. the right to support; 2. the right to insert a support beam or rafter in the wall of another; 3. the right to have a window in the wall of another as a servitude of light or view; 4. the right to have parts of one's building either in the neighbour's air space, or on the neighbour's land, or to keep something on the property of another; 5. the right to direct smoke or other gases through the neighbour's chimney; 6. the right of drip and drain of rainwater onto the property of another; 7. the right to lead or spill liquids onto the neighbour's land; or other.

(5) Servitudes may also be established in order to serve a piece of real property with a building which authorise the owner of the real property to exercise his right over the neighbour by preventing the owner of the servient tenement from doing something that he would otherwise be free to do, such as in particular: 1. not to add a floor to his house or lower it; 2. not to deprive the dominant tenement of light and air, or view; 4. not to divert rainwater on the roof of one's house from the neighbour's land which such neighbour could use to water his garden, fill his water-tank or for another purpose; or other.

### **Irregular Servitudes**

#### Article 189

(1) Any servitude the nature of which is real may be established on the servient tenement in favour of a particular person (irregular servitude).

(2) If the servitude referred to in paragraph 1 of this Article is established, it shall be governed accordingly by the rules on personal servitudes.

(3) Any person claiming that a real servitude was established in favour of a particular person has the burden of proof.

***Particular Rules on Specific Servitudes  
Of Rights-of-way***

**Article 190**

- (1) The owner of a servient tenement having the right of transit passage is authorised to walk along such passage and let other people to his property through it; if a person has the right to drive cattle, he is also authorised to use a cart; if a person has the right of carriage-way, he is authorised to drive on the servient tenement using one or more drawn cart(s), a motor vehicle and bicycle.
- (2) The right to walk along a passage does not include the authority to go horse-back riding or ride a bicycle or push a bicycle along the servient tenement; the right to drive cattle does not include the authority to pull heavy loads across the servient tenement; the right of carriage-way over the servient tenement does not include the right to drive unrestrained cattle.
- (3) The space for the enforcement of the right of transit passage, the right to drive cattle and the right of carriage-way on the servient tenement has to be big enough to facilitate enforcement, in view of the local circumstances. If the passages and paths should become unusable because of a flood or another incident, new space has to be provided until restoration to the previous condition if the competent authority fails to take immediate necessary measures.

**Of Rights-of-way as Necessary Way**

**Article 191**

- (1) A necessary way is a right-of-way established by the court at the request of the owner of a piece of real property which has no connection or no appropriate connection to a public road.
- (2) A necessary way is governed by the rules applicable to rights-of-way, unless there is a particular provision regarding the necessary way.

**Of Servitudes of Water Supply**

**Article 192**

- (1) The owner of a dominant tenement authorised to lead water from the servient tenement is also entitled to free access to it.
- (2) The owner of a dominant tenement authorised to lead waters from the property of another to his land or lead off waters from his land to the land of another is also authorised to bear the cost of placing any tubes, gutters, dams, water-tanks and other equipment, to the extent determined according to the needs of the dominant tenement.

**Of Servitudes of Pasture**

**Article 193**

- (1) If at the moment of acquiring the right of pasture the species and the number of cattle or the time and measures to enforce the right of pasture are not determined, the way of enforcing peaceful possession of the right of servitude over the previous twenty years is applicable.
- (2) If the species and the number of cattle cannot be determined according to the rule referred to in paragraph 1 of this Article, the following rules shall apply:
- unless contrary to a particular regulation, the right of pasture includes all species of draught animals, bovine cattle and sheep, except for pigs and poultry or goats in mountainous regions; any cattle that is unclean and unhealthy, as well as the cattle of another are always excluded from pasture;
  - if the number of cattle on pasture has changed in the past twenty years, the average number in the first three years is taken as relevant, and if it is not clear what the number is, what would be fair has to be taken into account in view of the size and substance of the pasture-ground; the person having the right is not authorised under any circumstances to hold more cattle than would be possible to feed with the forage from the dominant tenement over the winter months on somebody else's pasture; any cattle not weaned yet is never counted.
- (3) The time of pasture is determined according to local customs; however, the cultivation of land, which is regulated in a particular piece of legislation, may never be hindered or made burdensome because of the pasture.
- (4) The right of pasture does not extend to any other benefit; accordingly, the holder may not cut grass, damage the substance of the pasture or prevent the cattle of the owner of the servient

tenement from grazing on the servient tenement, and if a danger exists that the cattle might cause damages, a suitable sentry arrangement has to be put in place.

#### **Of Other Rural (Rustic) Servitudes**

##### Article 194

The provisions on the right of pasture apply accordingly to the right to cut timber and other rural (rustic) servitudes.

#### **Of the Right to a Window**

##### Article 195

- (1) The right to a window in a wall of the servient tenement entitles the owner of the dominant tenement to the right to light and air, but to a view only if the authority was expressly granted.
- (2) Any person not having the servitude of view is bound to insert a grate in the window at the request of the owner of the wall.
- (3) Any person having the right to a window is bound to watch over the opening; any person who neglects such a duty is held liable for the resulting damages, if any.

#### **Of the Right to Have Parts of One's Building and Equipment on the Servient Tenement**

##### Article 196

- (1) The owner of a dominant tenement who is authorised to have a part of his building or a device or other equipment serving his building on the neighbouring property, on its surface area, below it or in its air space based on his right of servitude, is bound to bear the cost of maintaining such part of his building, device or equipment, and to pay to the owner of the servient tenement compensation for using his real property in the amount of rent, unless provided otherwise in an agreement or by law.
- (2) The provision of paragraph 1 of this Article applies accordingly where the owner of the dominant tenement is authorised to have conduits and other equipment (electricity, sewage, gas, water supply, heating, telecommunications and other) on the neighbouring estate, on its surface area, below it or in its air space.
- (3) The owner of a servient tenement who has to bear the weight of the neighbouring building, the support beam of another in his wall, the passage of smoke of another through his chimney, the antenna of another on his roof, the advertisement or sign of another on the facade of his building or other, is bound to contribute to the maintenance of his wall, pillar, rock, chimney, roof, facade and other; he is, however, not bound to support or repair the thing of another.

#### **Of the Right to Direct Liquids**

##### Article 197

If ditches and channels are needed to direct liquids through the servient tenement, the owner of the dominant tenement has to build them and maintain them well-covered and clean, thus making the enforcement of the servitude on the servient tenement less burdensome.

#### **Of the Servitude of Rain Drip**

##### Article 198

- (1) The owner of a dominant tenement who has the right to divert rainwater from his roof onto the servient tenement (the servitude of rain drip) may let rainwater drip and drain from his roof onto the real property of another either with or without a gutter.
- (2) The person having the right referred to in paragraph 1 of this Article may raise his roof, provided that he takes measures so as not to make the enforcement of the servitude more burdensome for the owner of the servient tenement.
- (3) The person having the right referred to in paragraph 1 of this Article has to maintain gutters used to direct rainwater away from his roof, as well as the roof itself so that the rainwater does not cause damages to the servient tenement, as well as to clean the snow in a timely fashion.

### **Title 3**

## **PERSONAL SERVITUDES**

### *Section 1*

#### ***General Provisions***

### **Servitudes of Personal Nature**

#### Article 199

- (1) Personal servitude is a real right granting a specific person the right to use the property of another in a specific manner (servient property), and obliging the everyday owner to such use.
- (2) There are three sorts of personal servitudes: usufruct, right of use, and habitation.

### **Servient Property**

#### Article 200

- (1) Personal servitudes may be imposed on the entire servient property, but also on its proportional share, if that is possible in view of the content of the servitude and the nature of the object.
- (2) If ownership of a particular part of real property is established on one of its proportional shares, a personal servitude may have as its subject matter such particular part only together with the proportional share on which ownership of such particular part is established.

### **Limited Duration**

#### Article 201

Personal servitudes last for the period of their establishment, and they terminate at the latest by the death of their holder, unless provided otherwise by law.

### **Non-alienability and Non-inheritability**

#### Article 202

- (1) Personal servitudes may not be transferred from the holder to any other person.
- (2) Personal servitudes cannot be inherited, save for servitudes which expressly also cover the holder's heirs.
- (3) Without prejudice to the foregoing, if a personal servitude expressly also covers the holder's heirs, it shall be passed to the heirs by inheritance following the death of the holder; when an heir who inherited a personal servitude dies, the personal servitude is also extinguished, without any exceptions.

#### *Section 2*

### ***Particular Rules on Specific Servitudes***

#### *a/ Usufruct*

### **General Principles**

#### Article 203

- (1) A usufruct is a personal servitude that provides its holder (usufructuary) with the right to use a thing of another (servient property) in accordance with its purpose, while preserving its substance.
- (2) A usufruct may exist on servient property that is non-consumable, regardless whether it is movable or immovable, as well as on several movables together; it may exist on consumables only in the form of a quasi-usufruct.
- (3) A usufruct may exist on a right yielding fruits or other benefits, in which case the right is taken to be a thing, and the provisions on things under paragraph 2 of this Article apply accordingly.
- (4) The subject matter of any usufruct is the thing within the meaning of paragraphs 2 through 4 of this Article, together with all its component parts.
- (5) Several people may enjoy a usufruct on one and the same servient property, in which case each of them is an independent holder of his share of the usufruct, except when their relationship is such that the usufruct or a part thereof belongs to them jointly; in case of doubt, it is deemed that each of them is entitled to the same portion of the usufruct.
- (6) If a servient property is owned by several co-owners or joint owners, each of them has to suffer that the person having the usufruct burdening their piece of real property uses it in accordance with his right.

### **Powers**

#### Article 204

- (1) The usufructuary is authorised to use the servient property in accordance with its purpose, regardless of the extent of his needs, to have it in possession as an independent possessor and to



utilise it for himself, and he is also entitled to net income of the net value of the property, but only to the extent to which its substance is preserved, including the preservation of the basic purpose of the servient property.

(2) The usufructuary may empower another person in a legal transaction to enforce his authorities referred to in paragraph 1 of this Article.

(3) The owner of the servient property has to suffer the enforcement of the usufructuary's authorities on his property, and may enforce his right of ownership only in a way that does not violate the right of the usufructuary.

### **Net Revenues of Net Value**

#### Article 205

(1) All revenues derived from the servient property without diminishing its substance belong to the usufructuary; however, he bears the costs and burdens laid down in this Act.

(2) Revenues derived from the servient tenement include all fruits and other benefits derived from the property without diminishing its substance; any treasure found on the servient property does not represent revenues of the usufructuary.

(3) The usufructuary acquires fruits of the servient property on their separation, and the same applies to everything else that becomes separated from the property without diminishing its substance, unless provided otherwise by law.

(4) The provision of paragraph 3 of this Article relating to fruits also applies to rentals, interest and other revenues derived from the property in a legal transaction (civil fruits), and what relates to the period of duration of the usufruct belongs to the usufructuary, regardless when it became mature and whether gathered; the rest belongs to the owner of the servient property, and he may claim it.

(5) The usufructuary bears all costs connected to the use and utilisation of the servient property, regardless of the actual amount of revenues.

(6) As a good host, the usufructuary has to maintain the servient property in a condition in which he received it and bear all costs of ordinary maintenance and repair, as well as any related public obligations (tax and other), real burdens encumbering it and interest on claims secured by a mortgage against such property; the usufructuary is bound to bear the costs only within the limitations of the value remaining after deducting the costs referred to in paragraph 5 of this Article from the revenues referred to in paragraphs 2 through 4 hereof.

### **Extraordinary Repairs and Restoration**

#### Article 206

(1) If it becomes necessary to make extraordinary repairs or extraordinary restoration works on the servient property because of age or force majeure, the usufructuary is bound to notify the owner thereof without any delay, or any person administering the property on behalf of the owner, unless he is bound to bear the cost of such repairs or restoration himself.

(2) If the owner of the servient property makes the necessary extraordinary repairs or extraordinary restoration works on the servient property, the usufructuary is bound to reimburse the owner for the interest on the value that the owner spent, to the extent in which his usufruct improved.

(3) If the owner cannot or will not perform the necessary extraordinary repairs or extraordinary restoration works, the usufructuary is not authorised to require of such owner to make such repairs or restorations on the property that is his; however, he may do them himself and on dissolution of the usufruct claim reimbursement as a fair possessor, or claim appropriate compensation for the usufruct lost as the result of the failure to build.

(4) The usufructuary is bound to bear the cost of such extraordinary repairs and extraordinary restoration works on the property that he caused himself or that were caused by the person for whom he is responsible.

### **Improvements**

#### Article 207

(1) The usufructuary is not bound to permit to the owner to make improvements on the servient property that are not necessary, unless the owner commits himself to providing full reimbursement of the use and revenues lost by the usufructuary as the result of such works.

(2) The owner of property who made improvements has the right to require of the usufructuary claiming reimbursement under the provision of paragraph 1 of this Article to deduct from the reimbursement concerned the benefit that the usufructuary enjoys as the result of the improvements.

(3) If the usufructuary makes improvements without coming to an agreement with the owner, he is authorised to separate and take for himself what he added, if that is possible without damaging the property in question; he may claim reimbursement for such improvements only if he would be entitled to such reimbursement as an administrator without an order.

### **Inventory and Assessment**

#### Article 208

(1) The owner and the usufructuary shall draw a legalised inventory of all servient properties and indicate their value at the time of drawing the inventory and the assessment in order to facilitate the proving of mutual claims.

(2) In the absence of the inventory and the assessment referred to in paragraph 1 of this Article, it is deemed that the usufructuary received the servient property in a usable condition of medium quality, with all component parts necessary for proper enjoyment of the usufruct.

### **Security**

#### Article 209

(1) If the substance of the servient property is jeopardised, the owner may ask the usufructuary to provide reasonable security.

(2) If the usufructuary does not provide security which he assumed the obligation to provide or which the court instructed him to provide, the owner may ask the court to repeal the usufruct, provided that the owner gives equitable compensation for it.

(3) The court shall not repeal the usufruct but appoint an administrator for administration on behalf of the usufructuary if that is better in view of the circumstances of the case, further to a request by the usufructuary to that effect after having assumed an obligation to bear the cost of such administration as the cost of using and utilising the servient property.

(4) The court which appointed an administrator shall also make the inventory and the assessment of the servient property without any delay.

### **Restitution**

#### Article 210

(1) Upon termination of the usufruct, the former usufructuary is bound to deliver possession of the servient property to its owner, and the property has to be in the same condition as the one in which the usufructuary received it.

(2) If the property is not in the same condition as the one in which the usufructuary received it, he is accountable to the owner for the diminished value, regardless of the cause; however, he is not held accountable for the diminished value because of age or regular wear and tear that could not be avoided or remedied by full performance of the duties referred to in Article 205 paragraph 6 of this Act.

(3) The usufructuary is not accountable for the diminished value of the servient property that could have been avoided or remedied only by extraordinary repairs or extraordinary restoration works on the property, unless he was bound to bear the cost of such extraordinary repairs or extraordinary restoration works.

(4) Fruits that are still ungathered belong to the owner, and he shall have to reimburse the usufructuary or his heir for the cost incurred by the usufructuary to obtain such fruits according to the rules governing the legal position of a fair possessor on returning the property to its owner.

(5) The provisions of paragraph 4 of this Article on ungathered natural fruits also apply to civil fruits (rentals, interest etc.) relating to the period following the termination of the usufruct.

(6) The duties and responsibilities of the usufructuary are a burden of his heir or another universal successor.

### **Quasi-usufruct**

#### Article 211

- (1) If the usufruct is established on property that is consumable or a right that does not yield any fruits, this is a quasi-usufruct.
- (2) In the event referred to in paragraph 1 of this Article, the servient property is the monetary value of the property to be returned to the owner upon termination of the usufruct.
- (3) The usufructuary may dispose of ready cash during the quasi-usufruct as he sees fit; however, if the usufruct already exists on the principal, the holder may claim only interest.
- (4) The quasi-usufruct is governed accordingly by the usufruct rules, unless provided otherwise by law or by the nature of such usufruct.

#### *b/ Right of Use*

### **General Principles**

#### Article 212

- (1) The right of use is a personal servitude which confers in favour of a person (person having the right of use) a specified use of a thing (servient property) in accordance with its purpose, while preserving its substance.
- (2) The right of use may exist on servient property that is non-consumable, regardless whether it is movable or immovable, as well as on several movables together; it may not exist on consumables even in the form of a quasi-right of use.
- (3) The right of use may exist on a right that yields fruits or other benefits, in which case the right is taken to be a thing, and the provisions on things under paragraph 2 of this Article apply accordingly.
- (4) The subject matter of any right of use are things within the meaning of paragraphs 2 and 3 of this Article, together with all their component parts.
- (5) The right of use may not be enjoyed by several people, except when their relationship is such that the right of use belongs to them jointly.
- (6) The right of use is governed accordingly by the usufruct rules, unless provided otherwise by law or by the nature of such right of use.

### **Powers**

#### Article 213

- (1) The person having the right of use is authorised to use the servient property for his needs by holding it, to the determined extent, in possession as a non-independent possessor, using it and gathering its revenues, while preserving its substance.
- (2) The person having the right of use may not empower another person to perform his powers referred to in paragraph 1 of this Article in a legal transaction.
- (3) The owner of servient property has to suffer the performance of the powers of the person having the right of use on the thing, and may enforce his right of ownership only if that shall not result in a violation of the right of the person having the right of use; accordingly, all benefits arising from the thing without disturbing the person having the right of use belong to the owner.

### **Needs of the Person Having the Right of Use**

#### Article 214

- (1) Regardless of his other property, the person having the right of use is authorised to use servient property in accordance with his needs, appropriate in view of his age, occupation, profession and the size of his household.
- (2) Needs of the person having the right of use are determined according to the situation existing at the time of establishing the right of use; subsequent changes of occupation and profession do not entitle the person having the right of use to extend the right of use, unless provided otherwise.
- (3) Needs of the person having the right of use include the needs of his family household, including any changes in the family household that could be naturally expected and foreseeable

(spouse and underage children, as well as persons he is bound to support in accordance with law) or which are necessary for maintaining the family household.

### **Acquiring Fruits and Other Benefits**

#### Article 215

(1) The person having the right of use acquires the fruits of servient property when he gathers them for his needs based on the powers following from the right of use, and the same applies to all other benefits of the thing.

(2) The provision of paragraph 1 of this Article relating to fruits also applies to rentals, interest and other revenues derived from the thing as the result of a legal relationship (civil fruits); however, the person having the right of use is not authorised to gather anything not relating to the period of duration of his right of use; the rest belongs to the owner of servient property, who may claim it.

### **Costs and Burdens**

#### Article 216

(1) All benefits derived from the thing without having disturbed the person having the right of use belong to the owner, and the owner is bound to bear all ordinary and extraordinary costs and burdens on the servient property, as well as to bear the cost of maintaining it in good condition.

(2) If the costs and burdens are in excess of the benefit to the owner, the person having the right of use has to bear the cost of such difference, unless he waives his right of use.

#### *c/ Habitation*

#### Article 217

(1) Habitation is a personal servitude authorising its holder (person having the right of habitation) to use a house or a part thereof of another intended for habitation (servient property) in accordance with its purpose, while preserving its substance.

(2) Habitation is evaluated on the basis of the rules on use, unless provided otherwise.

(3) If the right of habitation authorises the person having the right of habitation to use all parts of a building intended for habitation by taking full advantage of it, while preserving its substance, the right is actually the right of usufruct of a residential building and is evaluated according to the usufruct rules.

(4) The owner retains the right to dispose of those parts of real property not intended for habitation, as well as of the residential parts of the building which are not the subject matter of the right of habitation of the person having the right of habitation, but not so as to prevent the enforcement of the right of habitation.

(5) In the enforcement of the right of habitation, it must not be made impossible or burdensome for the owner to examine the entire piece of real property that he owns.

## **Title 4**

### **ACQUISITION**

#### *Section 1*

### ***Establishing Servitudes***

#### **General Principles**

#### Article 218

(1) A real servitude may be established in a legal transaction made by the owner of a servient tenement, a court decision or a decision by another authority, or by the operation of law, as an appurtenance of the dominant tenement for its everyday owner, being a charge on the servient tenement.

(2) A personal servitude in favour of a particular person as a charge on a particular thing as servient is established on the basis of a legal transaction made by the owner of the servient tenement, and the same applies to the establishment of irregular servitudes.

(3) A servitude is established upon the fulfilment of all conditions provided by law.

#### *a/ Establishment in a Legal Transaction*

### **Legal Foundation**

#### Article 219

- (1) Duly concluded legal transactions, the purpose of which is the acquisition of servitudes, serve as the basis for establishing servitudes by derivation from ownership of the servient property, that is, from the belonging of the right that is servient property, as provided by law.
- (2) The content of servitudes is determined by the owner of servient property, that is, the person having the right that is servient property, or in agreement with the acquirer in a legal transaction referred to in paragraph 1 of this Article.
- (3) In the legal transaction referred to in paragraph 1 of this Article, a servitude may be limited and encumbered in any way that is possible, and that is not impermissible or contrary to the legal nature of the right.
- (4) A legal transaction, the purpose of which is to establish a servitude, next to having to meet general conditions for its validity, has to be in written form if the servient property is a piece of real property.
- (5) If a piece of real property is owned by several co-owners or joint owners, only all of them may agree to burden the real property with a servitude.

### **Method of Establishing Servitudes on Real Properties**

#### Article 220

- (1) A servitude on a piece of real property is established by entry of the right in the land register as a burden on the servient tenement, unless provided by law that the servitude is to be established differently.
- (2) If not all conditions for registration laid down by land registry law are met, and an application to register a servitude has been filed, the right shall be established in the form of a conditional registration under the condition of subsequent justification of the entry, provided that the conditions under which land registry law permits conditional registrations are met.
- (3) Servitudes on real properties that are not registered in the land register are established by depositing with the court a legalised document suitable for registration of the right in the land register, stating that the owner of real property permits the servitude to be registered; the deposition is regarded as a registration or conditional registration, and the rules on acquisition by entry in the land register apply accordingly.
- (4) The provisions of this Act on establishing servitudes on real properties by entry in the land register apply accordingly to any changes and termination of servitudes based on legal transactions.

### **Protecting the Confidence**

#### Article 221

The provisions of Articles 122 through 125 of this Act apply accordingly to the protection of confidence in the land register regarding servitudes, unless they are contrary to the legal nature of the rights.

### **Method of Establishing Servitudes on Chattels**

#### Article 222

- (1) A personal servitude on a chattel is established by surrendering the thing in question to the acquirer into non-independent possession, based on a duly declared will of the owner to the effect that the right of servitude should be derived for the acquirer, unless provided otherwise by law.
- (2) If the owner concludes several legal transactions in order to establish a personal servitude on one and the same thing as servient, and such servitudes cannot exist simultaneously on one and the same thing, the servitude with respect to which the thing was submitted first is deemed to be established, provided that all other conditions for acquiring the servitude are met.
- (3) In the event referred to in paragraph 1 of this Article, relations between the seller and those people with whom he concluded legal transactions, but who did not acquire a personal servitude, are regulated by the law on civil obligations.

*b/ Establishment by Decision of the Court or Another Authority Establishment by Decision*

Article 223

- (1) The court may establish a servitude in its decision under the conditions laid down by law, in a proceeding of establishing necessary way or necessary establishment of the servitude of conduits or other equipment in the procedure of partition and in probate proceedings, as well as in other cases provided by law.
- (2) A real servitude may be established under the conditions laid down by law by a competent administrative authority in a proceeding of expropriation and land consolidation, and in other cases provided by law.
- (3) A servitude is established at the moment the court decision referred to in paragraph 1 of this Article becomes legally effective, that is, at the moment the decision by another authority referred to in paragraph 2 of this Article becomes final, unless provided otherwise by law or arising otherwise from the purpose of adopting the decision.
- (4) The person having the right of servitude based on a court decision or a decision of another authority is authorised to obtain entry of the right in the land register.

**Decisions on Necessary Way**

Article 224

- (1) The owner of a piece of real property that has no access to a public road or that has no suitable access to a public road may request the court to establish necessary way over another property as servient tenement in a decision, provided that the benefit of opening the necessary way for administering the dominant tenement is greater than the damage to the servient tenement. The owner of the real property in whose favour the necessary way is to be established is bound to provide full compensation to the owner of the servient tenement.
- (2) The court may not establish a necessary way over real properties if that would be opposed to public interest, through buildings, enclosed house yards or enclosed wildlife management reserves; a necessary way through enclosed gardens and vineyards may be established only if there is a particularly good reason to do so.
- (3) The court shall determine in its decision establishing a necessary way that it is to be established in favour of a particular piece of real property as the right of transit passage, the right to drive cattle, the right of carriage-way, or all of the above, taking into account the needs of the dominant tenement and the necessity to make the enforcement of the necessary way as least burdensome for the servient tenement as possible; however, a necessary way may never be established in favour of a particular person or common things.
- (4) In its decision establishing a necessary way, the court shall impose an obligation on the owner of the property that is to be the dominant tenement to pay full monetary compensation to the owner of the servient tenement for everything that he is to suffer or incur in costs, and the compensation may not be less than he would be entitled to in the case of expropriation in the interest of the Republic of Croatia. The establishment of a necessary way shall be conditional on full payment of the compensation, unless the parties come to a different understanding regarding the subject matter of compensation.

**Decisions on Necessary Conduits or Other Equipment**

Article 225

- (1) The owner of an estate that has no access to the supplier of substances, energies or services or that has no suitable access to the supplier of substances, energies or services may request from the court to establish a servitude of conduits or other equipment (electricity, sewage, gas, water supply, heating, telecommunications etc.) over the property of another as servient tenement in a decision, provided that the benefit of placing such conduits or equipment for administering the dominant tenement is greater than the damage to the servient tenement. The owner of the real property in whose favour the servitude of conduits or other equipment is to be established is bound to provide full compensation to the owner of the servient tenement.
- (2) The rules governing the necessary way apply accordingly to the necessary establishment of the servitude of conduits or other equipment referred to in paragraph 1 of this Article.

### **Decisions in Partition or Probate Proceedings**

#### Article 226

- (1) The court conducting a proceeding relating to the partition of co-ownership or joint ownership may decide to establish a real servitude if the parties agree or, in the event of geometric partition of a piece of real property, without their permission.
- (2) The court conducting a probate proceeding shall decide in its decision to establish a servitude if the testator ordered the establishment of such right in a valid document or order.
- (3) Any servitude the establishment of which was ordered by the court pursuant to the provisions of this Article shall be established according to the method provided by this Act for the acquisition of a servitude in a legal transaction.

### **Protecting the Confidence**

#### Article 227

A servitude burdening a piece of real property established by a decision of the court or other authority, but not registered in the land register, may not be opposed to the right of the person who, having relied on the information in the land register, registered his right on the real property in good faith before the servitude established by the decision of the court or another authority was entered.

#### *c/ Establishment by the Operation of Law*

### **General Principles**

#### Article 228

- (1) A servitude shall be established by the operation of law if all conditions laid down by law to establish a servitude by occupancy are met; otherwise, it may be established by the operation of law only if so provided in a particular piece of legislation.
- (2) Any person having acquired a servitude on a piece of real property by the operation of law is authorised to obtain an entry of the acquired right in the land register.

### **Servitude by Occupancy**

#### Article 229

- (1) A real servitude is established by occupancy if the possessor of the dominant tenement has had it in fair possession enforcing its content over a period of twenty years, and the owner of the servient tenement has not voiced any objections.
- (2) A real servitude may not be established by occupancy if its content has been being enforced by abusing the trust of the owner or possessor of the servient tenement, by force, covertly, or at request until revocation.
- (3) If the nature of a servitude is such that it may be enforced only seldom, any person claiming the servitude to have been acquired by occupancy in favour of his real property as a dominant tenement has to prove that over a period of at least twenty years the servitude was exercised at least three times and that he or his predecessor enforced its content each time.

### **Protecting the Confidence**

#### Article 230

The right of real servitude established by the operation of law as a charge on a piece of real property, but which is not entered in the land register, may not be opposed to the right of the person who, having relied on the information in the land register, entered his right on the real property in good faith before the right of servitude established by the operation of law was registered, even if the right is established in a court decision.

#### *Section 2*

### **Acquiring Servitudes of Another Acquisition by Dominant Property**

#### Article 231

Any person who acquires ownership of dominant property, regardless of the legal foundation, shall have also acquired all rights of real servitude that are its appurtenances, unless provided otherwise.

#### **Acquisition by Servient Property**

Article 232

Any person who acquires ownership of servient property, regardless of the legal foundation, shall have also acquired it burdened with all real servitudes thereon, unless provided otherwise by law.

### **Title 5**

#### **PROTECTION**

#### **Request to Respect the Right of Servitude**

Article 233

(1) Any person having the right of servitude has the right to require of the owner of servient property to recognise and endure as sufferance his right of servitude against the servient property, and to endure as sufferance the enforcement of the holder's right to it, that is, to omit to do what he is bound to omit to do because of the holder's right to it; he also has the right to require the same of any other person denying his right of servitude or arbitrarily preventing or interfering with the enforcement of the right.

(2) Each individual co-owner and joint owner of dominant property and each individual of several people having the same right of usufruct are entitled to the right referred to in paragraph 1 of this Article.

(3) The right referred to in paragraph 1 of this Article terminates on expiration of the term of twenty years from the moment the possession of the right was taken away from the holder.

#### **Complaint by a Person Having the Right of Servitude**

Article 234

In order to exercise his right referred to in Article 233 of this Act in a court proceeding or in a proceeding before another competent authority, the person having the right of servitude has to prove his right of servitude and the respondent's act of preventing or interfering with the enforcement of the right.

#### **Complaint by a Presumed Person Having the Right of Servitude**

Article 235

(1) Any person who in a court proceeding or in a proceeding before another competent authority proves the legal foundation and the truthful way of acquiring possession of the servitude has the right to protection of his presumed right of servitude, just like the person who proved his right of servitude (presumed person having the right of servitude).

(2) The rules on the complaint by a presumed owner apply accordingly to the right of the presumed person having the right of servitude to protection.

#### **Protection against Violation by Entry in the Land Register**

Article 236

(1) Should a person violate the right of servitude by invalid entry in the land register, the person having the right is entitled to protect himself by using means foreseen in the rules of land registry law for the protection of land registry rights.

(2) The provisions on the establishment of real burdens based on a legal transaction apply accordingly to changing the content.

### **Title 6**

#### **TERMINATION**

#### **Destruction**

Article 237

(1) The right of servitude terminates on destruction of the dominant or servient property; however, the servitude is revived as soon as the property is restored to its original condition.

(2) The provisions applying to the destruction of property also apply if the thing is placed out of trade.



(3) If servient property that was destroyed is replaced by a right (right to compensation, security etc.), the right of usufruct is deemed not to have terminated by the destruction of the thing, but to still exist on the substitute as servient property.

#### **Unification**

##### Article 238

- (1) If one and the same person should come to own the dominant and servient tenement, the unification results in the termination of the real servitude concerned.
- (2) If ownership of the dominant and servient tenement becomes separated before deletion of the servitude in the land register, the servitude is revived.

#### **Waiver by the Person Having the Right**

##### Article 239

- (1) The right of servitude terminates based on a valid unilateral waiver by the person having the right of servitude, regardless of the legal foundation.
- (2) An individual co-owner or joint owner of the servient tenement may not waive the right of servitude without permission by all other co-owners or joint owners.
- (3) The owner of a dominant tenement on which there is a charge of usufruct or lien may not waive such usufruct or lien without permission by all persons having such right.
- (4) A servitude terminates on the basis of the waiver without permission by the owner of servient property, even if he enjoyed benefits as the result of the servitude.
- (5) If a servitude is entered in the land register, it shall terminate only upon its deletion.

#### **Expiration of the Term and Fulfilment of the Termination Clause**

##### Article 240

- (1) A servitude terminates on expiration of the term of its establishment or of the term of establishment of the right of ownership from which it is derived, and the same applies on fulfilment of the termination clause under which the servitude or the right of ownership from which it is derived was established.
- (2) If a servitude is established for a term until a third party reaches a certain age, it shall terminate only at such time, although the third party might have died before reaching the said age.
- (3) If a servitude is entered in the land register, it shall terminate only upon its deletion.

#### **Non-performance**

##### Article 241

- (1) The right of servitude terminates based on the statute of limitations if it was not enforced over a period of twenty years.
- (2) If the nature of a servitude is such that it may be enforced only seldomly, it shall not terminate based on the statute of limitations until the person having the right of servitude fails to enforce the servitude on three occasions when its content should be enforced.
- (3) The right of servitude terminates if the owner of servient property objected to its enforcement, and the person having the right therefore failed to enforce it uninterruptedly over a period of three years.
- (3) The right of servitude shall not become barred by the statute of limitations or terminate by non-performance as long as there is equipment on the servient property the purpose of which is the enforcement of the right.
- (5) If a servitude is entered in the land register, it shall terminate only upon its deletion.

#### **Revocation**

##### Article 242

- (1) If the right of servitude loses its reasonable purpose, the owner of servient property may request its revocation; unless expressly regulated otherwise, the decision on such revocation shall be made by the court at the request of the owner of servient property, regardless of the legal foundation on which the servitude is established.
- (2) At the request of the owner of servient property, the court shall terminate the necessary way or any other right-of-way, regardless of the legal foundation on which it is established, if it

determines that there is another more appropriate passage or another equally appropriate passage that would cause less damage to the owner of servient tenement, or another equally appropriate public passage.

(3) At the request of the owner of servient property to whom the usufructuary did not provide security he assumed the obligation to provide or was instructed to provide by the court, the court shall terminate the usufruct and bind the owner to pay equitable compensation.

(4) The court in charge of the proceeding of terminating a usufruct because the usufructuary failed to provide the necessary security may appoint an administrator for administration on behalf of the usufructuary instead of terminating the usufruct if it establishes that would be better in view of the circumstances of the case, and if so requested by the usufructuary who assumes an obligation to bear the cost of such administration as the cost of using and utilising the servient property.

(5) If a servitude is entered in the land register, it shall terminate only upon its deletion.

#### **Protecting the Trust of Another**

##### Article 243

A servitude that is not entered in the land register terminates when the servient property is acquired by a person who did not know and did not have to know about the servitude concerned.

#### **Death or Dissolution of Person Having the Right of Personal Servitude**

##### Article 244

(1) The right of personal servitudes expires upon the death of the person having the right of servitude or upon the dissolution of the legal entity having the right, unless provided otherwise.

(2) Without prejudice to the provision of paragraph 1 of this Article, if the right of personal servitude was established to expressly include heirs of the person having the right of personal servitude, it shall pass to the heirs by inheritance upon the death of the original person having the right of servitude; the personal servitude shall expire upon the death of the heir who inherited the right of personal servitude, unless provided otherwise.

(3) If the personal servitude is established in favour of a whole family, it shall expire when the family dies out; in case of doubt, it is deemed that it was established to include the heir, and any person claiming that the personal servitude was established in favour of the whole family has the burden of proof.

#### **Relief by the Operation of Law or Decision by Administrative Authority**

##### Article 145

(1) Servitudes terminate on the fulfilment of conditions laid down in a particular piece of legislation.

(2) The administrative authority shall terminate a servitude in cases and under the conditions laid down in a particular piece of legislation.

(3) If the termination of servitudes referred to in paragraphs 1 and 2 of this Article means expropriation, the person whose servitude is to terminate has the right to full compensation.

(4) If a servitude is entered in the land register, it shall terminate only upon its deletion, unless provided otherwise by law.

### **Part Five**

#### **REAL BURDENS**

##### **Title 1**

#### **OF REAL BURDENS IN GENERAL**

##### **Definition and Content**

##### Article 246

A real burden gives its beneficiary a real right on a piece of real property, authorising him to repeatedly receive things or to have acts done, as a charge on its value, that are the content of the real burden.

#### **Burdens on Real Property**

##### Article 247

(1) A piece of real property, and also several of such real properties together, may have a real burden on them if they are suitable to be the subject matter of a lien.

- (2) All component parts of a piece of real property are burdened together with the real property that has a burden on it.
- (3) The provisions applicable to a piece of real property also apply to the co-ownership shares of such real property.

### **Beneficiary**

#### Article 248

A piece of real property may have a real burden on it in favour of the everyday owner of a particular real property (dominant tenement) or the person having the right to build on it, or in favour of a particular person.

### **Content**

#### Article 249

- (1) The content of a real burden is the performance to which the beneficiary is entitled as a charge on the value of the encumbered real property.
- (2) The content of a real burden may be a possible, permissible and specified or at least specifiable performance of a repeated act of giving a thing or money, or any performances having monetary value, and not necessarily connected to the economic purpose of the encumbered real property nor serving for the realisation of the economic purpose of the beneficiary's real property.
- (3) The performance of a one-time giving or performance with monetary value may be an accessory content of a real burden, in which case the provisions applicable to the act of giving or performances referred to in paragraph 2 of this Article apply accordingly, unless provided otherwise.

### **Changing the Content**

#### Article 250

- (1) Changing the content of a real burden is permitted only in agreement with the owner of servient property, and also in agreement with the beneficiaries of such other rights if such change would interfere with the present way of enforcing other real burdens on the encumbered real property.
- (2) The provisions relating to the establishment of real burdens on the basis of a legal transaction apply accordingly to any changes to the content of a real burden.

### **Basic Obligations of the Owner**

#### Article 251

- (1) A real burden binds the everyday owner of an encumbered real property to fulfil the content of the burden in favour of the beneficiary of the burden, for which he is held accountable against the value of the real property.
- (2) The obligation referred to paragraph 1 of this Article is transferable only together with the encumbered real property.
- (3) On transfer of ownership of the encumbered real property to another person, the obligation referred to in paragraph 1 of this Article is also transferred.
- (4) The obligation referred to in paragraph 1 of this Article is not barred by the statute of limitations.

### **Individual Obligations to Give or Perform**

#### Article 252

- (1) If based on the owner's obligation referred to in Article 251 of this Act an act of giving or performance becomes mature and has to be fulfilled, the person who is the owner of the encumbered real property is bound to make such an act of giving or performance to the beneficiary as creditor, and the beneficiary is entitled to make such a claim.
- (2) The beneficiary is authorised to claim fulfilment of the individual obligation referred to in paragraph 1 of this Article, or claim its value in money in place of the mature unperformed individual obligation.
- (3) Individual obligations to give or perform become barred by the statute of limitation in three years' time from the maturity of each individual obligation.

### **Personal Liability for Individual Obligations**

#### Article 253

- (1) Any person who is the owner of an encumbered real property at a time when an individual obligation to give or perform referred to in Article 252 of this Act appears is accountable for the fulfilment of the obligation against the value of his own property, and such accountability does not terminate on termination of his right of ownership of the encumbered real property.
- (2) If a third party has encumbered real property in independent possession, he is accountable for the individual acts of giving and performances that are the subject matter of the real burden on the real property against the value of his own property, instead of the owner.
- (3) Any person having the right of usufruct on a piece of real property burdened with a real burden is accountable against the value of his own property, instead of the owner of the real property, for the individual acts of giving and performances that are the subject matter of the real burden.

### **Real Legal Liability for Individual Obligations**

#### Article 254

- (1) The everyday owner is liable for all mature individual obligations, acts of giving and performances referred to in Article 252 of this Act that have not become barred by the statute of limitations against the value of the encumbered real property, and after partition, all owners of the parts to which the real property was partitioned are held jointly and severally liable.
- (2) A real legal liability for an individual obligation to give and perform is joint and several with the personal liability for the same obligation.

### **Inseparability**

#### Article 225

- (1) A real burden may not be separated from a piece of real property which it encumbers; accordingly, any person who acquires ownership of an encumbered piece of real property, regardless of the legal foundation, shall also have acquired the real property encumbered with the real burden, unless provided otherwise by law.
- (2) Any right arising from a real burden established in favour of a person may not be transferred from the person having the right to another, unless provided otherwise, and the right arising from a real burden established in favour of the everyday owner of a piece of real property may be transferred only together with ownership of the real property.

### **Title 2**

## **BURDENS IN FAVOUR OF REAL PROPERTY**

### **Burdens and Dominant Tenements**

#### Article 256

- (1) A real burden in favour of a piece of real property (dominant tenement) gives the everyday owner of such dominant tenement a limited real right on the encumbered real property, authorising him to be the object of repeated acts of giving or performances that are the subject matter of the real burden, with the everyday owner of the encumbered real property being accountable against the value of such property.
- (2) A real burden established in favour of a piece of real property as dominant may not be separated from ownership of such real property and is its appurtenance, transferable only together with the real property.

### **Effect of Partition**

#### Article 257

- (1) If a dominant tenement is partitioned, a real burden continues to exist in favour of some of its parts, *pro rata* to the size of each part, if the acts of giving and performances that are the

subject matter of the burden are divisible; with respect to those that are not (divisible), the rules on indivisible obligations apply accordingly.

(2) A partition may not make the position of the owner of the encumbered real property more burdensome, and he is therefore entitled to request that the real burden terminate or that the acts of giving and performances that have become more burdensome for him as the result of the partition be reduced.

#### **Transferability of Individual Claims**

Article 258

Mature individual obligations to give or perform to which the everyday owner of a piece of real property is bound by a real burden in favour of a piece of real property may be transferred to another, unless provided otherwise.

### **Title 3**

#### **BURDENS IN FAVOUR OF A PERSON**

##### **Burdens of Personal Nature**

Article 259

(1) A real burden in favour of a person gives such person a limited real right on the encumbered real property, authorising him to be the object of repeated acts of giving or performances that are the subject matter of the real burden, with the everyday owner of the encumbered real property being accountable against the value of such property.

(2) A right arising from a real burden established in favour of a person may not be transferred from the person having the right to another, unless provided otherwise.

#### **Transferability of Individual Claims**

Article 260

Mature individual acts of giving or performances to which the everyday owner of a piece of real property is bound by a real burden in favour of a person may be transferred to another, unless provided otherwise or unless contrary to the nature of the performance required.

### **Title 4**

#### **ACQUISITION**

##### *Section 1*

##### ***Establishing Real Burdens***

##### **General Principles**

Article 261

(1) A real burden may be established on a particular real property as servient based on a legal transaction of the owner of the real property being burdened or based on a court decision.

(2) A real burden of public nature is established by the operation of law.

(3) A real burden is established upon the satisfaction of all conditions laid down by law.

*a/ Establishment in a Legal Transaction*

##### **Legal Foundation**

Article 262

(1) A real burden is established by its derivation from ownership of the real property being burdened based on a legal transaction the purpose of which is to establish a real burden, according to the modality laid down by law.

(2) The legal transaction referred to in paragraph 1 of this Act has to include provisions on establishing a burden on a piece of real property, its content and the beneficiary, and it has to be in written form in order to be valid.

(3) By the legal transaction referred to in paragraph 1 of this Article a real burden may be limited in any way which is feasible, and which is not impermissible or contrary to the legal nature of the right.

(4) If a piece of real property is owned by several co-owners or joint owners, only all of them may agree to impose a real burden on such real property.

##### **Method of Establishment**

Article 263

(1) A real burden is established by registration in the land register as a burden on the encumbered real property, and if it is established in favour of the everyday owner of a particular real property, then it is also registered as a right in favour of the dominant tenement, unless it is provided by law that a real burden may be established differently.

(2) If all conditions for registration laid down by land registry law are not met, and an application to register a real burden has been filed, the right shall be established in the form of conditional registration under the condition of subsequent justification of the entry, provided that the conditions under which land registry law permits conditional registrations are met.

(3) Real burdens on real properties that are not registered in the land register are established by depositing with the court a legalised document suitable for registration of the real burden on it; deposition is regarded as registration or conditional registration, and the rules on acquisition by entry in the land register apply accordingly.

(4) The provisions of this Act on establishing real burdens on real properties by entry in the land register apply accordingly to any changes and termination of real burdens based on legal transactions.

### **Protecting the Confidence**

#### Article 264

The provisions of Articles 122 through 125 of this Act apply accordingly to the protection of confidence in the land register regarding real burdens, unless contrary to the legal nature of the real burden.

#### *b/ Establishment by Court Decision*

### **Establishment by Decision**

#### Article 265

(1) The court may establish a real burden in a decision rendered in a proceeding of partition and in a probate proceeding, if authorised to establish a servitude in such a proceeding, and also in other cases provided by law.

(2) The rules on establishing servitudes by a court decision apply accordingly to the establishment of real burdens by a court decision.

#### *c/ Establishment by the Operation of Law*

### **Real Burdens of Public Law**

#### Article 266

(1) Real burdens of public law are established by the operation of law upon the fulfilment of conditions laid down by law.

(2) Unless the law based on which a real burden is established provides otherwise, real burdens of public law are not entered in the land register.

#### *Section 2*

### **Acquiring Real Burdens of Another**

### **Acquisition by Dominant Estate**

#### Article 267

Any person who acquires ownership of a dominant tenement, regardless of the legal foundation, shall have also acquired as its appurtenance a real burden existing in favour of the everyday owner of the real property, unless provided otherwise.

### **Title 5**

### **PROTECTION**

### **Request for Protecting the Holder's Right**

#### Article 268

(1) The beneficiary has the right to request from the everyday owner of an encumbered real property who by not recognising the real burden denies to give or perform the content of the burden, to recognise and suffer the enforcement of the real burden on the encumbered real property.

(2) The beneficiary has the right to request any person interfering with his enforcement of the act of giving or performing what is the content of the real burden to recognise and suffer the

enforcement of the real burden on the encumbered real property, and to put an end to the interference.

(3) Each individual co-owner and joint owner of the dominant tenement, and each individual of several persons having one and the same right derived from the real burden are entitled to independently enjoy the right referred to in paragraphs 1 and 2 of this Article.

#### **Request to a Person who is Personally Responsible**

##### Article 269

(1) The beneficiary has the right to request fulfilment of any mature, but still outstanding individual obligation referred to in Article 252 of this Act or its equivalent in money from the person who is personally responsible for the obligation pursuant to Article 253 of this Act.

(2) Each individual co-owner and joint owner of the dominant tenement, and each individual of several persons having one and the same right are entitled to independently enjoy the right referred to in paragraph 1 of this Article.

#### **Request to a Person Having Real Legal Responsibility**

##### Article 270

(1) The beneficiary is entitled to request from the owner of an encumbered real property to pay the amount of mature, but still outstanding individual obligations to give or perform referred to in Article 252 of this Act, or their equivalent in money, against the value of such real property.

(2) The beneficiary may request from a third party who has independent possession of an encumbered real property, as well as from the usufructuary of a piece of real property encumbered by a real burden the same as from the owner.

(3) Each individual co-owner and joint owner of the dominant tenement, and each individual of several persons having one and the same right are entitled to independently enjoy the right referred to in paragraphs 1 and 2 of this Article.

(4) The rules governing liens on real property apply accordingly to the request referred to in paragraphs 1 and 2 of this Article and its enforcement.

#### **Complaint by Beneficiary**

##### Article 271

(1) In order to exercise his right referred to in Article 268 of this Act in a court proceeding or in a proceeding before another competent authority, the beneficiary has to prove the existence of a real burden in his favour and the respondent's act of denying execution of the performances due, that is, the act of preventing or interfering with the execution of the performances.

(2) In order to exercise his right referred to in Article 269 of this Act in a court proceeding or in a proceeding before another competent authority, the beneficiary has to prove the existence of a real burden in his favour, that the individual obligations referred to in Article 252 of this Act are mature, and that the respondent was the owner of the encumbered real property at the moment they became mature for payment.

(3) In order to exercise his right referred to in Article 270 of this Act in a court proceeding or in a proceeding before another competent authority, the beneficiary has to prove the existence of a real burden in his favour, that the individual obligations referred to in Article 252 of this Act are mature, and that the respondent is the owner or presumed owner of the encumbered real property, that is, its independent possessor or usufructuary.

(4) The beneficiary may exercise his rights referred to in Articles 268 through 270 in a court proceeding or in a proceeding before another competent authority either jointly or separately.

### **Protection against Violations by Entry in the Land Register**

#### Article 272

If any person violates the right of the beneficiary of a real burden by invalid entry in the land register, the beneficiary has the right to protect himself against such act according to the provisions of land registry law governing the protection of land registry rights.

### **Title 6**

#### **TERMINATION**

##### **Destruction**

#### Article 273

- (1) A real burden terminates if the encumbered and the dominant tenement are destroyed; however, the real burden is revived as soon as the previous condition is restored.
- (2) The provisions that apply to the destruction of a thing also apply if the thing is placed out of trade.

##### **Waiver**

#### Article 274

- (1) A real burden terminates following a valid unilateral waiver by the beneficiary.
- (2) A waiver of the individual obligations to give or perform referred to in Article 252 of this Act is not regarded as a waiver of a real burden.
- (3) An individual co-owner or joint owner of a dominant tenement may not waive his real burden in favour of the real property without permission by the others if the content of the burden is indivisible.
- (4) The owner of a dominant tenement encumbered by a usufruct or lien may not waive a real burden in favour of the real property without permission by the persons having the rights.
- (5) If a real burden is entered in the land register, it shall terminate only upon its deletion.

##### **Expiration of the Term and Fulfilment of the Termination Clause**

#### Article 275

- (1) A real burden terminates on expiration of the term of its establishment or on fulfilment of the termination clause subject to which it was established.
- (2) If a real burden is entered in the land register, it shall terminate only upon its deletion.

##### **Revocation**

#### Article 276

- (1) If the right of servitude loses its reasonable purpose, the owner of the encumbered real property may request its revocation; unless expressly regulated otherwise, the decision on such revocation shall be made by the court at the request of the owner of the encumbered real property, regardless of the legal foundation on which the burden was established.
- (2) A real burden shall terminate pursuant to a decision by the land registry court permitting the burden to be depreciated after conducting the procedure foreseen by land registry law.
- (3) In the event referred to in paragraphs 1 and 2 of this Article, a real burden shall terminate by deletion in the land register.
- (4) The court is not authorised to revoke a real burden of public law, unless provided otherwise by law.

##### **Protecting the Trust of Another**

#### Article 277

- (1) A real burden that is not entered in the land register terminates when the encumbered property is acquired by a person who did not know and did not have to know about the real burden concerned.
- (2) The provision of paragraph 1 of this Article does not apply to real burdens of public law, unless provided otherwise by law.

##### **Death or Dissolution of Beneficiary**

#### Article 278



(1) A real burden established in favour of a particular person expires upon the death of such person, that is, upon the dissolution of the legal entity having the right, unless provided otherwise.

(2) Without prejudice to the provision of paragraph 1 of this Article, if a real burden was established to expressly include heirs of the beneficiary, it shall exist after the beneficiary's death for as long as there are those who inherit the original beneficiary; the real burden shall expire upon their death, unless provided otherwise.

(3) If a real burden is established in favour of a whole family, it shall expire when the family dies out; in case of doubt, it is deemed that it was established to include the heir, and any person claiming that the real burden was established in favour of the whole family has the burden of proof.

### **Relief by the Operation of Law or Decision by Administrative Authority**

#### Article 279

(1) Real burdens terminate on the fulfilment of conditions laid down in a particular piece of legislation.

(2) If a real burden is entered in the land register, it shall terminate only upon its deletion in the land register, unless provided otherwise by law.

(3) If the revocation of a real burden means expropriation, the person whose right derived from the real burden has thus terminated has the right to full compensation.

### **Part Six**

#### RIGHT TO BUILD

##### **Title 1**

#### OF THE RIGHT TO BUILD IN GENERAL

##### **Definition**

#### Article 280

(1) The right to build is a limited real right on someone's land, authorising the person having the right to have his own building on the surface of the land or below it, and the everyday owner of the land is bound to sufferance.

(2) The right to build is equal to a piece of real property in legal terms.

(3) Any building erected or to be erected on a piece of land that is burdened with the right to build is a component part of such right, as if it were the land itself.

##### **Content of the Right to Build**

#### Article 281

(1) Any person having the right to build is also the owner of the building that is a component part of his right, and he has the powers and duties of a usufructuary regarding land burdened with the right to build; any provision to the contrary is null and void.

(2) Any person having the right to build is bound to pay to the owner of land a monthly fee for the land in the amount of an average rent for such land, unless provided otherwise.

(3) The right to build has the content with which it was established, unless lawfully changed at a later date; any person claiming that the content changed has the burden of proof.

##### **Changing the Content**

#### Article 282

(1) Changing the content of the right to build is permitted only in agreement with the owner of the encumbered property, and also in agreement with the beneficiaries of such other rights if such change would interfere with the present way of enforcing other real burdens on the encumbered property.

(2) The provisions relating to the establishment of the right to build on the basis of a legal transaction apply accordingly to any changes to the content of the right to build.

##### **Inseparability**

#### Article 283

The right to build may not be separated from the land which it encumbers; accordingly, any person who acquires ownership of an encumbered piece of land, regardless of the legal

foundation, shall also have acquired the piece of land encumbered with the right to build, unless provided otherwise by law.

### **Person Having the Right to Build**

#### Article 284

- (1) A person having the right to build is the person in whose favour the right was established or to whom it passed.
- (2) The owner of a piece of land may hold the right to build on his own land.

### **Trade**

#### Article 285

- (1) The right to build is alienable and inheritable just like other real properties, unless provided otherwise.
- (2) There may be servitudes, real burdens and liens as a charge on the right to build.
- (3) Any building that is erected is part of the right to build, and it is transferred, inherited and burdened together with the right to build concerned.

### **Title 2**

#### ACQUISITION

##### *Section 1*

### ***Establishing the Right to Build***

#### **General Principles**

#### Article 286

- (1) The right to build may be established based on a legal transaction by the owner of the real property being encumbered or based on a decision of the court.
- (2) The right to build is deemed established when all conditions laid down by law are satisfied.

##### *a/ Establishment in a Legal Transaction*

#### **Legal Foundation**

#### Article 287

- (1) Duly concluded legal transactions, the purpose of which is the establishment of the right to build, serve as the basis for establishing the right to build by derivation from ownership of the property being encumbered, as provided by law.
- (2) The legal transaction referred to in paragraph 1 of this Article has to include provisions on the establishment of the right to build on a particular piece of real property, and it has to be in written form in order to be valid.
- (3) In the legal transaction referred to in paragraph 1 of this Article, the right to build may be limited in any way which is feasible, and which is not impermissible or contrary to the legal nature of the right.
- (4) If a piece of land is owned by several co-owners or joint owners, only all of them may agree to encumber the real property with the right to build.

#### **Method of Establishment**

#### Article 288

- (1) The right to build is established by double entry of the right in the land register, firstly by its entry as a burden on the land being encumbered, and secondly by its entry as a particular land registry unit in a newly-established land registry file.
- (2) Entry of the right to build in the land register as a burden on a piece of land being encumbered is possible only pursuant to a written declaration of will by the owner to encumber his land; however, if the right to build would be detrimental to the already registered limited real rights on the land that would be encumbered by the right to build, it may be entered only based on permission by the persons having the rights.
- (3) A building, if erected, is to be registered as if it were erected on the right to build.
- (4) The person having the right to build shall be entered in the proprietorship register of the new file and, unless the owner of the piece of land concerned determines otherwise, the owner shall be entered as the person having the right.

(5) Unless provided otherwise by law regarding the method of establishing the right to build, its changes and termination, and regarding the protection of confidence in the land register, the provisions of Articles 263 and 264 of this Act shall apply accordingly.

*b/ Establishment by Court Decision*

**Establishment by Decision**

Article 289

(1) The court may establish the right to build in a decision rendered in a proceeding of partition and in a probate proceeding, if authorised to establish a servitude in such a proceeding, and also in other cases provided by law.

(2) The rules on establishing servitudes by a court decision apply accordingly to the establishment of the right to build by a court decision.

*Section 2*

**Acquiring the Right to Build of Another  
Transfer and Inheritance**

Article 290

(1) Transfer of the right to build is governed accordingly by the provisions on acquiring the right of ownership of real properties by legal transactions, court decisions and inheritance, unless provided otherwise or arising otherwise from the legal nature of the right to build.

(2) Ownership of a building erected on the right to build is transferred simultaneously with the right to build; any provision to the contrary is null and void.

**Title 3**

PROTECTION

**Protection of the Right to Build**

Article 291

(1) The right to build, before and after a building is erected, enjoys protection according to the rules on the protection of servitudes, which are applied accordingly.

(2) The right of ownership of a building erected on the right to build enjoys protection according to the rules on the protection of the right of ownership, which are applied accordingly.

**Title 4**

TERMINATION

**General Principles**

Article 292

(1) The right to build terminates by destruction of the thing concerned, by waiver of the beneficiary, by expiration of the term and by fulfilment of the termination clause, by the protection of the trust of another, by death or dissolution of the beneficiary, by relief and by revocation.

(2) The right to build entered in the land register terminates when because of the reasons referred to in paragraph 1 of this Article it is deleted as a burden on the land encumbered with the right and as a particular land registry body.

**Destruction and Other Reasons**

Article 293

The rules on termination of real burdens apply accordingly to the termination of the right to build by destruction of the thing concerned, by waiver of the beneficiary, by expiration of the term and fulfilment of the termination clause, by the protection of the trust of another, by death or dissolution of the beneficiary and by relief.

**Revocation**

Article 294

(1) If a building is not erected on the right to build within a period of twenty years of its establishment, the owner of the encumbered property may request the right to build to be revoked; unless there is a particular provision regulating the matter, the decision on such revocation is made by the court at the request of the owner of the encumbered property, regardless of the legal foundation on which the right to build was established.

(2) The right to build on which a building was erected, but has been demolished to the extent that it may not be used for the intended purposes, shall terminate by revocation as if the building had never been erected if within a period of six years it is not re-built at least to the extent necessary to make it suitable to serve the previous principal purpose.

(3) The period referred to in paragraph 2 of this Article begins on the first day of the year following the year when the building was demolished, but does not run as long as there are circumstances under which the term of occupancy would also not run.

(4) The right to build shall terminate pursuant to a decision on revocation only upon the deletion in the land register by reason of revocation.

### **Consequences of Termination**

#### Article 295

(1) Upon the termination of the right to build, what was legally separated from the land becomes a component part of such land.

(2) The rules used to evaluate relations after termination of the usufruct, unless provided otherwise, shall apply accordingly to the relations between the landowner and the person whose right to build terminated.

(3) The owner is bound to provide to the person whose right to build terminated compensation for the building in an amount equal to the augmented value of his real property as the result of the building on it.

### **Rights of Another**

#### Article 296

(1) Real rights of another which were a burden on the right to build terminate upon the termination of the right, unless provided otherwise.

(2) After termination of the right, liens burdening the right to build shall burden the compensation that the owner is bound to give to the person whose right to build terminated.

(3) Servitudes, real burdens and liens in favour of and as a charge on the right to build with a building shall remain as servitudes and real burdens in favour of, that is, as a charge on the land with a building, based on the order of priority applicable until such time.

## **Part Seven**

### **LIEN**

#### **Title 1**

#### **OF LIEN IN GENERAL**

#### **Definition**

#### Article 297

(1) The lien is a limited real right on a particular thing (liened property) authorising the holder (lien creditor) to have a particular claim settled against the value of the thing if the claim is not settled on maturity, regardless who the owner of the thing is, and its everyday owner (lien debtor) is bound to sufferance.

(2) The provisions on liens apply accordingly to the transfer of ownership for security purposes, as well as to any other security of a claim against things or rights of the debtor or a third party, unless provided otherwise by law.

### **Liened Property**

#### Article 298

(1) A lien may be established on an individual movable or immovable thing that may be converted into money, as well as on the proportional share of such a thing.

(2) In the same way as for a thing, a lien may be established on an individual right in property against which the creditor may collect his claim, unless provided otherwise by law.

(3) In the same way as for a thing, a lien may be established on several real properties as if all of them together were one and the same thing (joint, simultaneous mortgage).

(4) Next to the thing itself, a lien is also established on all component parts of the thing, unless provided otherwise.

(5) The right to fruits derived from a thing by mediation of a legal relationship (rentals etc.) may be an independent lien.

(6) If the debtor gives a thing to the creditor as liened property, and later gives the fruits of the thing as liened property to someone else, the latter lien has effect only with respect to the fruits already separated or gathered at the time of being liened.

(7) Liens on ships and aircraft are regulated by the provisions of this Act, unless regulated in a particular piece of legislation.

### **Inseparability**

#### Article 299

(1) Liens may not be separated from the liened property concerned; accordingly, any person who acquires liened property, regardless of the legal foundation, shall also have acquired the lien itself, unless provided otherwise by law.

(2) Liens may not be transferred from one liened property to another, unless provided otherwise.

### **Lien Creditor**

#### Article 300

Liened property is burdened with a lien in favour of the everyday creditor of a particular claim whose settlement is thus secured.

### **Claims and Liens**

#### Article 301

(1) Liens are established in order to secure settlement of a particular monetary claim or a claim the value of which is expressed in money against the value of liened property; it is deemed that a claim is sufficiently determined if it specifies the creditor and the debtor, the legal foundation and the amount of the claim, or at least the maximum amount up to which it is secured by the liened property.

(2) In the same way as for an existing claim, a lien may also serve to secure a claim against the value of liened property that is yet to pass after a period of time or upon the fulfilment of a condition, provided that the claim concerned meets the conditions laid down in paragraph 1 of this Article.

(3) Next to the principal claim referred to in paragraph 1 of this Article, a lien may also serve to secure settlement of accessory claims, interest, the cost of maintaining the thing and the cost of collecting the claim against the value of liened property.

(4) For the duration of the lien, the settlement of a claim is secured by the liened property as a whole, including all its component parts; should the liened property be partitioned, the lien continues to burden what the liened property has been partitioned to or what has become separated from the liened property; if the liened property is ruined and replaced by a right to come in its stead (right to compensation, the secured amount etc.), the lien shall continue on such right.

(5) Liens serve to secure settlement of a particular claim as a whole against the value of liened property; therefore burdens on the liened property do not diminish with the diminishment of the claim, unless provided otherwise by law.

(6) If a lien is established so as to secure settlement of a particular claim against the value of several pieces of real property as a single piece of liened property (joint, simultaneous mortgage), the creditor may freely select the piece of real property to settle the claim, unless provided otherwise.

(7) The debtor who established a lien in order to secure a claim of the creditor is not bound to satisfy the creditor's claim if the liened property is not returned to him, that is, to permit deletion of the lien registered in the land register.

(8) On termination of the lien securing a claim, the claim does not terminate automatically.

### **Priority in Settlement**

#### Article 302

- (1) A claim secured by a lien has priority in settlement against the value of liened property over all other claims that are not secured by a lien on the liened property concerned, unless provided otherwise by law.
- (2) If a piece of liened property is burdened with several liens, the claim that is before all others in the order of priority has priority in settlement over other claims.
- (3) A place in the order of priority is determined on the basis of the moment of establishing the lien, unless provided otherwise by law.
- (4) The order of priority of mortgages and conditions under which a place in the order of priority may be duly assigned are governed by the rules of land registry law.

#### **Trade**

##### **Article 303**

- (1) Liens may be alienated and inherited only together with the claim being secured.
- (2) Liens may be burdened with a junior lien.
- (3) The provisions on liens apply to junior liens as well, unless provided otherwise by law or arising otherwise from the legal nature of the junior lien.

#### **Mortgage Lien**

##### **Article 304**

- (1) A voluntary lien established on a thing without handing the thing over to the creditor's possession and not authorising him to hold the liened property in possession is a mortgage.
- (2) A lien on real property may be established only in the form of a mortgage.
- (3) Movables and rights that may be acquired solely on the basis of an entry in a public register or that may not be used without an entry into such register may be burdened with a mortgage under the conditions and according to the modality laid down by law (registry lien).
- (4) Mortgages on the things referred to in paragraph 3 of this Article are governed by particular legal provisions, and subordinately they shall be governed accordingly by the provisions of this Act regulating liens on real property, unless contrary to the particular legal provisions or the nature of the mortgage concerned.

#### **Title 2**

#### **ACQUISITION**

##### *Section 1*

##### *Establishing Liens*

#### **Giving Liens on Property**

##### **Article 305**

- (1) A lien may be established on a particular thing or right as liened property based on a legal transaction of the person who owns the liened property (voluntary lien), based on a court decision (judicial lien) or law (statutory lien), according to the modality laid down by law.
- (2) A lien is deemed established when all conditions laid down by law are satisfied.

##### *a/ Establishing Voluntary Liens*

#### **Derivation from Ownership of Liened Property**

##### **Article 306**

- (1) Voluntary liens are established on the basis of legal transactions the purpose of which is to establish a lien on a particular thing or right in order to secure settlement of a particular claim against the value of liened property by its derivation from ownership of the thing or belonging of the right being burdened, according to the modality laid down by law.
- (2) If the thing being liened is owned by several co-owners or joint owners and if the right being liened belongs to several persons, only all of them may agree to lien the thing or right; however, the proportional share of a thing or right may be liened without asking for permission by the others.

#### **Lien Agreements**

##### **Article 307**

- (1) In lien agreements or mortgage agreements, the debtor or a third party (pledgor) assume the obligation to give to the creditor a movable as liened property or to permit to the creditor to enter

his lien in a public book as a burden on a particular thing, or to transfer to him a right as security for the purpose of establishing a lien that is to secure a particular claim of the creditor. The other side assumes the obligation to keep the liened movable and to return it to the pledgor as soon as the claim terminates or to do whatever necessary to have the lien deleted in the public book or to have the right transferred back.

(2) Lien agreements are governed by the same rules as agreements for a consideration, unless there is a particular piece of legislation regulating the matter.

(3) All provisions of an agreement that are contrary to the nature of liened property and the claim that should be secured by the lien are null and void.

(4) Provisions of the agreement stipulating that a piece of liened property is to fall under the ownership of the creditor if the debt is not repaid at a specific time, that the debtor may never redeem the liened property or that he may never allow anyone else to establish another lien on the same liened property, or that the creditor should not require the sale of the liened property even after the secured claim becomes mature, are null and void.

(5) Provisions that the creditor may alienate liened property or keep it for himself as he sees fit or at a price set in advance are null and void; however, they are not null and void if the liened property has a prescribed price.

(6) An agreement on giving a piece of real property in lien (mortgage agreement) has to be in written form in order to be valid.

#### **Voluntary Liens on Chattels**

##### Article 308

(1) A creditor acquires voluntary contractual liens on movables when a movable is surrendered to his possession or to the possession of a designated person based on a lien agreement.

(2) If the thing referred to in paragraph 1 of this Article has already been liened to another, the new lien creditor shall acquire a new lien on it when the lien debtor notifies the lien creditor who already has the thing in possession of the new lien and orders him to surrender it to the other lien creditor on expiration of his lien.

#### **Voluntary Liens on Real Property**

##### Article 309

(1) Creditors acquire voluntary contractual liens on real property (voluntary contractual mortgage) and on rights extended equal status as real property on entry of the right in the land register as a burden on the encumbered property, unless provided otherwise by law.

(2) If not all conditions laid down by land registry law for the entry of registration are satisfied, and an application for registration of the lien on a piece of real property has been filed, the lien shall be established by conditional registration under the condition of subsequent justification of the entry, if the conditions under which the said rules permit conditional registration are satisfied.

(3) A voluntary lien on real property that is not entered in the land register is established by depositing with the court a legalised document by which the owner of the real property permits the registration of the right against it; deposition is regarded as registration or conditional registration, and the rules on acquisition by entry in the land register apply accordingly, unless provided otherwise by law.

(4) The provisions of this Act on establishing voluntary contractual liens on real property by entry in the land register apply accordingly to any changes and termination of liens on real property based on legal transactions.

#### **Voluntary Liens on Rights**

##### Article 310

(1) Creditors acquire voluntary liens on bearer securities in the same way as on chattels, on papers based on an order by lien endorsement, on registered papers, and on claims – by assignment for security purposes and by notifying the debtor's debtor on the assignment, and on other rights according to the modality foreseen for transferring such rights, unless provided otherwise by law.

(2) Liens on rights created upon the entry in a public book or other public register, if a corresponding security has not been issued, are acquired by entry in the book or register based on

an application for entry of the data on establishment of the lien, which is submitted by the person whose right is liened, and with the lien agreement enclosed.

(3) The rules of land registry law apply accordingly to determining the order of priority of liens established as laid down in paragraph 2 of this Article, unless provided otherwise by law.

*b/ Establishing Judicial and Statutory Liens*

**Establishing Involuntary Judicial Liens**

Article 311

(1) Involuntary judicial liens are established based on a court decision rendered in a proceeding of involuntary securing of a claim. Statutory provisions regulating the court proceeding of securing monetary claims lay down conditions under which the court may decide to establish an involuntary lien.

(2) Pursuant to the decision referred to in paragraph 1 of this Article, involuntary judicial liens are established according to the modality laid down by the statutory provisions on execution and involuntary security.

(3) Any person who acquires a lien on a piece of real property based on a court decision is authorised to obtain an entry of the acquired right in the land register.

**Establishing Voluntary Judicial Liens on Movables and Immovables**

Article 312

(1) Judicial liens on movables and immovables are established on a voluntary basis pursuant to a lien agreement which the parties conclude in the court proceeding of securing monetary claims in the form of court minutes on the agreement between the parties to secure a particular claim by a lien.

(2) Statutory provisions regulating the court proceeding of securing monetary claims also lay down the procedure for incorporating a lien agreement on the agreement between the parties to secure a claim by a lien in the minutes of the court, and its legal effects.

(3) Pursuant to the agreement by and between the parties referred to in paragraph 1 of this Article, voluntary judicial liens are established according to the modality laid down by the statutory provisions on execution and involuntary security.

(4) Any person who acquires a lien under the provisions of this Article is authorised to obtain an entry of the acquired right in the land register.

**Establishing Voluntary Judicial Liens on Rights**

Article 313

(1) Judicial liens on rights are established on a voluntary basis pursuant to a lien agreement which the parties conclude in the court proceeding of securing monetary claims in the form of court minutes on the agreement between the parties to secure certain claims by a lien.

(2) Statutory provisions which, by regulating the court proceeding of securing monetary claims, also lay down the procedure and legal effects of the agreement between the parties on securing claims by establishing a lien on movables and immovables, apply accordingly to the establishment of liens on rights.

(3) Judicial liens are established pursuant to the agreement by and between the parties referred to in paragraph 1 of this Article according to the modality laid down by the statutory provisions on execution and involuntary security for the establishment of an involuntary lien on a right.

**Establishing Statutory Liens**

Article 314

(1) Statutory liens may be established upon the fulfilment of conditions laid down in a particular piece of legislation.

(2) A statutory lien on real property shall be entered in the land register at the request of the lien creditor.

*c/ Establishing Junior Liens*

**Voluntary Junior Liens**

Article 315



(1) A lien creditor may establish a junior lien on an already liened movable in his possession within the framework of his right to be settled against the value of such movable, and according to the legal foundation and the modality laid down for establishing voluntary liens; if the lien creditor establishes such a lien, the movable is subject to a junior lien of a junior lien creditor.

(2) A creditor having a claim secured by a lien on real property may establish a mortgage in favour of a third party (senior mortgage) on the already existing lien (mortgage) within the framework of his right to be settled against the value of such real property, even without permission by the lien debtor, and according to the legal foundation and the modality laid down for establishing voluntary liens on real property; if the lien creditor establishes such a lien, the mortgage is subject to a senior mortgage as a junior lien of a junior creditor.

(3) If the lien debtor is notified that the liened property was liened further to a junior lien creditor, he may settle the debt of the lien creditor only if the person having the junior lien gives his permission or by depositing the debt in court; otherwise the liened property remains liened in favour of the junior lien creditor.

### **Judicial and Statutory Junior Liens**

#### Article 316

(1) Involuntary judicial junior liens on liened property securing a claim by the lien creditor are established pursuant to a court decision, according to the modality of establishing judicial liens.

(2) Voluntary judicial junior liens on liened property securing a claim by the lien creditor are established pursuant to a lien agreement, in the form of court minutes on the agreement by and between the parties to secure a particular claim by a lien in the proceeding of securing monetary claims, according to the modality of establishing judicial liens.

(3) Statutory junior liens on liened property securing a claim by the lien creditor are established upon the fulfilment of conditions laid down in a particular piece of legislation for the establishment of statutory liens. Once established, a statutory junior lien on real property shall be entered in the land register at the request of the lien creditor.

#### *d/ Protecting the Confidence*

### **Acquisition by Non-owners**

#### Article 317

(1) If a creditor having the legal foundation to acquire a voluntary lien acquires a movable as liened property without permission by its owner, he shall have acquired a lien if the conditions under which he could acquire the right of ownership on the thing from a non-owner, that is, from a person who is not authorised to make such legal dispositions of the thing are satisfied; the same applies accordingly if he receives a bearer security as liened property.

(2) The provision of paragraph 1 of this Article applies accordingly to the acquisition of a voluntary junior lien if the creditor receives the thing as liened property without permission by the lien creditor whose claim secures the liened property.

### **Protecting the Confidence in the Land Register**

#### Article 318

The provisions of Articles 122 through 125 of this Act apply accordingly to the protection of confidence in the land register regarding liens on real property (mortgages), unless they are contrary to the legal nature of the rights.

#### *Section 2*

### **Acquiring Liens of Another**

#### **Transfer**

#### Article 319

If a claim secured by a lien passes to another person, regardless of the legal foundation for such transfer, such person shall also have acquired the lien without a particular legal foundation and without a particular modality of acquisition, unless provided otherwise.

### **Possession and Entry**

#### Article 320

(1) If a lien debtor does not agree to surrender a lien property to the immediate possession of a new creditor of the claim secured by the lien property, the lien property shall remain in the possession of the transferor of the claim to keep it for the lien creditor as a mediate possessor; the same applies to the surrender of a bearer security.

(2) A new creditor shall be able to enforce powers he enjoys on the basis of a mortgage that was passed to him with the claim it secures once it is entered in the land register as his right.

**Title 3**

**CREDITOR'S POWERS BEFORE SETTLEMENT**

*Section 1*

***Powers regarding Liened Movables***

**Right to Possession**

Article 321

(1) A lien creditor has the right to hold a thing in possession based on his voluntary lien on the movable.

(2) Unless provided otherwise, a lien creditor has the right to immediate possession of the lien property.

(3) A lien creditor who acquires a lien on a thing which is already liened to another at such time shall be satisfied with mediate possession of the thing as long as the thing is in immediate possession of the person who acquired a lien on it before him.

(4) A lien creditor whose claim is secured by a judicial, statutory or registry lien on a movable does not have the right to possession of the thing.

### **Safe-keeping and Returning Liened Property**

#### Article 322

(1) A lien creditor should safe-keep the liened property in his possession with due care of a prudent administrator, otherwise he is liable for damages.

(2) A lien creditor is authorised to use the liened property in his possession and give it to somebody else for use only if so permitted by the lien debtor or if that is necessary for performing his duty of safe-keeping the liened property.

(3) When a claim that is secured by a piece of liened property terminates, the lien creditor is bound to return the liened property to the person from who he received it without any delay.

(4) A lien debtor may require of the lien creditor to return the liened property even before the termination of the claim if it is essential that he have the liened property in his immediate possession and if he provides another liened property in exchange, provided that its value is no less and that the safe-keeping requires no greater effort, costs or care than the property that was liened originally.

(5) The right of a lien creditor to receive compensation of any costs he incurred as the result of safe-keeping the liened property, as well as whether he may retain the liened property until his costs are settled, shall be examined according to the applicable rules on the possessor's objections if the owner requires restitution.

(6) Any claims by the lien debtor against the lien creditor because of the deterioration of the liened property become barred by the statute of limitations within one year's time from the date of having received the thing back. Any claims by the lien creditor against the lien debtor regarding compensation of costs incurred in order to improve the liened property become barred by the statute of limitations within the same term.

### **Fruits of Liened Property**

#### Article 323

(1) Fruits and other benefits derived from the liened property belong to the lien debtor.

(2) A lien creditor who has the liened property in immediate (direct) possession is authorised to gather and take for himself all fruits and other benefits derived from the thing, unless he assumed the obligation not to do that.

(3) Fruits gathered for himself by the lien creditor become his property, and their value is set off against his claim, in the first place against costs to the compensation of which the creditor is entitled, then against interest owed by the debtor, and finally against the principal.

### **Taking Liened Property from Creditor's Possession**

#### Article 324

A lien debtor may require in court that the liened property be taken from the immediate possession of the lien creditor and handed over to a third party to keep it for the account of the creditor as mediate possessor, if the lien creditor is not keeping the liened property properly, if he is using it without authority or if he has given it to another to be used without permission, or if he has taken the fruits and other benefits derived from the liened property for himself although he assumed the obligation not to do so.

### **Establishing Junior Liens**

#### Article 325

A lien creditor is authorised to establish a junior lien on the liened property in his possession, even if that be against the prohibition by the lien debtor or pledgor; however, he shall be held liable in the case of accidental destruction and damage to the liened property that would not have occurred otherwise.

### **Hidden Defects**

Article 326

(1) If it is discovered that a piece of liened property has a material or legal defect that the creditor did not know and did not have to know about at the time of receiving the liened property into possession, and because of which the liened property is insufficient security to settle the secured claim, the lien creditor is authorised to require of the pledgor to provide another reasonable liened property.

(2) Defects in liened property, even if the defect results in the destruction of the liened property do not vest in the lien creditor the right to terminate the relationship governed by the law on civil obligation based on which his claim was secured by the liened property.

**Necessary Sale of Liened Property**

Article 327

(1) If a liened movable received by the lien creditor is perishable or if its value diminishes for reasons unrelated to hidden defects, and there is a danger that the liened property might become insufficient security of the claim of the lien creditor, the lien debtor is entitled to require the liened property to be sold at its exchange or market value and a sufficient portion of the proceeds to be deposited in court as security of the creditor's claim.

(2) The lien creditor also has the right referred to in paragraph 1 of this Article; however, if he requests the necessary sale of liened property, the lien debtor may avoid the sale by providing another liened property as replacement, provided that its value is no less and that the safe-keeping requires no greater effort, costs and care than the property that was liened originally.

**Protection of Liened Property**

Article 328

A lien creditor is authorised to impose any and all requirements necessary to protect his right on the liened property on anyone, including the owner of the liened property, and is entitled in particular:

- to require of the person having the liened property in possession unlawfully to surrender the thing to him; the rules on the owner or presumed owner protecting his right of ownership apply accordingly;
- to require of the person unlawfully interfering with his right regarding the liened property in another way instead of by taking away the thing to stop interfering; the rules on the owner or presumed owner protecting his right of ownership apply accordingly;
- to require of the pledgor another appropriate liened property instead of the liened property with hidden defects; the rules on liability for material and legal defects apply accordingly;
- to require the necessary sale of the liened property.

*Section 2*

***Powers regarding Liened Real Property***

**Lien without Possession**

Article 329

(1) The creditor of a claim secured by a lien on real property (mortgagee) does not have the right to possession of the liened real property or the right to gather and take as his own the fruits and other benefits derived from such real property or to use the real property in any other way.

(2) The provision of an agreement or another legal transaction contrary to paragraph 1 of this Article is null and void, unless provided otherwise by law.

(3) Provisions regulating the legal position of a creditor whose claim is secured by a lien on real property apply accordingly to a creditor whose claim is secured by a judicial or statutory lien on a movable or who has a registry lien.

**Maintaining the Value of Liened Property**

Article 330

(1) If a mortgagor does something that endangers or diminishes the value of real property burdened with a mortgage, the mortgagee is authorised to require that the mortgagor ceases

with such performance, and if he does not cease, the mortgagee may require involuntary collection of the claim secured by the mortgage before its maturity.

(2) Actions by the mortgagor referred to in paragraph 1 of this Article, even if the lien property should be destroyed as the result, do not authorise the mortgagee to terminate the relationship in which his claim was secured by the mortgage.

### **Civil Fruits Derived from Immovables as Liened Property**

#### Article 331

(1) If the mortgagee has a lien only on fruits that the real property yields by mediation of a legal transaction, he has the right to gather them.

(2) The value of fruits referred to in paragraph 1 of this Article that the mortgagee has gathered is set off against his claim; in the first place against costs to the compensation of which he is entitled, then against interest owed to him by the debtor, and finally against the principal.

### **Protection**

#### Article 332

A mortgagee is authorised to impose any and all requirements necessary to protect his lien on the real property on anyone, including the owner of the lien property, and is entitled in particular:

- to require protection of the lien that was violated by using means foreseen for the protection of registry rights by the rules of land registry law;
- to require that the lien debtor or a third party not perform, regarding the lien real property, anything that is endangering it or diminishing its value;
- to require that what the lien property yields based on a legal transaction be handed over to him, if he has the lien on such fruits.

(2) The claims that a mortgagee may voice for the purpose of exercising his powers on the lien right shall be governed according to the applicable rules on the owner or presumed owner protecting his right of ownership.

### *Section 3*

### ***Powers regarding Liens***

#### **General Rules**

#### Article 333

(1) A lien creditor who has as a lien the right of another that was extended equal status as a movable has the powers and duties with respect to the right that he would have if he had a movable in lien, unless provided otherwise by law or arising otherwise from the legal nature of the lien right.

(2) A lien creditor who has as a lien the right of another that was extended equal status as an immovable has the powers and duties with respect to the right that he would have if he had an immovable in lien, unless provided otherwise by law or arising otherwise from the legal nature of the lien right.

### **Of Liened Claims in Particular**

#### Article 334

(1) A lien creditor who received a claim as a lien is bound to take measures necessary to preserve the claim.

(2) If the lien claim yields interest or other occasional receipts, the lien creditor is bound to collect them. Their value shall be set off against costs to the compensation of which the lien creditor is entitled, then against interest owed to him by the debtor, and finally against the principal.

(3) When a lien claim becomes mature, the lien creditor is bound to do what is necessary to have the debtor satisfy it and to receive the performance.

(4) Upon the performance of a lien claim, the lien passes to the thing used to perform the claim; however, where the lien creditor receives money for the performance of the lien claim, he is bound to deposit such money in court. He is authorised to keep the amount of money owed to him and submit the rest to the pledgor only if the claim of the lien debtor has already become mature.

### **Protecting Liened Property**

Article 335

- (1) A lien creditor is authorised to impose any and all requirements necessary to protect his lien on the lien right on anyone, including the owner of the lien right, and is entitled in particular:
- to require of the debtor of the lien claim any mature interest and other occasional receipts derived from the claim, that is, to require of a third party what the third party received as mature interest and other occasional receipts;
  - to require of the debtor to perform the lien claim that has become mature, that is, to require of a third party what the third party received as performance of the lien claim.
- (2) The claims that a lien creditor may voice for the purpose of exercising his powers on the lien right shall be governed according to the rules applicable to the corresponding claims by a lien creditor who has a movable in lien or an immovable in lien, and subordinately according to the rules of the law on civil obligations applicable to creditors exercising their right.

**Title 4**

**PERFORMANCE OF THE RIGHT TO SETTLEMENT**

**Right to Settlement of the Lien Creditor**

Article 336

- (1) If a secured claim is not performed on maturity, the lien creditor is authorised to exercise his right to settlement of the claim against the value of the lien property.
- (2) The lien creditor may exercise his right to settlement of a secured claim against the lien property in court, according to the rules laid down in this Act and according to the modality laid down in the regulations governing the execution of monetary claims, unless provided otherwise by law.
- (3) The lien debtor has the right to require of the everyday owner of lien property, as well as of any third party, to suffer the settlement of the claim secured by the lien against the value of the lien property, unless provided otherwise by law.
- (4) The lien creditor may choose, regardless whether his debtor is the owner of lien property or not, either to require the settlement of his claim primarily against the value of the lien property or against the property of his debtor, or simultaneously against the lien property and the debtor's property.
- (5) If the lien creditor requires settlement against the value of the lien property, but fails to settle the claim in its entirety out of the proceeds of such sale, the debtor shall continue to owe the difference; otherwise, if the lien creditor sells the lien property for an amount in excess of his claim, the surplus belongs to the debtor.
- (6) A lien creditor whose lien is a charge on a thing that is the subject matter of a proceeding of involuntary settlement of someone's claim by selling the lien property is authorised to redeem the claim that is the subject matter of the proceeding; however, he may do so by the beginning of the public sale at the latest.
- (7) A lien creditor whose lien is a charge on a thing or right capable of yielding fruits and other benefits against the value of which the mature claim secured by the lien property could be settled is authorised to require of the court to appoint an interim administration over the lien property and an administrator authorised to gather the fruits or benefits, that is, to use them and convert them into money, and to deposit the proceeds in court for the purpose of settlement out of the deposit.

**Out-of-court settlement**

Article 337

- (1) A lien creditor is authorised to exercise his right to the settlement of a claim secured by lien property against the value of such lien property out of court if the subject matter of the lien is a movable or a right not regarded as an immovable, provided that the lien debtor

permitted such settlement expressly in written form at the moment of establishing the lien or at a later date.

(2) If the movable or the right not regarded as an immovable was liened in order to secure a claim arising from a mercantile transaction, the lien creditor is authorised to exercise his right to the settlement of the claim against the value of the liened property out of court, provided that the lien debtor did not exclude such settlement expressly at the moment of establishing the lien.

(3) If the lien creditor is authorised to exercise his right to settlement out of court, he is authorised to exercise it in a public auction (public tendering), or in another way if he has the right to exercise it in that way based on a legal transaction or law, or if that is the only way to realise his right to settlement given the circumstances.

(4) If a lien creditor who is authorised to exercise his right to out-of-court settlement receives a movable or right in lien which has a price at the stock exchange or market, he is authorised to sell the liened property for the price in a direct sale in order to settle his claim, provided that he carries out the sale through a person having public authority for sale at the stock exchange or for public sale of such things and rights.

(5) If the liened property is money, the lien creditor is authorised to settle his mature claim secured by such liened property by keeping the corresponding amount for himself. The same applies if the creditor is to settle his mature claim against the money received for a claim liened to him or interest or other occasional receipts derived from the liened claim, or against the liened fruits derived from an immovable through the mediation of a legal relationship.

(6) If the lien creditor is authorised to gather for himself the fruits derived from a movable given to him as liened property, the value of the gathered is to be set off by the operation of law at the moment of gathering against the claim secured by the liened property, even if it is not mature; the lien debtor is authorised to require of the creditor at any time to bear the cost of issuance of a set-off certificate. The same also applies to the value of other benefits the lien creditor has duly derived from the liened property.

(7) A creditor who exercised his right to settlement out of court without authority or who exercised it in an unauthorised way shall be held liable for any and all damages that might arise out of such exercise.

### **Recordation of Cancellation and Complaint**

#### Article 338

(1) If a creditor, in order to settle his claim against the value of an immovable, needs to obtain a legally effective judgment in a lawsuit that would order the lien creditor to suffer the settlement against the value of the liened property or a judgement that would order the debtor personally to settle the creditor's claim, he is authorised to require that the complaint against the owner of the immovable be recorded in the land register; he is also authorised to require that the cancellation on which the maturity of the claim depends be recorded.

(2) The recorded cancellation or complaint shall have effect against any successive owner of the immovable, and an enforceable judgment the adoption of which was obtained by the recorded complaint or cancellation shall be able to serve as the basis for execution by settlement against the immovable, regardless of the present owner of the immovable.

### **Title 5**

#### PROTECTION

### **Request to Respect Lien**

#### Article 339

(1) A lien creditor has the right to require of the owner of liened property to recognise and suffer his lien as a burden on the liened property and to suffer the exercise of the holder's right on it, in particular the settlement of the mature claim of the lien creditor against the value of the liened property, and to omit doing on the liened property what he is bound to omit doing because of the holder's right; he is also authorised to require the same of any other person who is denying his lien or is unlawfully preventing or interfering with the exercise of the lien by his acts.

- (2) Each of several holders of the same lien have the right referred to in paragraph 1 of this Article.
- (3) The right referred to in paragraph 1 of this Article is not barred by the statute of limitations.

#### **Complaint by Lien Creditor**

##### Article 340

If a lien creditor is to exercise his right referred to in Article 339 of this Act in a court proceeding or in a proceeding before another competent authority, he has to prove his lien and the respondent's act of preventing or interfering with the exercise of the lien.

#### **Complaint by Presumed Lien Creditor**

##### Article 341

(1) Any person who in a court proceeding or in a proceeding before another competent authority proves the legal foundation and the truthful way of acquiring possession of the lien property, that is, that his lien on the immovable was at least entered in the land register, has the right to protect his presumed lien in the same way as the person who proved his lien (presumed lien creditor).

(2) The rules on a complaint by presumed owner apply accordingly to the right to protection of the presumed lien creditor.

#### **Protection against Violation by Entry in the Land Register**

##### Article 342

Should a person violate a lien on a piece of real property by invalid entry in the land register, the lien creditor is entitled to protect himself by using means foreseen in the rules of land registry law for the protection of land registry rights.

### **Title 6**

#### **TERMINATION**

##### **Destruction**

##### Article 343

If the lien property is destroyed, and another thing or right does not take its place, the lien shall terminate; however, the claim shall continue to exist.

##### **Waiver**

##### Article 344

- (1) A lien terminates upon a valid waiver by the lien creditor.
- (2) It is deemed that a lien creditor waived his lien if he returned the possession of the lien property to the debtor unconditionally; otherwise the lien does not terminate if one loses possession of it.
- (3) One of several creditors of a claim secured by a lien may not waive the lien validly without permission by all other creditors.
- (4) The creditor of a claim burdened with someone's junior lien or the right of personal servitude may not waive the lien securing the claim validly without permission by the holder of the right.
- (5) If a lien is entered in the land register, it shall terminate only upon deletion in the land register as the result of a waiver.

#### **Expiration of the Term and Fulfilment of the Termination Clause**

##### Article 345

- (1) A lien that is limited by a term or by a termination clause shall terminate as the result of expiration of the term or fulfilment of the clause; however, the lien entered in the land register shall terminate only once the right is deleted.
- (2) A lien shall not terminate if the term expired or the termination clause was fulfilled if it belongs to a lien creditor who did not know and did not have to know about the limitation based on the information in the land register at the time of his acquisition of the claim secured by the lien concerned.

#### **Termination of Secured Claims**

##### Article 346



A lien terminates simultaneously with the termination of the secured claim and all accessory claims to interest and costs, unless provided otherwise by law.

### **Disposing of Undeleted Mortgages**

#### Article 347

- (1) In order for a lien on a piece of real property to terminate, it is not sufficient that the secured claim has terminated: mortgages terminate on deletion in the land register.
- (2) Before the mortgage is deleted in the land register, the owner of a piece of real property encumbered by the mortgage may transfer the mortgage to a new claim not greater than the one that is entered and that has terminated based on a certificate or another document proving the termination of the claim secured by the mortgage.
- (3) The owner may not waive the right to dispose of a mortgage referred to in paragraph 2 of this Article at the establishment of the mortgage; however, if a person assumes the obligation to obtain deletion of a specific mortgage, with the assumed obligation being entered in the land register next to the mortgage, he may not dispose of the mortgage.
- (4) If following the termination of a claim secured by a mortgage the real property is sold in an execution proceeding for the purpose of settling a monetary claim or establishing involuntary administration upon it, and the mortgage was not deleted and the real property or the lien was not transferred to another, the mortgage shall not be taken into account at the partition of the purchase price.
- (5) The owner is entitled to a portion of the purchase price only if the claim secured by the mortgage still exists towards a third party or if the owner is entitled to compensation for the satisfaction of the claim.

### **Recordation of Retention of the Order of Priority**

#### Article 348

- (1) If a mortgage is deleted, the owner may simultaneously obtain a recordation in the land register that for the entry of a new mortgage up to the amount of the deleted mortgage the order of priority is to be retained for a period of three years from the approval of the recordation. If ownership changes, the retention shall also have effect towards the new owner; however, in the event of an involuntary public auction of the real property, the retention shall not be taken into account unless exercised before the recordation of the ruling permitting execution proceedings against such real property for the purpose of settling someone's monetary claim.
- (2) The owner of a piece of real property may require that the mortgage in favour of a new claim be entered in the order of priority and up to the amount of the mortgage encumbering the real property; however, the new mortgage shall have legal effect only if the deletion of the old mortgage is registered within a period of one year from the approval for the entry of the new one.
- (3) If the deletion of the old mortgage is not requested or permitted within the period referred to in paragraph 2 of this Article, the new mortgage shall terminate as soon as the period expires and it shall be deleted in the line of duty, together with all entries relating to it. Deletion of the old mortgage may be required by both the mortgagor and the mortgagee in whose favour the new mortgage is entered.
- (4) If an older mortgage is encumbered, the new one entered in its place in the order of priority shall have legal effect only subject to a further condition that the burden is deleted or transferred to the new mortgage upon approval by all participants. If the older mortgage is a charge on several real properties jointly (simultaneously), the new one shall have legal effect only upon a further condition that the older mortgage is deleted on all real properties on which it exists as a charge.
- (5) The provisions of this Article shall apply accordingly even if a new claim should take the place of two or more mortgage claims immediately following each other in the order of priority.

### **Protecting the Trust of Another**

#### Article 349

A lien on a piece of real property which is not entered in the land register shall terminate when the encumbered real property is acquired by a person who did not know and did not have to know that it existed.

### **Dissolution of Lien Creditor**

#### Article 350

A lien terminates if the legal person who is the lien creditor loses its personality, provided that it does not have a universal legal successor; however, a lien entered in the land register shall terminate only upon its deletion.

### **Revocation**

#### Article 351

- (1) A lien on immovables shall terminate pursuant to a decision by the land registry court permitting the mortgage to be depreciated after conducting the procedure foreseen by the provisions of the act regulating land registry law.
- (2) In the event referred to in paragraph 1 of this Article, a lien shall terminate on deletion in the land register.

### **Relief by the Operation of Law or Decision by Administrative Authority**

#### Article 352

- (1) Liens terminate on the fulfilment of conditions laid down in a particular piece of legislation.
- (2) If a lien is entered in the land register, it shall terminate only upon its deletion, unless provided otherwise by law.
- (3) If the revocation of a lien means expropriation, the lien creditor has the right to full compensation, and the same applies to persons having real rights on the claim secured by the revoked lien.

### **Termination of Judicial and Statutory Liens**

#### Article 353

- (1) Unless provided otherwise by law, involuntary liens terminate upon the legal effectiveness of rulings revoking any actions and measures that were executed and by which the right was established, and if the settlement was performed in the proceeding, upon the legal effectiveness of the ruling on settlement, where the mortgage terminates only upon deletion in the land register.
- (2) A statutory lien terminates in the same way as the voluntary, and also upon the termination of circumstances because of which it was established by the operation of law, unless provided otherwise by law. If entered in the land register, it terminates only upon deletion.

### **Part Eight**

#### REAL RIGHTS OF FOREIGNERS

#### **Applying the Act to Foreigners**

#### Article 354

- (1) The provisions of this Act also apply to foreign natural persons and legal entities, unless provided otherwise by law or an international treaty.
- (2) Limitations that the law imposes on foreigners regarding the right of ownership of immovables in the territory of the Republic of Croatia cannot apply accordingly to the right of ownership of movables or to limited real rights.

### **Foreigners**

#### Article 355

- (1) Within the meaning of this Act, a natural person is a foreigner who does not have the citizenship of the Republic of Croatia, unless provided otherwise by law.
- (2) Within the meaning of this Act, people who do not have the citizenship of the Republic of Croatia, but who are emigrants from the territory of the Republic of Croatia or their descendants are not regarded as foreigners, provided that the body of state administration competent to decide on citizenship has determined that they do meet conditions for the acquisition of citizenship of the Republic of Croatia.
- (3) Within the meaning of this Act, a legal entity is a foreigner with a registered seat outside the territory of the Republic of Croatia, unless provided otherwise by law.

### **Ownership of Real Property**

#### Article 356

- (1) Foreign natural persons and legal entities may acquire ownership of real property in the territory of the Republic of Croatia by inheritance under the condition of reciprocity.
- (2) Foreign natural persons and legal entities may acquire ownership of real property in the Republic of Croatia under the condition of reciprocity, unless provided otherwise by law, if the Minister of Foreign Affairs of the Republic of Croatia gives his approval on the prior opinion by the Minister of Justice of the Republic of Croatia, unless provided otherwise by law.
- (3) Foreigners having no citizenship who are emigrants from the territory of the former SFRY or descendants of such persons may acquire ownership of real property in the territory of the Republic of Croatia if the minister in charge of emigration gives his approval to the acquisition on the prior opinion by the Minister of Justice of the Republic of Croatia.
- (4) Persons regarded as emigrants are determined in a particular regulation.
- ~~(5) The approval referred to in paragraphs 2 and 3 of this Article is not an administrative act.~~  
**(ceased to be valid according to Constitutional Court decision no. U-I-1094/99, NN 22/00)**

### **Approval and Opinion**

#### Article 357

- (1) If the acquisition of the right of ownership of real property is subject to an approval by the Minister of Foreign Affairs or the minister in charge of emigration, the legal transaction the purpose of which is to acquire the right of ownership shall have no legal effect without the approval by the competent minister.
- (2) The competent minister decides on the giving of the approval to the acquisition of the right of ownership based on an application by the person who intends to acquire ownership of a particular piece of real property or a person intending to alienate the real property.
- (3) In deciding on the application referred to in paragraph 1 of this Article, the competent minister has to obtain a prior opinion by the Minister of Justice of the Republic of Croatia.
- (4) A foreigner whose application regarding the acquisition of the right of ownership of real property has been denied may not submit another application for the issuance of an approval to the acquisition of the right of ownership of the same piece of real property for a period of five years from the date of submitting the original application that was denied.
- ~~(5) The approval referred to in paragraphs 1, 2 and 4 of this Article is not an administrative act.~~  
**(ceased to be valid according to Constitutional Court decision no. U-I-1094/99, NN 22/00)**

### **Real Property on Excluded Territory**

#### Article 358

- (1) A foreigner may not be the owner of real property located within a territory proclaimed by law to be an area on which foreigners may not have the right of ownership for the purposes of protecting the interests and security of the Republic of Croatia, unless provided otherwise by law.
- (2) A foreigner who had acquired the right of ownership of a piece of real property before the territory on which the real property is located was proclaimed to be the territory referred to in paragraph 1 of this Article shall lose the right of ownership of the real property and shall be entitled to compensation according to the regulations on expropriation.
- (3) If a foreigner may not acquire ownership of a piece of real property in the territory referred to in paragraph 1 of this Article that he would otherwise acquire by inheritance, he has the right to compensation according to the regulations on expropriation as if the real property had been taken away in the procedure of expropriation.

### **Part Nine**

#### TRANSITIONAL AND FINAL PROVISIONS

##### **Title 1**

#### TRANSFORMATION OF SOCIAL OWNERSHIP

##### **General Provisions on Transformation**

#### Article 359

(1) The provisions of this Title on transforming the right to administration, use and disposition of things under social ownership and on transforming the right to use undeveloped construction land under social ownership in favour of the holders of such rights also applies to their heirs and other legal successors.

(2) The right of ownership and other rights acquired according to the provisions of this Act on transforming the right to administration, use and disposition of things under social ownership and on transforming the right to use construction land under social ownership are acquired under the condition that they are not in conflict with the rights that other persons hold on former socially-owned things based on the regulations on denationalisation.

### **Transformation of the Right to Administration, Use and Disposition**

#### **Article 360**

(1) By transforming the holder of the right to administration, use and disposition, the right to administration, use and disposition of a thing under social ownership has become the right of ownership of the person who is the universal legal successor of the former holder of the right to administration, use and disposition of the thing based on the transformation process, provided that the thing has the capacity to be the subject matter of the right of ownership, unless provided otherwise in a particular piece of legislation.

(2) The right to administration, use and disposition of a thing under social ownership of a person who has not been transformed into the subject of the right of ownership before the entry into force of this Act shall become the right of ownership of the former holder of the right to administration, use and disposition on the thing with the entry into force of this Act if the thing has the capacity to be the subject matter of the right of ownership, unless provided otherwise in a particular piece of legislation.

(3) The provisions of paragraphs 1 and 2 of this Article apply accordingly to all real rights.

(4) Entries of the right to administration, use and disposition in the land register and in other public registers performed by the date of entry into force of this Act shall be deemed to be entries of the right of ownership.

### **Transformation of the Right to Use Undeveloped Construction Land**

#### **Article 361**

(1) The right to use undeveloped construction land under social ownership that has not terminated by the adoption of this Act shall become the right of ownership of the former holder of the right or his legal successor on its entry into force.

(2) The provision of paragraph 1 of this Article shall apply accordingly to the right of priority to use construction land under social ownership.

(3) Entries of the right referred to in paragraphs 1 and 2 of this Act in the land register performed before the entry into force of this Act shall be deemed to be entries of the right of ownership.

### **Presumptions of Ownership**

#### **Article 362**

(1) It is deemed that the owner of a piece of real property under social ownership is the person who is entered as the holder of the right to administration, use and disposition of the real property in the land register, and any person asserting otherwise has the burden of proof.

(2) It is deemed that the person who is entered in the land register as the holder of the right to use undeveloped construction land under social ownership, that is, the holder of the right of priority to use such land is the owner of the land concerned, and any person asserting otherwise has the burden of proof.

(3) It is deemed that the Republic of Croatia has the right of ownership of all things under social ownership in the territory of the Republic of Croatia regarding which their ownership is not determined and regarding which the presumptions of ownership referred to in paragraphs 1 and 2 of this Article do not have effect, and any person asserting otherwise has the burden of proof.

(4) The provisions of paragraphs 1 through 3 of this Article regarding things also apply accordingly to rights that were under social ownership.

### **Protection of Transformed Rights**

#### Article 363

(1) Any person whose right of ownership is derived from the former right to administration or use and disposition of things under social ownership, that is, the former right to use or the right of priority to use construction land under social ownership has the right to protect his right in the same way as any owner, subject to the application of the provisions of Articles 161 through 168 of this Act, unless there is a particular piece of legislation regulating the matter.

(2) The person referred to in paragraph 1 of this Article who may not rely on the presumption of ownership or who is trying to prove the contrary shall prove his right of ownership if he proves that he or his legal predecessor acquired the right to administration or use and disposition, that is, the right to use or the right of priority to use construction land under social ownership on a valid legal foundation, and upon the fulfilment of all other conditions required at the moment of acquisition for the acquisition of the right.

#### **Entry of Unregistered Rights on Real Property**

#### Article 364

(1) Entry of the right of ownership of a piece of real property derived from the former right to administration or use and disposition of things under social ownership shall be performed according to the rules of land registry law, unless provided otherwise under this Article of the Act.

(2) The land registry court shall permit entry of the right of ownership against the registered predecessor who is entered as the owner or the holder of the right to administration, use and disposition in the land register. If the right to administration, use or disposition was transferred to several people on a consecutive basis without being entered in the land register, the entry shall be performed in favour of the person who proves an uninterrupted flow of unregistered acquisitions from the registered predecessor to himself.

(3) The land registry court shall permit registration of the right of ownership based on private documents on which the signature of the person whose right is being limited, encumbered, revoked or transferred is not notarially legalised, provided that after the change of the person having the power to such disposition the document was co-signed, and the signature notarially legalised, by the person authorised to sign such documents at the moment of legalisation or by the person authorised to sign such documents as a legal successor of the person who disposed of the real property at the moment of legalisation, or the public attorney of the Republic of Croatia in cases where the person who disposed of the real property has no legal successor.

(4) If the land registry court is to permit the registration further to the provision of paragraph 3 of this Article, the statement co-signed according to the rules referred to in the said paragraph must be accompanied by a public or notarially legalised document showing the power of the co-signatory, and proof of legal succession or its absence.

(5) It is deemed that the person whose right is being limited, encumbered, revoked or transferred has also permitted an entry in favour of the acquirer if the statement was given in the prescribed form by a person having the power of such co-signature in accordance with paragraph 3 of this Article.

(6) People who are not entered as holders of the right to administration, use or disposition in the land register and who do not have a document suitable for land registry entry of the right of ownership shall enter the right of ownership of the real property by entry in the land register based on a court decision after they prove that they were unregistered holders of such right on the real property under social ownership.

(7) The provisions of paragraphs 1 through 6 of this Article apply accordingly to unregistered holders of limited real rights on real property, unless provided otherwise by law.

#### **Entry of Ownership Derived from the Right to Use Construction Land**

#### Article 365

(1) Entry of the right of ownership of a piece of real property derived from the former right to use undeveloped construction land under social ownership or the right of priority to use such land shall be performed according to the rules of land registry law, subject to the application of the provisions of Article 364 of this Act, unless provided otherwise by this Article.

(2) At the request of a person having an inherent legal interest, the land registry court shall permit deletion of social ownership and the right to use, that is, the right of priority to use, and shall enter the right of ownership in favour of the person who was entered in the land register as the holder of the right to use, that is, the right of priority to use.

(3) The land registry court shall permit deletion of social ownership in favour of a person who is not entered in the land register as the holder of the right to use undeveloped construction land, and shall enter his right of ownership pursuant to the ruling on granting such construction land for use, the ruling on the taking of land from the possession of the former owner or user and giving it to such person (that is, the ruling on the implementation of deposal in his favour), and the agreement on mutual rights and obligations concluded in accordance with the conditions established in the ruling on giving the construction land for use.

(4) The land registry court shall permit entry of the right of ownership in favour of a person who is not entered as the holder of the right to use undeveloped construction land, and who may not present the documents referred to in paragraph 3 of this Article, pursuant to a decision rendered by the court after the person has proved that he acquired the right to use based on a valid legal foundation and according to the prescribed modality.

(5) If the right to use or the right of priority to use was transferred to several people on a consecutive basis, the entry shall be performed in favour of the last holder of the right on undeveloped construction land if he can prove an uninterrupted flow of unregistered acquisitions from the registered predecessor to himself.

(6) Any person asserting that the right to use undeveloped construction land, that is, the right of priority to use the land has terminated in the meantime, and that such termination has not been registered in the land register, has to prove his claims in court in order for the right, that is, the derived right of ownership to be deleted pursuant to a court decision.

## **Title 2**

### **ESTABLISHING LEGAL UNITY OF REAL PROPERTY**

#### **Unity of Real Property**

##### *Article 366*

(1) The principle of legal unity laid down in Article 9 of this Act shall apply in the Republic of Croatia as of the entry into force of this Act, unless provided otherwise in a particular piece of legislation.

(2) The establishment of unity of real property is carried out according to the provisions of this Title, unless provided otherwise in a particular piece of legislation.

(3) As of the entry into force of this Act, any legal transaction contrary to the principle of unity of real property shall not have legal effect.

(4) If a bilaterally or unilaterally binding agreement has no legal effect because it is contrary to the principle of unity of real property, each party, as well as third parties in whose favour the agreement is concluded have the right to demand fair amendments to be made to the agreement in order to remedy the defect.

##### *Section 1*

#### ***Establishing the Unity of Land and Building***

#### **Legal Unification of Land and Registered Building**

##### *Article 367*

(1) If before the entry into force of this Act a building that is owned by someone and is registered in the land register as a land registry unit separate from the land on which it is erected is erected on a piece of land under social ownership, the owner of the building shall acquire the right of ownership of the entire piece of real property by unification of all land registry units into one, with an entry of the right of ownership of the unified unit in favour of the owner of the building.

(2) In the event referred to in paragraph 1 of this Article the competent court shall order unification of land registry files into one at the request of the owner of the building.

~~(3) If several buildings are erected on one and the same piece of land and registered in the land register as land registry units separate from the land on which they are erected, the court shall~~

~~unify all such land registry units into a single land registry unit at the request of the owner of any of the buildings, with an entry of the right of ownership in favour of all owners of the buildings as co-owners of the entire piece of real property created in the described manner with equal co-ownership shares. (ceased to be valid according to Constitutional Court decision no. U-I-58/1997, NN 137/99)~~

~~(4) Each of the former owners of the buildings who became co-owners of the real property by entry referred to in paragraph 3 of this Article may require of the court to determine the size of their respective co-ownership shares based on the value of the buildings existing at the time of unifying them into a single land registry unit. (Deleted, NN 114/01)~~

(3) If several land registry units are to be unified into one because of establishing the unity of real property, the rights existing until such time in favour or as a charge on both land registry units shall not be impinged upon; however, they shall be entered in the line of duty in favour or as a charge on the relevant co-ownership share; if that is not possible, they shall be entered in favour or as a charge on the unified unit, each with the place in the order of priority it has based on the time of appearance, that is, according to the assignment of priority, if any.

#### **Legal Unification of Land and Unregistered Building**

##### Article 368

(1) If before the entry into force of this Act a building is erected on a piece of land under social ownership, which is owned by someone at the time of entry into force of this Act, but is not registered in the land register although the land on which it is erected is registered, the owner of the building shall acquire the right of ownership of the entire real property by entry of the existence of the building on the land plot on which it is erected, with an entry of the right of ownership of the entire land registry unit in favour of the owner of the building.

(2) If before the entry into force of this Act a building is erected on a piece of land under social ownership, which is owned by someone at the time of entry into force of this Act, and the right to use construction land under social ownership, that is, the right of priority to use construction land under social ownership is entered on the land concerned in favour of the owner of the building, the competent court shall order the entry referred to in paragraph 1 of this Article at the request of the owner of the building based on a notification by the competent cadastral body that a building is indeed erected on the construction plot concerned.

(3) If before the entry into force of this Act a building is erected on a piece of land under social ownership, which is owned by someone at the time of entry into force of this Act, but the right to use construction land under social ownership, that is, the right of priority to use construction land under social ownership is not entered on the land concerned in favour of the owner of the building, the competent court shall order the entry referred to in paragraph 1 of this Article at the request of the owner of the building based on an enforceable decision by the authorities granting the right to use to the holder for the purpose of erecting the building, with a ruling on the taking of construction land from possession of the former owner or user and giving the land for use, with an agreement on mutual rights and obligations concluded in accordance with the conditions in the ruling, and a notification by the competent cadastral body that a building is indeed erected on the construction plot concerned.

(4) If before the entry into force of this Act a building is erected on a piece of land under social ownership, which is owned by someone at the time of entry into force of this Act, but the land is not entered in the land register, the owner of the building shall acquire ownership of the entire real property by applying the provisions of paragraph 3 of this Article accordingly, where ownership of the real property shall be acquired by court deposition of a document based on which entry could be permitted under the provision of paragraph 3 of this Article instead of by entry in the land register; the provision of Article 120 paragraph 4 of this Act shall apply accordingly.

#### **Legal Unification of Real Property and Transformation of the Right to Administration, Use or Disposition**

##### Article 369

(1) If before the entry into force of this Act a building is erected on a piece of land under social ownership, which is under social ownership at the time of entry into force of this Act, and the right to administration, use or disposition of the building belongs to a legal entity different from the one who has the right to administration or use and disposition of the land, the right of ownership of the entire real property shall be acquired by the owner of the building according to the modality laid down in Articles 367 and 368 of this Act that are to be applied accordingly.

(2) In the event referred to in paragraph 1 of this Article, the owner is the person whose right to administration, use or disposition was transformed into the right of ownership according to the provisions of this Act or a particular piece of legislation.

#### *Section 2*

### ***Establishing Unity of Real Property and Particular Parts of the Building Connecting Floor Ownership and Co-ownership***

#### **Article 370**

(1) Ownership of a particular part of a building (floor ownership), and the right to disposition on a particular part of a building under social ownership acquired pursuant to the previously valid legislation, shall be ownership of the particular parts of real property as of the entry into force of this Act, as regulated by the provisions of this Act, and shall be consequently evaluated according to the said provisions, unless the transitional provisions of this Act provide otherwise.

(2) The owner of a particular part of a building referred to in paragraph 1 of this Act shall remain the owner of his particular part of the piece of real property following the entry into force of this Act, and the holder of the right to disposition on a particular part of the building shall become the owner of such particular part, where ownership of a particular part of real property is inseparably connected to a specific co-ownership share of the entire real property according to the provisions of paragraphs 3 and 4 of this Act.

(3) The owner of a particular part of a building referred to in paragraph 2 of this Article shall own the appropriate co-ownership share of the entire real property following the entry into force of this Act, instead of his former participation in joint indivisible ownership of the common parts of a family building and co-ownership of land, that is, instead of his former participation in the permanent right to use the common parts of a tenement with the right to permanent use of the land.

(4) The size of the appropriate co-ownership share referred to in paragraph 3 of this Article shall be determined by applying accordingly the rules of this Act on the size of the appropriate co-ownership share of a building which authorise the co-owner to have a particular part of the building under his ownership; until such time, it is deemed that the shares of all co-owners are equal; however, each co-owner, even if he is not the owner of a particular part of the building, may require of the court to determine the size of co-ownership shares and to distribute them equitably amongst them.

(5) Persons who had a valid legal foundation to acquire ownership of an apartment or another particular part of a piece of real property pursuant to the previously valid legislation are authorised to acquire the apartment or the particular part of the building based on the said legal foundation, together with the appropriate co-ownership share of the entire real property, the size of which is to be determined according to the provisions of paragraph 4 of this Article.

(6) Ownership of a specific particular part of a piece of real property, connected to a particular co-ownership share of the real property, is entered in the land register by applying accordingly the provisions foreseen by this Act for the establishment of ownership on a particular part; until such time, entries of ownership of a particular part of a building, that is, entries of the right to disposition of a particular part of a building under social ownership are regarded as entries of the right of ownership of a particular part of real property connected to the co-ownership share of the real property determined in accordance with paragraph 4 of this Article.

#### **Article 371**

(1) After acquiring co-ownership of land pursuant to the provision of Article 370 paragraph 3 of this Act, any owner who came to own a particular part of a building pursuant to an agreement



concluded according to the provisions of the Act on the Sale of Apartments subject to the Right of Tenancy, which did not include the price of land in the price of the apartment, is bound to provide compensation of the value derived from such benefit to the former owner of the land.

(2) The obligation to provide compensation referred to in paragraph 1 of this Article consists of the payment of an amount of money within the terms and in the manner, in the amount, at the time and in the way in which the purchaser of the apartment would have been bound to pay the price of land had it been included in the price of the apartment in accordance with the provisions of the Act on the Sale of Apartments subject to the Right of Tenancy, where the terms begin as of the date of entry into force of this Act, which will be regulated more closely in a particular regulation to be adopted by the Ministry of Environmental Protection, Physical Planning and Construction within three months from the entry into force of this Act.

(3) The limitation period with respect to the obligation to provide compensation referred to in paragraphs 1 and 2 of this Article may not begin before the entry into force of this Act.

### **Particular Parts Created by Adaptations, Additions or Annexes**

#### **Article 372**

(1) Any person who before the entry into force of this Act bore the cost of performing an adaptation of the common premises in a building under social ownership into an apartment or another independent room pursuant to an approval issued by the competent authority within the limits of its power to make such proprietary and legal disposition, shall have acquired the right of ownership of the adapted rooms as a particular part of the real property, together with the corresponding co-ownership share of the entire real property based and within the framework of the approval, within the meaning of the provisions of Article 370 of this Act.

(2) The provision of paragraph 1 of this Article shall apply accordingly to any and all additions and annexes to real property performed before the entry into force of this Act, based on a duly issued approval of the competent authority and at the cost of the person who had them performed.

(3) If any adaptations, additions or annexes referred to in paragraphs 1 and 2 of this Article were performed before the entry into force of this Act, at the request of the person having an inherent interest the competent court shall order entry of ownership established on the appropriate co-ownership share of the entire real property in the land register, based on an enforceable court decision establishing the acquisition of ownership of a particular part of the real property and a decision establishing the size of the appropriate co-ownership share, that is, based on a document by all co-owners of the real property recognising the acquisition of ownership of a particular part of the real property and agreeing on the size of the appropriate co-ownership share on which such ownership is established.

### **Appurtenances of a Particular Part Created by Adaptations, Additions or Annexes**

#### **Article 373**

(1) The right of ownership of a particular part of any person who before the entry into force of this Act bears the cost of performing an adaptation of the common premises in a building under social ownership into a space to serve his particular part of the real property pursuant to an approval issued by the competent authority within the limits of its power to make such proprietary and legal disposition, shall extend to cover such space as an appurtenance of the part, unless according to the provisions of this Act it cannot be an appurtenance of such particular part.

(2) The provision of paragraph 1 of this Act shall apply accordingly to any and all additions and annexes to real property performed before the entry into force of this Act, based on a duly issued approval of the competent authority and at the cost of the person who had them performed.

## **Title 3**

### **ENFORCING POWERS ON REAL PROPERTY AS A WHOLE IN THE TRANSITIONAL PERIOD**

#### **Article 374**

- (1) The provisions of this Title shall regulate mutual relations between co-owners until they regulate their relations in accordance with the provisions of Part Three Title 4 of this Act.
- (2) Without prejudice to the provision of paragraph 1 of this Article, the provisions of Articles 91 and 92 in Part Three Title 4 of this Act shall apply to relations between co-owners regulated in accordance with the provisions of this Title.

### **Owners' Agreement**

#### *Article 375*

- (1) Relations between co-owners regarding the administration and use of a piece of real property are determined in the form of an agreement which has to be concluded in written form (owners' agreement).
- (2) The owners' agreement referred to in paragraph 1 of this Article has to include in particular:
  - the size of co-ownership shares of the real property,
  - the conditions and the modality of administering the real property,
  - detailed information about the person to administer the real property,
  - the scope of work to be performed by the person, his responsibilities and other,
  - the conditions and the modality of gathering and disposing of the funds in the joint reserves,
  - the name of the co-owner who is authorised to represent the co-owners in their relations with the administrator or third parties and the limits of his powers,
  - the conditions and the modality of using the common premises, including the apartment intended for the janitor, as well as equipment and land belonging to a specific piece of real property.
- (3) Decisions arising out of the owners' agreement are binding on all co-owners if the agreement was concluded by a majority of co-owners whose co-ownership shares make more than one half of the value of all particular parts of the real property.
- (4) The provisions of the owners' agreement also have effect towards the co-owner who acquired the right after the conclusion of the owners' agreement.

#### *Article 376*

- (1) If a piece of real property was under the administration of a housing fund, the co-owners are bound to submit the agreement referred to in Article 375 of this Act to the housing fund and notify it about the account on which the funds in the joint reserves are kept.
- (2) In the event referred to in paragraph 1 of this Article, the housing fund shall cease to administer a piece of real property after the co-owners of the real property submit the agreement they concluded with the administrator, and at the latest within twelve months from the entry into force of this Act.

### **Agreements relating to Common Parts**

#### *Article 377*

If a piece of real property has common parts and equipment that are shared by other real properties, such as the roof, the gutters, the facade or the boiler room, that is, the janitor's apartment which also belongs to other real properties, the co-owners of all such real properties are bound to conclude an agreement on administration and use of the common parts and equipment, that is, the janitor's apartment.

### **Administrator**

#### *Article 378*

- (1) The co-owners of a piece of real property are bound to entrust the taking of activities relating to the administration of the real property to an administrator in accordance with the agreement concluded with him.
- (2) The administrator may be either a natural person or a legal entity registered for the performance of such activities.
- (3) The administrator administers a piece of real property on behalf and for the account of the co-owners within the powers stipulated in the agreement.
- (4) The administrator disposes of the funds in the joint reserves.

(5) The administrator represents the co-owners relating to the administration of the real property in procedures before state authorities, unless stipulated otherwise in the agreement referred to in paragraph 1 of this Article.

(6) If the administrator administers several pieces of real property at the same time, he is bound to administer the affairs of each one of them separately.

### **Duties and Powers of the Administrator**

#### Article 379

(1) The administrator is bound in particular:

- to take care that the common parts of the real property are maintained in a state of construction and functionality required for normal use,
- to conduct occasional and annual inspections of the real property and to draw the corresponding minutes,
- to establish the amount of funds in the joint reserves to be borne by each individual co-owner,
- to also distribute other costs of the real property between the co-owners, to collect debts and to regularly settle the costs of third parties, based on the funds available,
- to notify the co-owners on the activities performed in an appropriate manner,
- to perform other activities in line with the obligations assumed in the agreement referred to in Article 378 of this Act,
- to present a proper account of the activities undertaken in the previous calendar year to each co-owner and to make available to him all documents on which it is based by 30 June of each year at the latest,
- to make an overview of the planned maintenance and improvements, as well as of any foreseeable costs and burdens in the calendar year to come (an annual programme) or in several years to come, and to display it in the building before the end of the current calendar year,
- to gather as many offers for the maintenance of the real property that have to be repeated at intervals longer than one year and for any other major improvement works.

(2) The co-owners on whose behalf the administrator administers a piece of real property are bound to notify any residential or business lessees in an appropriate manner of any changes to the person of the administrator or of any changes to his powers that concern them also; what unnotified residential or business lessees would perform for a person who is no longer the administrator or who is not authorised to receive the performance shall be deemed to have been duly performed and shall release the obligors from the obligation only if they did not know about the change.

(3) The co-owners may release any administrator acting contrary to the obligations referred to in this Article from his duty, and the administrator shall be bound to compensate any damages resulting from his negligence or omission.

### **Joint Reserves**

#### Article 380

(1) The co-owners are bound to pay the funds of the joint reserves to an account to be opened for the purpose, according to the annual or multi-annual programme.

(2) The co-owners are bound to pay the funds referred to in paragraph 1 of this Article at least in an amount corresponding to 0.54 % of the value of their particular part per annum.

(3) If the co-owners gather funds for the joint reserves in an amount exceeding 10% of the value of the real property, they shall not be bound to contribute to the joint reserves until the amount is reduced to below the prescribed minimum referred to in paragraph 3 of this Article.

(4) The co-owners are bound to pay the funds referred to in paragraph 1 of this Article on a monthly basis.

### **Administration Costs**

#### Article 381

Until the values of the particular parts of a piece of real property are established, the share of an owner of a particular part of the real property in the cost of administration shall be determined so that the amount of his share corresponds to the share of the useful surface area of the apartment or another independent room under his ownership, according to the sum of the useful surface areas of all apartments and other independent rooms in the real property.

#### **Emergency Repairs**

##### Article 382

- (1) If the co-owners do not ensure administration of the real property concerned, the local self-government unit and the local self-government and administration unit shall appoint a natural person or a legal entity to perform emergency repairs on the real property.
- (2) Emergency repairs means works that have to be performed suddenly and which prevent consequences for the life and health of people, as well as major damages to the real property.
- (3) In the event referred to in paragraph 1 of this Article, the co-owners are bound to pay costs of the person who performed an emergency repair within eight days from the date on which the person notified them in writing of the amount of the debt.
- (4) Any invoice issued for an emergency repair is deemed to be a trustworthy document in execution proceedings.
- (5) In order to secure the payment of any outstanding amounts, the legal person who performed an emergency repair has the right to enter a mortgage against the apartment or another particular part of the building belonging to those co-owners who failed to pay the cost of the repair.

#### **Necessary Repairs**

##### Article 383

- (1) If damages on the common parts and equipment of a piece of real property pose a danger to the life and health of people, the building inspector shall order the administrator of the real property or, if there is no administrator, the co-owners to perform the necessary repairs.
- (2) An appeal against the ruling of the inspector does not stay the enforcement of the ruling.
- (3) Any person seeking execution/enforcement in order to secure the settlement of the cost of the repair referred to in paragraph 1 of this Article has the right to enter a mortgage against the apartment or another particular part of the real property of those co-owners who failed to pay the cost of the repair.

#### **Deadline for Concluding Agreement**

##### Article 384

The co-owners are bound to conclude the owners' agreement referred to in Article 375, the agreement related to the common parts referred to in Article 377 and the agreement with the administrator referred to in Article 378 of this Act within twelve months from the entry into force of this Act.

#### **Involuntary Administration**

##### Article 385

- (1) If the co-owners failed to ensure administration of the real property within the deadline referred to in Article 384 of this Act, the local self-government units shall appoint a natural person or a legal entity to perform the activities of administration of the real property (involuntary administrator).
- (2) The involuntary administrator has all the powers of an administrator laid down in the provisions of this Title of the Act.

#### **Termination of Funds**

##### Article 386

The housing funds shall cease to work within twelve months from the entry into force of this Act.

#### **Subordinate Legislation**

##### Article 387

- (1) In a special regulation, the Government of the Republic of Croatia shall lay down the purpose of the funds in the joint reserves, the type and modality of performing emergency and necessary

repairs, the submission of the information about apartments to the competent administrative body of the local self-government units and the local self-government and administration units, the taking over of the resources and the personnel of the housing fund, the transfer of funds on the account of the housing fund, and the conditions and the way in which the housing funds shall cease to work.

(2) The Government of the Republic of Croatia shall pass the regulation referred to in paragraph 1 of this Article within a period of three months from the entry into force of this Act.

**Title 4**  
**FINAL PROVISIONS**  
**Effect of the Act**

Article 388

(1) As of the entry into force of this Act, the acquisition, change, legal effects and termination of real rights shall be evaluated according to the provisions of this Act, unless provided otherwise by the transitional and final provisions of this Act or a particular piece of legislation.

(2) The acquisition, change, legal effects and termination of real rights before the entry into force of this Act shall be evaluated according to the rules applicable at the moment of acquisition, change and termination of the rights and their legal effects.

(3) Time limits laid down in this Act for the acquisition and termination of real rights, if they began before the entry into force of this Act, shall continue to run in accordance with the provision of paragraph 2 of this Article, but not for a longer period of time than the deadline laid down in this Act if it would begin to run at the moment of its entry into force.

(4) With respect to the real property which was under social ownership on 8 October 1991, possession before the said date shall not be included in the time limit for acquisition by occupancy and for the acquisition of real rights on the real property by occupancy.

~~(4) With respect to the real property which was under social ownership on 8 October 1991, possession before the said date shall be included in the time limit for acquisition by occupancy and for the acquisition of real rights on the real property by occupancy.~~

**(ceased to be valid according to Constitutional Court decision no. U-I-58/1997, NN 137/99)**

(5) The protection of confidence in the truthfulness and completeness of the land register provided by this Act shall not apply with respect to acquisitions realised until 1 January 2007 if the acquisitions relate to the acquisition of real properties subject to the entry of social ownership, which was not deleted before the entry into force of this Act.

**Rights Acquired**

Article 389

(1) The entry into force of this Act shall not impinge on the relations between the owners or co-owners of things on one hand and the persons who duly acquired rights to such things based on a valid legal foundation on the other.

(2) Rights on real properties which are entered in the land register shall retain their place in the order of priority after the transformation of social ownership and the establishment of the unity of real property.

(3) Mutual relations between the owners or co-owners of real property on one hand and the tenants, that is, residential or business lessees on the other are regulated by the rules of the law on civil obligations, unless regulated in a particular piece of legislation.

**Exemptions from the Transformation of the Right to Administration, Use and Disposition**

Article 390

(1) The provisions of Articles 360 through 365 of this Act shall not cover things on which former social and social-political organisations held the right to administration, use and disposition, things not entered in the social capital of legal entities in the procedure of transformation based on the Act on the Transformation of Social Enterprises, and the things belonging to legal entities under social ownership having their seat in the formerly occupied, and now liberated territories of the Republic of Croatia.

(2) Transformation of the right to administration, use and disposition of things referred to in paragraph 1 of this Article shall be regulated in a particular piece of legislation.

#### **Disposing of Real Property Owned by Local Self-government Units**

##### Article 391

(1) The authorities governing the local self-government units and the local administration and self-government units may alienate or dispose of real property owned by the local self-government units and the local administration and self-government units only in tendering procedures and subject to the payment of consideration established based on the market value of the real property, unless provided otherwise by law.

(2) The provision of the paragraph 1 of this Article do not apply to legal transactions concluded between Republic of Croatia and local self-government unit, respectively local administration and self government unit, if that is in the interest of and aimed at general economy and social development of its citizens.

(3) Legal transactions concluded contrary to the provisions of this Article are null and void.

#### **Lost and Found Offices**

##### Article 392

(1) The Ministry of the Interior shall establish lost and found offices and regulate the method of their operation within three months from the entry into force of this Act.

(2) Until the lost and found offices referred to in paragraph 1 of this Article are established, the activities pertaining to such lost and found offices shall be performed by police stations.

#### **Exemptions from the Application of the Act on the Lease of Business Premises**

##### Article 393

The provisions of the Act on the Lease of Business Premises do not apply to lease agreements concluded in accordance with the provisions of Article 32 of this Act.

#### **Repeals**

##### Article 394

(1) Following the entry into force of this Act, the following laws shall be repealed:

- the Act on the Basic Legal Ownership Relations (OG 53/91),
- the Act on Ownership of Parts of Buildings (OG 52/73),
- the Act on Trade with Land and Buildings (OG 52/73),
- the Act on the Adaptation of Common Premises into Apartments (OG 37/88),
- the Basic Act on the Acquisition of the Right of Ownership of Agricultural Tools and the Use of Agricultural Tools by Citizens (OG 52/71),
- Titles II and III of the Housing Act (OG 51/85, 42/86, 22/92 and 70/93),
- the Act on the Use of Amortisation Funds for Major Repairs of Tenements (OG 39/88 and 33/89), and
- the Act on Housing and Municipal Funds (OG 53/90 and 76/93).

(2) Following the entry into force of this Act, the Act on Construction Land (OG 48/88, consolidated version 16/90 and 53/90) shall be repealed, and procedures initiated according to the provisions of the said Act shall be finalised according to the provisions of this Act if they are more favourable for the person having the right to use.

(3) Following the entry into force of this Act, the Regulation on the Use of Amortisation Funds of Apartments and Tenements (OG 19/95) shall be repealed.

(4) Following the entry into force of this Act, the provisions of the following statutory Articles shall be placed out of force:

- Articles 966 through 996 of the Civil Obligations Act, assumed as legislation of the Republic of Croatia by the Act on the Takeover of the Civil Obligations Act (OG 53/91 and 73/91),
- Articles 34 and 53 of the Building Act (OG 77/92).

**Interpretation and Application of the Provisions of the Act**

Article 395

(1) As of the entry into force of this Act, the provisions of the regulations presently in force, regulating social ownership differently than other ownership, may be construed and applied only in accordance with the principle of uniformity of ownership.

(2) As of the entry into force of this Act, the provisions of the regulations presently in force, regulating the belonging of buildings or parts of buildings differently than the belonging of land, may be construed and applied only in accordance with the principle of unity of real property.

**Entry into Force**

Article 396

This Act shall enter into force on 1 January 1997.

Class: 941-06/95-01/01

Zagreb, 2 October 1996

HOUSE OF REPRESENTATIVES

OF THE PARLIAMENT OF THE REPUBLIC OF CROATIA

President of the House of Representatives of the Parliament Vlatko Pavletić, *m.p.*