

**04 Annex - Free movement of capital**

**22. LAW ON OWNERSHIP RIGHTS**

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Pursuant to Article 95, item 3 of the Constitution of Montenegro I hereby pass the

**DECREE**

**PROMULGATING THE LAW ON OWNERSHIP RIGHTS  
(Official Gazette of Montenegro 19/09 of 13 March 2009)**

I hereby promulgate the Law on Ownership Rights adopted by the Parliament of Montenegro of the 23<sup>rd</sup> convocation, at the sitting of the first extraordinary session in 2009, held on 26 February 2009.

Number: 01-880/2

Podgorica, 11 March 2009

President of Montenegro

Filip Vujanovic, manu propria

**LAW ON OWNERSHIP RIGHTS**

**Chapter 1**

**Basic Provisions**

**Contents of the Law**

**Article 1**

This Law shall regulate the ownership right and other property rights, possession of movable and immovable property, as well as the manner of acquisition, transfer, protection and cessation of these rights.

**Title Holders**

**Article 2**

Natural persons and legal entities shall be entitled to ownership right and other property rights.

**Objects**

**Article 3**

Objects of ownership right and other property rights shall be individually specified movable and immovable property.

**Specification and Exercise of Property Rights**

**Article 4**

The ownership right and other property rights shall be exercised in accordance with the nature and purpose of property in the manner and under conditions prescribed by law.

**Misuse of Property Rights**

**Article 5**

It shall be prohibited to exercise the ownership right and other property rights contrary to the purpose they are created or recognized for by law.

**Ownership Right**

**Article 6**

Ownership shall mean the most comprehensive dominion over property.

The owner shall be entitled to possess, use and dispose of his property within the limits determined by law.

Every person shall be obliged to refrain from violating the ownership right of another.

**State as the Owner**

**Article 7**

The state may be a holder of the ownership right, as well as other legal entities and natural persons (dominium).

The state and state bodies and organizations shall manage and have disposition right, in accordance with law (imperium), on certain property subject to ownership (natural resources, goods in general use, resources of state bodies, cultural goods).

The Government of Montenegro shall exercise ownership authorizations on property in the state ownership, unless otherwise prescribed by a separate law.

Municipal bodies shall exercise ownership authorizations, in accordance with law and charter, on property in the state ownership serving to realize municipal interests and functions.

**Extension of the Ownership Right**

**Article 8**

The right of owner of immovable property shall include the area above the surface and part of the land below the surface of immovable property, unless otherwise determined by law.

**Social Function of Ownership**

**Article 9**

Ownership shall be binding and the owner shall be obliged, in exercising his right, to act with a due consideration with respect to general interests and interests of another.

The owner of property must not exercise his ownership right outside the limits prescribed for all owners of such property by this or a separate law, for the purpose of protecting the interests and safety of the state, nature, environment and health of the people.

If the owner of property is subject to limitations for the purpose of protecting interests and safety of the state, nature, environment or health of people, which require that he, but not other owners of such property, suffers a greater damage, he shall be entitled to compensation as in the case of expropriation.

**Limitations**

**Article 10**

The ownership right may be limited in accordance with law.

No person may be deprived of the ownership right, unless when it is required so by a public interest determined by law or on the basis of law, with a compensation that cannot be lower than a fair one.

The owner may, for the purpose that is not prohibited, limit or encumber his right.

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If the owner, through a legal transaction, determines the prohibition to divest of or encumber immovable property, such a prohibition shall be effective against third parties if it is registered in the cadastre of immovable property.

Limitation of the ownership right on movable property for the purpose of securing a claim shall be effective against third parties, if it is registered in an adequate public registry or if a third person knew about it or could have known about it.

### **Other Property Rights**

#### **Article 11**

The right of easement, security interest (pledge) in movable and immovable property and fiduciary transfer of ownership right on movable and immovable property may be created on the property subject to ownership, under conditions determined by law.

#### **Easement**

#### **Article 12**

Easement shall mean the right entitling its holder to use the property of another to a certain extent or to request from its owner not to use it in a certain manner.

#### **Pledge**

#### **Article 13**

Pledge shall mean the right on the property of another on the basis of which the holder may satisfy his claim from the value of the pledged property before other creditors, if the debtor does not meet his obligation when due.

### **Fiduciary ownership**

#### **Article 14**

Fiduciary ownership shall mean a conditionally acquired ownership right on movable or immovable property entitling the creditor to satisfy his due claim prior to other creditors, regardless of who has possession of the property.

### **Chapter II**

#### **Property**

#### **Concept**

#### **Article 15**

Property shall mean a material part of the nature within the dominion of a natural person or a legal entity that the ownership right or another right may exist on.

### **Integral Parts of the Property**

#### **Article 16**

The ownership right may exist on the integral part of the property that can be separated without causing damage to the property.

In the case of divesture of the property, the ownership of separated part shall be transferred to the acquirer, only if that part was in ownership of the transferor.

The provision of paragraph 2 of this Article shall not be applied to the acquisition of ownership from a non-owner and through adverse possession.

### **Fruits**

#### **Article 17**

A natural fruit shall mean the product of the principal property generated periodically, without exhausting its essence.

Until they are separated, natural fruits shall be the integral part of the principal property and they shall belong to its owner.

Fruits in monetary form (civil fruits) shall mean periodical monetary proceeds generated by the property (interest, rent).

### **Appurtenance**

#### **Article 18**

Appurtenance shall mean incompletely incorporated (separable) part of the principal property (for example: door, tire on the car, window glass), as well as naturally separated (secondary) property (for example: spare tire, apartment key, car pump).

The status of appurtenance shall not be lost if it temporarily (for example: due to repair) ceased to serve to the use of the principal property.

By intending the property to serve to the use of another, as appurtenance, the rights of third persons existing on such a property shall not be affected.

Acquirer of the principal property shall acquire the ownership on its appurtenance, if the transferor of the principal property was also the owner of the appurtenance.

This shall be without prejudice to the application of rules on acquisition of ownership from non-owners and through adverse possession.

Machines or similar devices indented for manufacturing, agricultural or commercial activity that the immovable property itself is permanently intended for as the principal property, but they are not built into it, shall be considered as appurtenance if they permanently serve to the purpose of the principal property, provided that rights of third parties, registered in adequate public registry, do not exist on such properties.

### **Movable and Immovable Property**

#### **Article 19**

Movable property shall mean the property that can be moved from one place to another without damaging its essence, if it is not the integral part of the immovable property.

Natural forces having economic value and within man's dominion (electricity, heat) shall be considered as movable property, unless otherwise determined by law.

Immovable property shall mean land, buildings and other objects that are permanently attached to the land, unless otherwise determined by law.

The integral parts of the immovable property (uncollected fruits, non-mowed grass, uncut trees and similar) shall be considered as movable property with respect to legal transaction by which they are disposed of.

Movable property used for exploitation of immovable property as the principal property, according to the wish of the owner or by law shall be considered as fixtures.

**Goods of General Interest**

**Article 20**

Goods of general interest shall enjoy a special protection (natural resources, goods in general use, cultural goods, coastal commons, national parks and other goods of general interest) in accordance with law.

Goods of general interest such as construction land, agricultural land, forests and forest land, protected parts of nature, in exceptional cases coastal commons, flora and fauna, property of cultural, historical and ecological importance, and other goods with such a purpose, may be in private ownership and subject to other property rights.

Owners and holders of other property rights on goods of general interest shall be obliged to exercise their rights in accordance with the manner of use prescribed by a separate law.

**Public Goods**

**Article 21**

Public good shall mean the property that, in accordance with its purpose, may be used by all persons under equal conditions (natural resources and goods in general use).

Law shall determine property to be considered as public goods and conditions for their use.

Special rights to use may be acquired on a public good (concession, BOT, lease and other rights defined by contract), under the condition determined by law.

**Goods in General Use**

**Article 22**

Goods in general use shall represent goods that by their nature or purpose serve to general use.

Goods in general use may be used by all persons under equal conditions, without special permissions or approvals of competent bodies, in accordance with law.

Natural resources (seashore, waters, ore, game, etc.) and goods in general use (roads, railroads, airports, squares, air space, ports, cultural and historical monuments and others) cannot be in private ownership.

**Collective Property and Sum of the Property**

**Article 23**

Collective property shall mean the whole consisting of individual independent things, naturally separated, out of which each has its independent purpose, it is subject to a separate ownership right, and represents an independent thing in transactions (herd of sheep, library, warehouse of goods, and similar).

Sum of the properties shall consist of two or more properties having the same purpose, making one economic whole and are together in a legal transaction (pair of gloves, chess set, suit of the same cloth, and similar).

**Divisible and Indivisible Property**

**Article 24**

Divisible property shall mean the property that can be physically divided, so that every obtained part has the value proportionate to the value of the whole (sack of flour, truck of sand, roll of cheese and similar).

Indivisible property shall mean the property that shall be destroyed by a physical division or its parts shall not keep a proportionate value of the whole (a gem, pair of shoes, and similar).

**Consumable and Inconsumable Things**

**Article 25**

Consumable things shall mean the things whose entire usefulness is exhausted by the first use or are spent in proportion to the use (food, petrol, coal, money, bottle of gas and similar).

Inconsumable things shall mean the things that can be used several times (book, suit, car, land and similar).

**Individually Specified Property and Property Specified by Family**

**Article 26**

Individually specified property shall mean the property concretely kept in mind, regardless whether it has a characteristic typical only of it, or whether there are other properties that are of the same type, appearance, form and size (certain house, concrete car, certain book, and similar).

By family, certain things in a legal transaction shall be marked by type and number, i.e. per measurement unit (kilogram of wheat, liter of wine, cubic meter of sand, and similar).

**Replaceable and Irreplaceable Things**

**Article 27**

Replaceable thing shall mean the thing that can be replaced in fulfilling an obligation by another thing of the same characteristics and value (flour, wine, boards, money, and similar).

Other things shall be irreplaceable.

**Chapter III**

**Acquisition and Termination of the Ownership Right**

**Acquisition of Ownership**

**Article 28**

The ownership right shall be acquired by operation of law, on the basis of a legal transaction or by inheritance.

The ownership right shall also be acquired by the decision of a state body, in the manner and under conditions determined by law.

**Acquisition by Operation of Law**

**Article 29**

By operation of law, the ownership right shall be acquired by creation of a new property, merger, mixture, construction on the land of another, separation of fruits, adverse possession, acquisition of ownership from non-owners, occupation and in another cases determined by law.

**Creation of New Property**

**Article 30**

A person, who develops a new property from his own material, by his work, shall acquire the ownership right on that property.

The ownership right on a new property shall belong to the owner from whose material the property, on the basis of a legal transaction, was developed by another person.

**Restoration to the Previous Condition**

**Article 31**

If a person has developed through his work a new property using the material of another, the owner of used material shall be entitled to request the restoration to the previous condition, if this does not cause a significant damage, or significant expenses.

**One Party Acting in Good Faith and the Other Acting in Bad Faith**

**Article 32**

When one party acts in a good faith, and the other in bad faith, a party acting in good faith shall be entitled to choose either to keep a new property in ownership and compensate the other party for the value of his work or material, or to give the new property to a party acting in bad faith, provided that the party acting in bad faith compensates it for the value of work or material.

**Both Parties Acting in Good Faith**

**Article 33**

When both parties act in good faith, a new property shall belong to a producer if the value of work is greater than the value of material, and to the owner of material if the value of material is greater, and if the values are approximately the same, co-ownership shall be created.

If the owner of processed material does not have the interest to have the property as the owner or co-owner, he may request that the property, in any case, becomes the ownership of the producer, provided that the latter compensates him for the value of material.

**Insignificant Value of Material**

**Article 34**

When the value of material is insignificant compared to the work, a new property shall be transferred to the ownership of producer, regardless whether he acted in good or bad faith, and the producer owes the owner the compensation for the value of material.

**Rights of Third Parties**

**Article 35**

Rights that have existed for the benefit of third parties on the processed material shall be transferred to a new property, if the owner of material becomes the owner or co-owner of the new property.

**Merging (Combining and Mixture)**

**Restoration to the Previous Condition**

**Article 36**

When movable properties of different owners are combined or mixed in such a manner that it is possible to restore them into the previous condition without greater damage or disproportionate costs, everybody shall get his part or adequate quantity, at the expense of the party acting in bad faith.

**Co-ownership of a New Property**

**Article 37**

When properties belonging to different owners are combined or mixed in the manner that they cannot be separated without a substantive damage or disproportionate costs, co-ownership right shall be established on the new property for the benefit of the existing owners, in proportion to the value of individual properties at the moment of combining or mixture.

**Right to Choose of a Good Faith Owner**

**Article 38**

If some of the owners acted in bad faith, a good faith owner may request, within a year from the day of combining or mixing the property, that the whole property comes into his ownership or that the whole property comes into the ownership of a bad faith owner who is obliged to compensate a value of the property to a good faith owner.

**Insignificant Value of the Property**

**Article 39**

If one out of the two combined or mixed properties has insignificant value compared to the other, the owner of property of a greater value shall acquire the ownership right on the new property, with the obligation to compensate its value to a person who lost the ownership right on the property.

**Rights of Third Parties**

**Article 40**

If rights of third parties existed on the former property, and the owner of that property has become the owner or co-owner of a new property, these rights shall be transferred to the new property.

If the owner of a former property has become the co-owner of a new property, the rights of third parties shall relate to his co-ownership part, and if he has become the owner of the entire property, the rights of third parties shall relate to the aliquot part in proportion to the value of the former property.

**Construction on the Land of Another**

**Good Faith Constructor and Bad Faith Owner of Land**

**Article 41**

A person who constructs a building or another construction (construction facility) on the land in the ownership of another (constructor) shall acquire the ownership right also on the land where a construction facility has been constructed, as well as on the land that is necessary for a regular use of that construction facility, if he did not know or could not have known that he constructed on the land of another, and the owner of the land knew about the construction and did not object immediately.

The owner of land, in the case referred to in paragraph 1 of this Article, shall be entitled to request, within three years from the day of finding out about the finalized construction, but at the latest within the period of 10 years upon the finalized construction, that the constructor compensates him for the value of land in the amount of its market price at the time of adoption of a court decision.

**Bad Faith Constructor and Good Faith Owner of Land**

**Article 42**

If a constructor knew or should have known that he constructed on the land of another and the owner opposed immediately, the owner of land may request to get the ownership right on the construction facility, or that the constructor demolishes the construction facility and restores the land in the original condition, or that the constructor pays out the market price of the land.

In the cases referred to in paragraph 1 of this Article, the owner of land shall be entitled also to damage compensation.

If the owner of land requires to get the ownership right on the construction facility, he shall be obliged to compensate the constructor for the value of facility in the amount of average construction price of the facility at the place it is located, at the time of adoption of a court decision.

The owner of land may exercise the right to choose referred to in paragraph 1 of this Article at the latest within 3 years from the day of finalizing the construction of the construction facility.

The owner of land may require the payment of a market price of land upon expiration of the deadline referred to in paragraph 4 of this Article.

**Both Parties Acting in Good Faith**

**Article 43**

If a constructor acts in good faith, and the owner of land did not know about the construction, in the case when the value of construction facility is much higher than the value of land, the construction facility together with the land shall belong to the constructor, and the constructor shall owe the owner for the land a compensation at the market price of the land.

If the value of land is significantly higher, the court shall, at the request of the owner of the land, give him the construction facility and oblige him to compensate the constructor for the construction value of the facility in the amount of average construction price of the facility at the place where it is located. The owner may submit this request within three years upon finalization of the construction of the construction facility.

If the constructor acts in a good faith, and the owner of land did not know about the construction, in the case when the value of construction facility and the value of land are approximately the same, the court shall give the construction facility, i.e. construction facility and land to the owner of land and constructor, taking into consideration their needs, and especially their housing condition.

Compensation for land and compensation for construction facility shall belong to the owner of land and constructor, respectively, in accordance with the provision of paragraph 1 of this Article.

**Both Parties Acting in Bad Faith**

**Article 44**

When both parties act in bad faith, the rule prescribed for the case when the constructor is acting in bad faith, and the owner of land in good faith shall apply.

**Construction on the Land of Another with the Material of Third Party**

**Article 45**

Rules on construction on the land of another shall be applied also in the case when the constructor used in construction the material of third person without the permission of the owner of material.

The owner of material shall be entitled to the compensation of value of material and compensation of damage.

If the used parts can be separated without damage, the owner may request their return, within two months upon finding out about it, and at the latest within a year.

### **Construction on its Own Land**

#### **Article 46**

The owner of land, by construction, shall acquire the ownership right on the facility he constructed in accordance with law.

### **Construction with the Material of Another on its Own Land**

#### **Article 47**

The owner of land who constructed a building on his own land shall become the owner of building, even when he used the material of another for construction, if the building is constructed in accordance with law.

The owner of material shall be entitled to compensation for the value of material and the right to compensation for damage.

If parts of the material may be separated without damage, the owner of material may request the return of a part of material and compensation for damage.

### **Partial Penetration to a Neighbouring Parcel by Construction**

#### **Article 48**

When the building is constructed on one's own land, but the landmark is exceeded and the part of a neighbouring parcel is penetrated to, the owner of neighbouring land shall be entitled, regardless whether the parties are acting in good or bad faith, to request restoration to the previous condition, if it is possible to do so without substantive damage to the other part of the building, or if disproportionately big damage threatens to the owner of the occupied land due to exceeding of the landmark.

### **Ordering Real Easement (predial easement) or Ownership on the Occupied Land**

#### **Article 49**

If the conditions for restoring the previous condition referred to in Article 48 of this Law are not met, the court shall determine adequate real easement for the constructor, or ownership right on the area of the neighbouring land occupied by the construction.

In the case referred to in paragraph 1 of this Article, the owner of the occupied land shall be entitled to compensation in the amount of reduced value of the parcel, i.e. market value of the occupied part of the land, as well as the right to request from the constructor to repurchase, at market prices, the residual part of the land when it has substantially lost the economic purpose or its exploitation has become unsuitable or substantially more difficult for the owner.

The owner of land shall be entitled also to damage compensation.

### **Constructor Acting in Bad Faith**

#### **Article 50**

Restoration to the previous condition may also be required in the case when the owner of land has timely warned the constructor or the constructor has otherwise acted in bad faith.

Notwithstanding the provision of paragraph 1 of this Article, the court shall not allow the restoration to the previous condition, if it finds that it is not socially justifiable with respect to circumstances of the case, and especially with respect to insignificant value of occupied land against the size of damage that would be incurred to a constructor by demolition, wealth status of the parties, as well as their behaviour during the construction.

### **Long-Term Plants**

#### **Article 51**

The provisions on construction on another and one's own land shall apply accordingly to long-term plants (vineyards and orchards).

### **Separation of Fruits**

#### **Article 52**

The ownership right on fruits generated by the property shall belong to the owner of the property.

A good faith possessor, person using the fruits and lessee of the property generating fruits shall acquire the ownership right on fruits at the moment of their separation.

The fruits referred to in paragraph 2 of this Article, until their separation, shall be the integral part of the property and shall belong to its owner.

### **1. Adverse Possession**

#### **Ordinary Adverse Possession**

##### **Article 53**

A good faith and legal possessor of movable property that the other party has the ownership right on shall acquire the ownership right on that property, through adverse possession, by expiration of three years.

A good faith and legal possessor of immovable property that the other party has the ownership right on shall acquire the ownership right on that property, through adverse possession, by expiration of ten years.

#### **Extraordinary Adverse Possession**

##### **Article 54**

A good faith possessor of movable property that the other party has the ownership right on shall acquire the ownership right on that property through adverse possession by expiration of ten years.

A good faith possessor of immovable property that the other party has the ownership right on shall acquire the ownership right on that property through adverse possession by expiration of twenty years.

#### **Adverse Possession for the Benefit of Successors**

##### **Article 55**

A successor shall become a good faith possessor from the moment of opening inheritance, also in the case when the testator was a bad faith possessor, and the successor did not know or could not have known that, and the time for adverse possession starts running from the moment of opening the inheritance.

#### **Period of Time for Adverse Possession**

##### **Article 56**

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The time needed for adverse possession shall start running from the day when the possessor enters in the possession of the property, and it shall end by expiration of the last day of the period of time needed for adverse possession.

### **Including the Time of Predecessor**

#### **Article 57**

The time needed for adverse possession shall also include the time during which the predecessors of the current possessor held the property as good faith and legal possessors, i.e. as good faith possessors.

If out of the two successive possessions, one is suitable for ordinary and the other for extraordinary adverse possession, inclusion of the expired time shall be done in proportion to the length of legal periods of time for ordinary and extraordinary adverse possession.

### **Interruption and Cessation**

#### **Article 58**

Provisions on interruption and cessation of the statute of limitations of claims shall apply to interruption and cessation of adverse possession.

### **Rights of Third Parties**

#### **Article 59**

Property-based rights (property and obligation) that have existed on the property for the benefit of a third party shall remain in force, if a new owner obtained the property with no compensation.

If the acquirer of the property obtained the property for compensation, the rights of third parties shall cease to exist, if the new owner did not know about them, or could not have known about them, under given circumstances.

## **2. Acquisition from a Non-Owner**

### **Conditions Necessary for Acquisition**

#### **Article 60**

A good faith person shall acquire the ownership right on movable property acquired for a compensation from a non-owner who, within his business activity, trades in such property, from a non-owner who was given the property into possession by the owner on the basis of a legal transaction that is not a ground for acquiring the ownership right, as well as on public sale.

### **Rights of Former Owner**

#### **Article 61**

A former owner may request from a good faith acquirer to return him the property for the compensation at the market price, if that property has a special importance for him.

The request referred to in paragraph 1 of this Article cannot be placed upon expiration of one-year deadline upon acquiring the ownership right on that property.

### **Rights of Third Parties**

#### **Article 62**

Property-based rights that have existed on the acquired property for the benefit of third party shall cease, if the acquirer (new owner) did not know about them, or could not have known about them under given circumstances.

### **Occupation**

#### **Article 63**

The ownership right on a movable property abandoned by its owner shall be acquired by a person who has taken this property into possession with the intent to appropriate it (occupation), unless otherwise determined by law.

The ownership right on immovable property cannot be acquired by occupation.

### **Planting on the Land of Another and the One's Own Land**

#### **Article 64**

When someone plants seedlings on the land of another, and was not entitled to do so, seedlings shall become the integral part of the land and shall belong to the owner of the land.

#### **When the Planter is Acting in Good Faith, and the Owner of Land in Bad Faith**

##### **Article 65**

If the planter is acting in good faith (he did not know and could not have known that the land belongs to another and that he is not entitled to plant), and the owner of land is acting in bad faith (he noticed that the planting is underway, and did not warn the planter), the owner of land shall owe the planter a compensation based on the value of funds appropriately invested, but as maximum up to the amount of benefits he has due to the planting.

In the case referred to in paragraph 1 of this Article, the owner of land shall not be entitled to request removal of seedlings and restoration of the land into the previous condition at the expense of the planter.

#### **When Both Parties are Acting in Good or Bad Faith**

##### **Article 66**

The provision of Article 65 of this Law shall apply in the case when both parties act in good faith or bad faith.

The owner of land shall be entitled to request the removal of seedlings that disturb him or to remove them himself, and he shall not be obliged to give any compensation in return.

#### **When the Planter is Acting in Bad Faith, and the Owner of Land in Good Faith**

##### **Article 67**

If the planter is acting in bad faith, and the owner of land in good faith, the owner of land may keep seedlings and pay a compensation pursuant to the rule prescribed for the case when the planter is acting in good faith, and the owner of land is acting in bad faith, or request the removal of seedlings and restoration of the land into the previous condition or request a compensation of the incurred damage.

### **Planting of Seedlings of Another on the Land of Another**

#### **Article 68**

The rules on planting one's own seedlings on the land of another shall also apply in the case when someone plants seedlings that belong to third party on the land of another.

### **Planting of Seedlings of Another on One's Own Land**

#### **Article 69**

Seedlings of another planted on one's own land shall become the integral part of the land and shall belong to the owner of land, who is obliged to compensate the owner of seedlings for their value and damage.

### **3. Sowing in the Land of Another**

#### **Bad Faith Sower**

#### **Article 70**

If one's own seeds are sowed in the land of another without the consent of the owner of land (he knew or should have known that he is not entitled to do so), the crop shall belong to the owner of land, who is not obliged to provide compensation for invested funds and value of work.

In the case referred to in paragraph 1 of this Article, the owner of land shall also be entitled to damage compensation.

#### **Sower and Owner of Land Acting in Good Faith**

#### **Article 71**

If a sower was acting in good faith, a good faith owner of land shall take the entire crop, but he shall owe a compensation for funds appropriately invested and work, at the most up to the amount of proceeds he had from the land.

If the sower was acting in good faith, and the owner of land did not warn him on time, and he could have done it, the crop shall be divided as if there were a lease concluded between them.

#### **Both Parties Acting in Bad Faith**

#### **Article 72**

When a sower and owner of land are acting in bad faith, the crop shall belong to the owner of land who owes the compensation for funds appropriately invested and work, at the most up to the amount of proceeds he had from the land.

### **Sowing the Seeds of Another in the Land of Another**

#### **Article 73**

The rules applicable to sowing in the land of another shall apply also when the seeds of another are used, only the sower shall be obliged to compensate the owner of seeds for the value of seeds and incurred damage.

### **Sowing the Seeds of Another in One's Own Land**

#### **Article 74**

When the owner of land sows the seeds of another in his own land, without the consent of the owner of seeds, the crop shall belong to the owner of land, who owes a compensation for the value of seeds and compensation of incurred damage, in accordance with general rules.

#### **Torn Off Piece of Land**

##### **Article 75**

When the river separates a piece of land and attaches it to another land (brings it to the land of another), the owner of the torn off land shall be entitled to recover it within a year.

Upon expiration of the one-year deadline the torn off piece shall become the integral part of the land to which it is attached, and no compensation is owed to the former owner.

#### **Deposit**

##### **Article 76**

When a river gradually and imperceptibly deposits land on the shore, such an increased area shall belong to a coastal owner who is not obliged to give any compensation.

#### **Moving the Course of River**

##### **Article 77**

The increase in the area of coastal land, which occurs due to a gradual natural movement of the course of river to the opposite shore, shall be of benefit to the coastal owner.

Over-the-river neighbour, whose land is reduced due to the movement of the course of river, shall not be entitled to compensation.

#### **Abandoned Riverbed**

##### **Article 78**

If a river changes its course, interested coastal owners shall be entitled to restore the previous course at their expense within a year, if it is not contrary to the river regulation plan.

If the former course of the river is not restored within the deadline referred to in paragraph 1 of this Article, the abandoned riverbed shall become the state ownership.

Compensation, pursuant to the rules of the Law on Expropriation, shall belong to the owners of land occupied by the new course of the river.

#### **New River Island**

##### **Article 79**

When a land elevation elevates above the water surface of the river or lake, it shall be in the state ownership.

The island generated by division of the river or inundation of land by river flooding shall remain in the ownership of the existing owner.

#### **4. Swarm of Bees**

##### **Deadline for Chasing After Bees**

##### **Article 80**

Swarm of bees that left a beehive shall become no one's property, if the owner does not start chasing them within 24 hours, or waives the chasing, or loses the swarm from his sight during the chasing.

If the owner finds the swarm, and does not have the possibility to capture it immediately, he may mark it as his own (by placing a cross, notch, and in another common manner); thereafter no one else has the right to appropriate the swarm.

### **Right to Cross the Immovable Property of Another**

#### **Article 81**

In searching the swarm, the owner shall be entitled to cross the immovable property of another.

If the swarm occupies an empty beehive of another, the owner of swarm shall be entitled to open it in order to catch and recover the swarm.

If the owner of swarm does not perform the action referred to in paragraph 2 of this Article within 48 hours, such a swarm shall belong to the owner of beehive.

In the case referred to in paragraph 3 of this Article, the owner of beehive shall be obliged to compensate the incurred damage to the owner of swarm.

### **Runaway Swarm in the Occupied Beehive of Another**

#### **Article 82**

If a runaway swarm occupies the beehive of another, already occupied by bees, the ownership right and other rights that have existed on the occupied beehive shall be extended also to the newly come swarm, with no obligation to make a payment to the former owner.

The rights that have existed on the newly come swarm before unification shall cease to exist.

### **Co-Ownership on Mixed Swarms**

#### **Article 83**

When the runaway swarms, which belong to different owners, unite, their owners shall become co-owners of the captured swarm generated by unification, in proportion to the number of swarms.

## **5. Acquisition on the Basis of a Legal Transaction with Owner**

### **On Immovable Property**

#### **Article 84**

On the basis of a legal transaction, the ownership right on immovable property shall be acquired by registration in the cadastre of immovable property or in another adequate manner determined by law.

### **On Movable Property**

#### **Article 85**

On the basis of a legal transaction, the ownership right on movable property shall be acquired by the delivery of that property in possession of the acquirer.

### **Delivery of Movable Property**

#### **Article 86**

The delivery of movable property shall be considered done also by the delivery of document on the basis of which the acquirer may dispose of that property, as well as by submission of a part of the property or setting aside or marking in another manner the property that signifies the delivery of property.

The delivery of movable property shall be considered done also when the delivery of property seems to have happened based on concrete circumstances.

### **Transfer of Ownership Right by Conclusion of a Legal Transaction**

#### **Article 87**

When an acquirer on the basis of a legal transaction possesses a movable property, he shall acquire the ownership right on that movable property at the moment of the conclusion of a legal transaction with the owner of the property.

If the acquirer of the ownership right on movable property leaves that property in possession of the transferor on another basis, he shall acquire the ownership right on it at the moment of the conclusion of a legal transaction with the owner of property.

The ownership right on movable property held by a third party shall be transferred to the acquirer at the moment of the conclusion of a legal transaction, by which the transferor transferred the right to request the return of that property.

A third party shall be entitled to raise all objections he had against a former owner to the new owner.

### **Multiple Divesture of Immovable Property**

#### **Article 88**

When several persons concluded legal transactions for the purpose of acquiring the ownership right on the same immovable property and no one acquired possession and made registration in the cadastre of immovable property, the ownership right shall be acquired by a person who firstly concluded a legal transaction, if he acted in good faith.

When several persons concluded legal transactions for the purpose of acquiring the ownership right on the same immovable property, the ownership right shall be acquired by a person who registered his right in the cadastre of immovable property, if he acted in good faith.

When several persons concluded legal transactions for the purpose of acquiring the ownership right on the same immovable property, and no one registered the ownership right in the cadastre of immovable property, the ownership right shall be acquired by a person who acquired possession.

### **Multiple Divesture of Movable Property**

#### **Article 89**

When several persons concluded separate legal transactions for the purpose of acquiring the ownership right on the same movable property that is individually specified, that right shall be acquired by a person to whom the property was delivered, if he acted in good faith.

If there are several good faith acquirers, the right to request the delivery of property shall belong to a person who was the first to conclude a legal transaction for acquiring the ownership right.

### **Rights of Third Parties on Movable Property**

#### **Article 90**

Rights that have existed on movable property for the benefit of a third party shall remain, if a new owner acquired the property with no compensation.

If the acquirer obtained the property for compensation, the rights of third parties shall cease, if the new owner did not know or could not have known about them under given circumstances.

### **Inheritance**

#### **Article 91**

The ownership right on property shall be acquired by inheritance at the moment of opening inheritance of the property of the deceased, unless otherwise determined by law.

### **6. Finding the Property**

#### **Delivery of Found Property**

##### **Article 92**

A person who finds a lost property shall be obliged to deliver that property to a competent municipal body on whose territory it is found.

A municipality shall be obliged to receive the found property from the finder and make the minutes thereof, and issue to a finder a confirmation of receiving the found property.

The minutes shall include a place and time of finding the property, detailed description of the property, last and first name, and exact address of a finder, as well as his request for a prize, if any.

A finder may deliver the property to the closest police station or return it to the owner, i.e. to a person who lost it, if such a person can be recognized on the basis of signs on the property or other circumstances.

#### **Obligation of a Body that the Property is Delivered to**

##### **Article 93**

Municipality shall be obliged to immediately undertake all necessary measures for preserving the property and finding a person who lost it.

If a person who lost the property is known or reports immediately, a municipality shall deliver to him the property upon the payment, i.e. deduction of costs regarding keeping it and prize to a finder.

If a person who lost the property does not report immediately, and a finder delivered the property to a police station, a police station shall deliver the found property with necessary data to a municipality with confirmation.

#### **Announcing that the Property is Found**

##### **Article 94**

Municipality shall announce that the property of smaller value is found on a bulletin board or in another manner.

Municipality shall announce that the property of greater value is found also in a daily printed media.

### **Sale**

#### **Article 95**

If found property is susceptible to malfunctions or is inconvenient for keeping, municipality shall sell it and keep the proceeds from the sale.

Found cattle shall be sold, if a person who lost the cattle does not report within 15 days from the day of finding the cattle.

If a person who lost the property reports within a year, starting from the day of announcing the finding, property or money obtained from its sale shall be delivered to him upon the payment, i.e. deduction of keeping and announcing costs, as well as upon the payment, i.e. deduction of the prize for a finder.

### **Establishing the State Ownership**

#### **Article 96**

If a person who lost the property does not report within a year, starting from the day of announcing the finding, or does not prove his right on the property, or refuses to receive the property, the found property shall be transferred to the state ownership.

Municipality on whose territory the property is found shall acquire a disposition right on the property.

If the property due to its special importance (artistic, historical, cultural, scientific, etc.) represents a cultural good, the municipality shall notify a competent body for protection of cultural goods.

### **Costs and Prize**

#### **Article 97**

A finder of lost property shall be entitled to compensation of costs appropriately incurred, as well as to the prize in the amount of 15% of the property value.

The court may fairly reduce the amount of prize, taking into consideration circumstances of the finder and the owner (i.e. the person who lost the property), as well as in the case when the prize would represent disproportionately high benefit.

In the case referred to in paragraph 2 of this Article, a prize cannot be lower than 8% of the property value.

If the value of property can be determined only with disproportionate costs or if the property has the value only for the owner, i.e. person who lost it, the court shall determine the prize in accordance with a fair evaluation.

### **Prize for Several Finders**

#### **Article 98**

If several persons found the same property, they shall divide the prize in equal parts.

A finder shall be considered to be also a person who firstly noticed the property and reached for it, although the other person took it before.

### **Losing the Right to Prize**

#### **Article 99**

A finder who did not report the finding of property in the manner prescribed by law shall lose the right to a prize.

### **Special Rule**

#### **Article 100**

If a property is found in public transportation means or premises accessible to a greater number of persons, a finder may deliver it to a competent body.

If the procedure regarding these things is not regulated by special regulations, a manager of a service (institution) shall be obliged to announce the finding of the property in adequate manner, and if the owner or person who lost the property does not report within 15 days from the day of announcement, he shall submit the property for further procedure to a municipality where the public service is headquartered.

Employees in a public service, who find the property during their ordinary course of business, shall not be entitled to a prize.

## **7. Finding a Hidden Treasure**

### **Concept of Hidden Treasure**

#### **Article 101**

Hidden treasure, under this Law, shall mean money, gold, silver, jewellery, precious stones, things developed from precious metals or precious stones and other valuables, whose owner cannot be reliably determined.

### **Establishing the State Ownership**

#### **Article 102**

Found treasure shall become the state ownership, and municipality on whose territory it is found shall acquire a disposition right, unless otherwise determined by a separate law.

### **Right to a Prize**

#### **Article 103**

A finder shall be entitled to a prize in the amount of one quarter of the treasure value.

The owner of property where the treasure was hidden shall also have the right referred to in paragraph 1 of this Article.

If a finder is the owner of property where the treasure was hidden, one third of the value of the treasure shall belong to him.

If a treasure of high value is found, the court shall, in accordance with circumstances of the case, reduce the prize.

In the case referred to in paragraph 4 of this Article, a prize cannot be lower than 8% of the value of the property.

A finder who failed to disclose the finding of treasure shall lose the right to a prize.

Co-finders shall divide the prize into equal parts.

### **Special Finders**

#### **Article 104**

A finder shall also be considered to be a worker who accidentally found a treasure while executing the works.

Co-finder shall also be considered to be a person who noticed the treasure first, although the other person took it first.

A person who had the obligation to participate in the activities to find a treasure on the basis of a contract or employment shall not be entitled to a prize.

### **Finding a Cultural Good**

#### **Article 105**

Provisions of a separate law shall apply to finding a cultural good.

Finder of a cultural good shall be entitled to fair compensation.

Rules on who is considered to be a finder of hidden treasure shall apply accordingly also to finding of cultural goods, which have been in the ground or water until being found.

### **8. Cessation of the Ownership Right**

#### **Acquisition of the Ownership Right by Other Persons**

#### **Article 106**

The ownership right that a certain person has on property shall cease when another person acquires the ownership right on that property.

#### **Abandoning Property**

#### **Article 107**

The ownership right shall cease by abandoning the property, and when the owner of the property undoubtedly expresses his will not to own the property any more.

The owner of immovable property may waive his ownership right by giving the statement before a competent body, provided that there are no other property rights, except for real easement, created on the immovable property.

On the basis of the statement referred to in paragraph 2 of this Article, the deletion of the ownership right of the existing owner and registration of the ownership of the state are simultaneously done in the cadastre of immovable property, unless otherwise prescribed by a separate law.

#### **Destruction of Property**

#### **Article 108**

The ownership right shall cease by destruction of the property.

The owner shall keep the ownership right on the remainder of the destroyed property.

#### **Escape of the Caught Wild Animal**

#### **Article 109**

The ownership right on a caught wild animal shall be lost, if the animal escapes, and the owner does not start chasing it or gives up chasing it.

#### **Domesticated Animals**

#### **Article 110**

The ownership right shall be lost on a domesticated animal, when the animal loses the habit to return to a place it was determined for it.

**Establishing the State Ownership**

**Article 111**

Domesticated and caught animals that the owner has lost the ownership right on under Articles 109 and 110 of this Law shall become the state ownership.

**Chapter IV**

**Protection of Ownership Right**

**1. Complaint for Repossession**

**Concept**

**Article 112**

Owner may request from the possessor to return individually specified property by filing a complaint.

The owner must prove that he has the ownership right on the property the return of which he is asking for, as well as that the property is in the actual dominion of the defendant.

**Obligation to Return the Property and Fruits**

**Article 113**

A good faith possessor shall transfer the property to the owner with fruits that are still not collected.

A bad faith possessor shall be obliged to deliver all fruits to the owner of property.

A bad faith possessor shall be obliged to make compensation for the value of collected fruits he spent, divested of or destroyed, as well as for the value of fruits he failed to collect.

**Compensation for Using the Property and Liability for Damage**

**Article 114**

A good faith possessor shall not be obliged to pay a compensation for using the property and he shall not be liable for deterioration and destruction of the property occurred during his good faith possession.

A bad faith possessor shall be obliged to pay a compensation for using the property.

A bad faith possessor shall be obliged to compensate damage incurred by deterioration or destruction of the property, unless this damage would occur also in the case the property were with the owner.

**Compensation of Necessary Costs**

**Article 115**

A good faith possessor shall be entitled to compensation of necessary costs for maintaining the property.

A bad faith possessor may ask for the compensation of necessary costs that would have had the owner if he had held the property.

The owner of property shall be obliged to compensate a good faith possessor for the necessary costs referred to in paragraph 1 of this Article to the extent to which these costs are not included in the benefits he obtained from the property.

### **Compensation of Useful Costs**

#### **Article 116**

A good faith possessor may ask for compensation of useful costs to the extent to which the value of property is increased.

A bad faith possessor shall be entitled to compensation of useful costs, only if they are useful personally for the owner.

The owner of property shall be obliged to compensate a good faith possessor for the useful costs referred to in paragraph 1 of this Article to the extent to which these costs are not included in the benefits he obtained from the property.

### **Compensation of Luxurious Costs**

#### **Article 117**

A good faith possessor shall be entitled to compensation of costs incurred for his own pleasure or by embellishing the property, only if the value of property is increased by doing so. If what is done for the purpose of pleasure or embellishing the property may be separated from it without damaging it, a good faith possessor shall have the right to separate it and keep it for himself.

A bad faith possessor shall not be entitled to compensation of costs that he incurred for his pleasure or embellishment of the property, but he may take away the property he incorporated for his pleasure or embellishment of the property, when it can be separated without damaging the principal property.

### **Keeping the Property**

#### **Article 118**

A good faith possessor shall be entitled to keep the property, until the amount of necessary and useful costs he had regarding the maintenance of property is compensated.

### **Claims under the Statute of Limitations**

#### **Article 119**

Claims regarding compensation of necessary and useful costs shall fall under the statute of limitations within three years from the day of delivering the property.

### **Occurrence of Bad Faith**

#### **Article 120**

A good faith possessor shall become a bad faith possessor from the moment when the complaint is submitted to him, but the owner may prove that a good faith possessor has become a bad faith possessor even before the submission of the complaint.

### **Complaint Not Falling under the Statute of Limitations**

#### **Article 121**

The right to submission of complaint for returning the property shall not fall under the statute of limitations.

### **Claims Falling under the Statute of Limitations**

#### **Article 122**

The right of owner to request from a bad faith possessor the delivery of collected fruits and compensation of value of fruits that he spent, divested of, failed to collect or that he destroyed, shall fall under the statute of limitations within three years from the day of delivering the property.

A claim of bad faith possessor of the property for compensation of costs shall fall under the statute of limitations within three years from the day of delivering the property.

### **Complaint for Returning the Property on the Basis of Senior Possession (Actio Publiciana)**

#### **Article 123**

A person who acquired individually specified property on a legal ground and in a legal manner, and did not know or could not have known that he did not become the owner, shall be entitled to request its return also from a good faith possessor that holds this property with no legal ground or on the basis of a subordinate legal ground.

A person whose possession is suitable for acquiring the ownership right by extraordinary adverse possession shall be entitled to require the return of the property from a person who does not have the same possession of that property.

### **Senior Legal Ground**

#### **Article 124**

When two persons have equal possession for acquiring the ownership right by adverse possession, a senior legal ground shall have a person who acquired the property with the payment in return over the person who acquired the property with no payment in return.

If legal grounds of those persons are of equal effect, priority shall be given to a person who holds the property.

### **Application of Rules on Complaint of the Owner for Return of the Property**

#### **Article 125**

Provisions on complaint of the owner for return of the property shall accordingly apply to conditions under which a good faith possessor of property may request its return and return of its fruits, as well as conditions under which a possessor may request compensation of costs he had regarding the maintenance of the property.

### **Complaint against Disturbance of the Ownership**

#### **Article 126**

If a third person with no grounds disturbs the owner or possessor having the ownership right in another manner, and not by seizing the property, the owner or possessor having the ownership right may request by a complaint this disturbance to stop.

Good faith of a possessor and legality of possession shall be presumed, under the complaint referred to in paragraph 1 of this Article.

### **Proving the Right to Disturbance**

#### **Article 127**

A defendant shall be obliged to prove the existence of any right he has the exercise of which disturbs the owner of property.

Registration in public book shall be the proof of the existence of a certain right of the defendant on the immovable property referred to in paragraph 1 of this Article.

### **Right to Damage Compensation**

#### **Article 128**

When damage is incurred by disturbing the exercise of ownership right, the owner shall be entitled to request compensation of damage in accordance with general rules on damage compensation.

### **Complaint not Falling under the Statute of Limitations**

#### **Article 129**

The right to submit a complaint against disturbance of ownership shall not fall under the statute of limitations.

### **Protection of Co-Ownership and Joint Ownership**

#### **Article 130**

Co-owner and joint owner shall be entitled to the complaint for protection of ownership right on the entire property, and co-owner shall be entitled also to a complaint for protection of his right to a part of the property.

In litigations between co-owners, in litigations between joint owners, as well as in litigations among third parties and co-owners or joint owners, relating to the right on a joint property, a complaint must include all co-owners or joint owners as necessary co-litigant.

## **Chapter V**

### **Co-Ownership Right**

#### **Concept**

#### **Article 131**

Several persons shall have the right of co-ownership on an undivided property when each person's part is defined in proportion to the whole (aliquot part).

If co-ownership parts are not defined, it shall be presumed that they are equal.

### **Contents of the Co-Ownership Right**

#### **Article 132**

A co-owner shall be entitled to possess and use a property together with other co-owners in proportion to his part, without violating the rights of other co-owners.

A co-owner may dispose of his part without the consent of other co-owners.

In the case of sale of the co-owner's part, other co-owners shall have the pre-emptive right to purchase.

If a co-owner, within 10 days from the day of receiving a written offer for purchasing a co-ownership part, does not accept the offer, the bidder may sell his co-ownership part to a third party.

Fruits and other proceeds from the property shall be divided among the co-owners in proportion to the size of their parts (shares).

### **Managing a Co-Owned Property**

**Article 133**

Co-owners shall have the right to jointly manage the property.

Co-owners may delegate management of the property to one or several co-owners or third person.

The act of appointing the administrator shall determine also his rights and obligations.

If the consent regarding appointment and authorizations of the administrator is not reached, every co-owner shall be entitled to request the court to make a decision thereon.

The administrator shall be entitled to a fee for performance of managerial activities.

Co-owner who does not participate in management shall be entitled to be informed on management.

**Undertaking Activities regarding Regular Management of the Property**

**Article 134**

It is necessary to have the consent of co-owners whose parts together make more than half of the value of property to undertake activities regarding regular management of the property.

If in the cases referred to in paragraph 1 of this Article, the consent is not reached, and it is necessary to undertake the activities for a regular maintenance of the property, the court shall decide thereon.

Every co-owner may request the court to decide on undertaking activities regarding regular management of the property, although there is consent of co-owners whose parts together make more than half of the property value, if the activity being undertaken may cause significant damage for other co-owners.

In the case of doubt whether the activity exceeds the limits of regular management or not, it shall be considered that the activity exceeds those limits.

For a co-owner who holds the property or independent part of the property on the basis of a decision of co-owners, it shall be considered that the activities of regular management of the property, i.e. independent part of the property, are delegated to him, unless otherwise determined by a contract between co-owners.

Co-owner, against whose will it has been decided to undertake a certain job or the court has done it, shall be entitled to request a security for future damage.

Co-owner who is obliged to provide a security shall meet his obligation by creating a pledge or providing a guarantee.

**Decision on Appointment and Revocation of the Administrator**

**Article 135**

Consent of co-owners whose parts together make more than half of the property value shall be needed for the decision on appointment and revocation of the administrator.

The administrator shall be a party receiving the orders of co-owners, thus unless otherwise determined by co-owners, adequate rules on order shall apply to his rights, duties and cessation of his authorizations.

**Manner of Using the Property**

**Article 136**

Consent of co-owners whose parts together make more than half of the property value shall be needed for regulating the manner of using the property.

**Undertaking Necessary Urgent Activities**

**Article 137**

A co-owner may, without the consent of other co-owners, undertake activities necessary and urgent for maintaining or preserving the property.

**Undertaking Activities that Exceed the Limits of Regular Management**

**Article 138**

Consent of all co-owners shall be needed to undertake the activities exceeding the limits of regular management (divesture of the entire property, change in purpose of the property, giving the entire property to lease, creating a mortgage on the entire property, creating a pledge, creating real easement, major repairs, enlargement, expansion, remodelling, and similar).

If the consent of all co-owners is not reached for undertaking the activities exceeding the limits of regular management, every co-owner shall be entitled to request the court to decide thereon.

Every co-owner shall be entitled to request at any time the presentation of accounts and distribution of all benefits.

**Distribution and Collection of Costs regarding the Use, Management and Maintenance of Property and Encumbrances**

**Article 139**

Costs regarding the use, management and maintenance of the property and other encumbrances on the entire property shall be borne by co-owners in proportion to the size of their parts.

If the co-owner does not pay his part of the costs, other co-owners may request the collection from his part of fruits or other proceeds from the property, and in case it is not sufficient to cover the costs or the collection is not possible, they may request the sale of his part (share) on the public sale.

**Right of Co-Owners to Division**

**Article 140**

A co-owner shall be entitled to request, at any time, division of the property, except at the time when such a division would be to the detriment of other co-owners, unless otherwise determined by law.

The right referred to in paragraph 1 of this Article shall not fall under the statute of limitations.

A contract by which a co-owner permanently waives his right to division of the property shall be null and void.

**Contract of Non-Performing the Division**

**Article 141**

Co-owners may unanimously decide that a division cannot be requested for a certain time, but no longer than five years.

**Effect of the Contract of Non Performing the Division against Third Parties**

**Article 142**

The contract between co-owners that a division may not be requested for a certain time shall have a legal effect also against a legal successor of the co-owner, unless the legal successor has

become a co-owner on the basis of a legal transaction with the payment in return, and he did not know or could not have known about the contract.

A personal creditor of a co-owner may request a division, if he could not satisfy his claim from other property of the co-owner.

### **Contractual Division**

#### **Article 143**

Co-owners may carry out the division of property in extra-judiciary procedure (contractual division).

The contract of division of immovable property shall be made in writing and shall be authenticated with a competent body or notary.

### **Judicial Division**

#### **Article 144**

Every co-owner may request that the court executes division of property in non-adversarial procedure.

Co-owners shall make a decision on the manner of division by mutual consent.

If the co-owners do not reach the agreement, the court shall decide on the manner of division.

### **Payment of Insignificant Co-Owner's Part**

#### **Article 145**

If a property division is requested by a co-owner whose part is insignificant, and other co-owners object to the division, the court may decide that other co-owners pay off his part.

### **Physical Division**

#### **Article 146**

The court shall, whenever possible, if the value of property would not be significantly reduced by doing so, determine that a physical division of property is carried out in the manner that every co-owner gets in-kind a part that belongs to the size, i.e. value of his co-ownership part.

If co-owners get, by division, parts whose value does not correspond to their co-owners parts, the court shall determine that a co-owner, who received a greater value than the one belonging to him, pays the others a difference in money.

### **Division when Co-Ownership Exists on Several Properties**

#### **Article 147**

When co-ownership exists on several properties, and when it would not be economically justifiable due to the size of co-ownership parts or other circumstances, to divide each property, the court may assign to each co-owner a part of the individual entire property, which together correspond, by their value, to his co-ownership part, and if there is a certain negative difference in value, it shall determine the payment in money.

If a co-owner divested of or destroyed some of the co-ownership properties, it shall be considered that such a property was given to him by division, if other co-owners agree to do so.

**Decision of the Court to Assign the Property to One Co-Owner**

**Article 148**

If a physical division of property is not possible, or the value of property would be significantly reduced by division, the court shall, at the request of individual co-owners and if the circumstances of the case justify so, and taking into account the size of the parts of individual co-owners and their needs for that property, decide to assign the property to one co-owner, provided that he pays the other co-owners the value of their parts within the deadline determined by the court in accordance with given circumstances.

Other co-owners shall acquire a security interest in the property until the payment of value of their parts.

Other co-owners shall guarantee to the co-owner, who is assigned the entire or part of the property by a division, for legal and physical flaws of the property up to the amount of the value of their co-ownership parts, in accordance with the rules on obligations.

**Public Sale**

**Article 149**

If the court decides that a natural division is not possible or that it would significantly reduce a property value, and if it does not decide to assign the property to one of the co-owners, it shall determine that the property is sold through a public sale and proceeds from the sale to be divided among co-owners in proportion to the size of their parts.

**Costs of Division**

**Article 150**

Costs of division shall be borne by co-owners in proportion to their co-ownership parts, unless otherwise determined by law or their agreement.

**Liability for Flaws in the Property after Division**

**Article 151**

Other co-owners shall guarantee to the co-owner, who has been assigned the property or part of the property by division, for legal and physical flaws of the property within the limits of value of their co-ownership parts.

The right referred to in paragraph 1 of this Article shall cease by expiration of the three-year period upon division of the property.

**Rights of Third Parties upon Division**

**Article 152**

Security interests, easement and other property rights, which encumbered the undivided property even before the division, may be exercised in the same manner they were exercised before the division.

When the exercise of real easement relates only to one part of the property, that right shall cease to apply to other parts.

**Chapter VI**

**Right to Joint Ownership**

**Concept**

**Article 153**

Joint ownership shall mean the ownership of several persons of undivided property when their parts are specifiable, but are not specified in advance.

When in doubt whether the property is in co-ownership or joint ownership, it shall be considered that it is in co-ownership.

**Contents**

**Article 154**

Every joint owner shall be entitled to use the property and participate in its management.

**Registration in the Cadastre of Immovable Property**

**Article 155**

The right of joint ownership on immovable property shall be registered in the name of all joint owners.

**Costs and Encumbrances**

**Article 156**

Costs regarding the use, management, maintenance and preservation of the property and encumbrances that relate to the entire property shall be borne by joint owners in equal amounts.

**Disposition and Encumbrance**

**Article 157**

Consent of all joint owners shall be needed for disposition and encumbrance of the property in joint ownership.

Exceptionally, a third person may, on the basis of a legal transaction that is not concluded with all joint owners, acquire the ownership right:

- On movable property, if he acts in good faith and if he acquired the property on the basis of a legal transaction with the payment in return;
- On immovable property, if he acts in good faith and if the ownership right has not been registered in the cadastre of immovable property in the name of all joint owners.

**Right to Division**

**Article 158**

Joint owners may specify, at any time, by a mutual consent, their parts in the joint property.

If the agreement is not reached, every joint owner shall be entitled to request the court to specify his part in the property in proportion to the whole (aliquot part), unless the law determining the joint ownership prescribes otherwise.

The agreement by which a joint owner waives his right to request his part of the property to be specified shall be null and void.

**Right of Creditors**

**Article 159**

Creditors of a joint owner shall be entitled to request that a part of the property of the joint owner be specified.

### **Application of Rules on Co-Ownership**

#### **Article 160**

Provisions of this Law on co-ownership shall be applied to joint ownership, unless otherwise determined by this or another law, or unless another conclusion arises from the nature of joint ownership.

### **Chapter VII**

#### **Strata Ownership**

##### **Concept**

#### **Article 161**

Strata ownership, under this Law, shall mean the ownership right on separate parts of an apartment or office building to which certain rights on common areas of the building and land where the building is constructed are indivisibly attached.

#### **Apartment Building**

##### **Article 162**

Apartment building shall mean a building where at least one separate part is intended for dwelling, and which together with the building represents a constructional and functional unit.

Apartment building shall consist of separate and common areas of the apartment building.

##### **Legal Entity**

#### **Article 163**

Apartment building shall have the status of a legal entity in legal transactions regarding the maintenance and usage of apartment building.

#### **Use of the Apartment Building**

##### **Article 164**

Apartment building shall be used in accordance with its purpose.

Owner of the separate part of the apartment building (hereinafter: the owner) shall freely enjoy, use and have disposition right on separate and common areas of the apartment building, provided that he does not violate the rights of other owners and purpose of the apartment building.

#### **Separate Parts of the Apartment Building**

##### **Article 165**

Separate parts of the apartment building shall mean: apartments, business premises, separate basements, separate attics, separate garages or garage places and etc.

Separate parts of the apartment building shall also include auxiliary areas, such as open balconies, terraces, etc.

The apartment shall mean a group of rooms intended for dwelling, which make a functional and constructional unit, having, as rule, a separate entrance.

Business premises shall mean one or several rooms intended for performance of a business activity, which, as rule, make a constructional unit and have a separate entrance.

### **Common Areas of the Apartment Building**

#### **Article 166**

Common areas of the apartment building shall mean areas that serve to the apartment building as the whole, as follows:

- Foundations;
- Vertical construction;
- Horizontal (inter-floor construction)
- Roof;
- Passable and non-passable common terraces;
- Façade of the building, including windows and doors;
- Elements of protection against external factors on the common areas of the building (shutters, window shades, window blinds, and similar);
- Roof and other tinsplate works on the common areas of the building;
- Chimneys and ventilation ducts, hydrants, fire-fighting systems and installations, including also fire-fighting devices in the common areas of the building;
- Fire escape accesses, ladders and stairways;
- Elevators in the common areas of the building with installations and appliances providing their regular use;
- Installations for the supply of gas and electrical energy to the meter of the apartment or another separate part of the building;
- Sewage installations, main vertical and horizontal utility lines and foundation installations, including control manholes;
- Water supply installations from the main water meter for the building to the splitting of installations for individual apartment and another separate part of the building; i.e. to the water meter in the apartment or another separate part of the building;
- Sanitary devices and water supply and sewage installations in the common areas of the building;
- Electrical installations of the stairway lighting and other devices in the common areas of the building, main switchboard with the incorporated meter, electrical installations for apartments and separate parts of the building up to the meter for the apartment or another separate part of the building;
- Necessary and panic lighting;
- Common installation of the central heating and central preparation of hot water up to the radiator valve or valve of the device in the apartment or other separate part of the building;
- Radiators and other heating devices in the common part of the building;
- Telephone installations up to the place of splitting for the apartment or another separate area of the building;
- Common television and radio antenna installations, including also satellite installations with the amplifier and all other common devices that provide a common reception up to the place of splitting for the apartment or another separate area of the building;
- Installations and devices for a bell, electrical locks and intercom devices from the building entrance to the apartment or another separate area of the building, or to the place of separation of installations for a certain apartment or another separate area of the building;
- Common boiler room and heating room;
- Common air-conditioning systems;
- Common attics, laundry rooms, laundry-drying rooms, corridors, halls, basements, garages, garage places;
- Skylights;
- Common water booster pump stations and water wells, wastewater pump stations and water pump stations, electricity generator set, "Accu" batteries and other devices for lighting, elevator functioning and similar;
- Lighting rod installations;

- Tubes for garbage;
- Other parts and installations necessary for maintenance and common use of apartment building.

Common areas of the apartment building shall also mean the areas that serve only to some and not to all separate parts of the building (separate entrance door, stairway, special halls, attic, basement, chimneys, terraces, heating devices, and similar).

Common areas of the apartment building shall mean also other areas that are in a separate building or are part of the other building (common boiler rooms, water booster pumps, garages and similar).

### **Shelters**

#### **Article 167**

Shelters shall be in the state and private ownership.

The manner of management and disposition of shelters in the state ownership shall be prescribed by the Government of Montenegro.

### **Family Apartment Buildings**

#### **Article 168**

Provisions of this Law shall also refer to family apartment buildings in strata ownership, unless excluded by law, contract or nature of the property.

### **Ownership of Separate Parts of the Apartment Building**

#### **Article 169**

A natural person or a legal entity shall have exclusive ownership, co-ownership or joint ownership of separate parts of the apartment building.

### **Joint Ownership of Common Areas of the Apartment Building**

#### **Article 170**

All owners shall have a joint indivisible ownership of the common areas of the apartment building, which serve the building as the whole.

Joint indivisible ownership on common areas of the apartment building that serve only to some and not to all separate parts of the building shall have only owners of these separate parts.

### **Joint Ownership on Urban Parcel**

#### **Article 171**

Owners of separate parts shall have a joint indivisible ownership on the urban parcel where the apartment building is constructed.

### **Destruction of the Apartment Building**

#### **Article 172**

In the case of partial destruction of the apartment building, every owner shall get the value of construction material determined in proportion to the value of each separate part to the total value of the entire building.

If the owners do not agree on the value of material that belongs to each of them, the court shall determine it in the non-adversarial procedure.

If the apartment building is totally destroyed, every owner shall get the share of the land where the building is constructed, in proportion to the value of his separate part to the total value of the entire building, unless otherwise agreed upon by the owners in the form of contract.

### **Dependent Rights**

#### **Article 173**

The rights the owner has on the urban parcel where the apartment building was constructed and on the parts of the building which serve to the building as the whole or only to some of its separate parts, shall be indivisibly connected with his rights to separate parts of the building, so that all changes concerning the rights on that part of the building refer to those rights as well.

### **Use of Separate Parts**

#### **Article 174**

The owner shall make repairs at his expense in order to maintain his part of the apartment building in a good order.

The owner shall be obliged to keep and maintain his part of the apartment building, in the manner that does not incur any damage to other owners.

The owner shall be obliged to eliminate breakdowns incurring damage to other separate or common areas of the building or endangering their functioning, with no delay.

The owner with the obligation to perform maintenance shall be liable for all damages incurred to other owners, and if several owners had such an obligation, they shall have a joint and several liability for damage.

The owner shall be obliged to have the repair works done, at his expense, on his separate part of the building, if it is necessary to do so to remove damage incurred to the part of another owner or parts of the building that serve to the building as the whole.

The owner shall be obliged to allow the access to authorized persons in his part, if it is necessary for maintenance of common areas of the apartment building and the building as the whole.

### **Works on Separate Part**

#### **Article 175**

The owner may, in accordance with the regulations on construction, perform remodelling on his part of the apartment building, if such remodelling does not have effect on the part of another owner or parts that serve the building as the whole.

The owner cannot remodel his part in the manner that would damage the architectonic appearance of the building or reduce the security or stability of the building, or its common or separate part, or incur damage to these parts in another manner.

The owner, who remodels his part, shall be obliged to give adequate compensation to another owner whose rights are thus violated, even when the latter was obliged to endure this violation.

The owner of the separate part shall be liable for all damage incurred to other owners because of the changes in his separate part, and if several owners caused the damage, they shall be jointly and severally liable.

### **Use of Common Areas**

**Article 176**

The owner shall be obliged to use common areas in accordance with their purpose and to the extent corresponding to the rights of other owners.

Owners may make a decision on all works on the common areas, the goal of which is to improve or make the use easier or create greater revenue.

The works that may cause damage to stability or safety of the apartment building, which change its architectonic appearance or cause that certain common areas of the building cannot even be used by a single owner, shall be prohibited.

**Right to Build Extension**

**Article 177**

The apartment building may be extended, or common areas be transformed into the apartment (hereinafter: extension) in accordance with the regulations on spatial planning and development, regulations on construction and this Law.

Extension that affects stability and safety of the apartment building, damages architectonic appearance of the building or significantly reduces air circulation and luminosity of the lower floors cannot be carried out.

The holder of the right to extension shall be obliged to compensate the owners for the value of the common area being extended, unless otherwise determined by the decision of the Assembly of Owners or the contract.

The holder of the right to extension and the apartment building shall regulate their mutual relations by the contract.

If the owners do not perform the extension, they shall be obliged to offer to a competent state body or municipal body a pre-emptive right to purchase a part of the apartment building being extended or transformed in the apartment.

If the owners do not exercise the right to extension within three years from the day of adopting a planning document, the expropriation procedure may be initiated in accordance with the Law on Expropriation, with the payment of a fair compensation for the benefit of a joint account of the strata owners.

A competent municipal body shall be obliged to state its opinion on the offered pre-emptive right to purchase within 30 days from the day of receiving the owners' request.

**Obligations of the Holder of the Right to Extension**

**Article 178**

Owners suffering damage incurred by execution of the works regarding extension or final reduction in value of their part or serious disturbance of the right to enjoy, even if temporary, shall be entitled to compensation.

The holder of the right to extension shall be obliged to do the following:

- 1) To eliminate, at his expense, breakdowns and damages incurred by execution of works, at the latest within 30 days from the day of occurrence of breakdowns and damages;
- 2) In the case of a need for temporary moving out from the apartment, to provide the owner, with his consent, during the execution of works, with another apartment for temporary usage that shall not worsen his housing conditions, including also adequate costs;
- 3) Within 10 days upon finalization of works, to restore premises, devices and installations to the previous condition;
- 4) To inform the owners on the commencement of execution of works at the latest within 30 days prior to their commencement.

**Concept of Managing the Apartment Building**

**Article 179**

Management of the apartment building shall include the adoption of decision: on the manner of using the apartment building as the whole and common areas of the building and their maintenance and safekeeping; provision of funds for the building maintenance, as well as decision-making on other issues important for the use and maintenance of the apartment building.

**Management of the Apartment Building**

**Article 180**

Owners shall manage the apartment building.

Owners shall be obliged to form management bodies of the apartment building.

**Management Bodies**

**Article 181**

Management bodies of the apartment building shall be Assembly of Owners (hereinafter: the Assembly) and administrator.

**Management Bodies of Building Parts**

**Article 182**

When the apartment building has several separate entrances or blocks, management bodies for each entrance or block can be established separately.

In the apartment building where management bodies are established in accordance with paragraph 1 of this Article, mutual relations of owners shall be regulated by a contract.

**Assembly of Owners**

**Article 183**

The Assembly shall be made of owners or their representatives.

The Assembly shall:

- adopt the programme for maintenance of the apartment building and ensure its execution;
- decide on the manner of organizing works on maintenance of the apartment building;
- adopt the annual report on realization of the programme for maintenance of the apartment building;
- determine the amount and manner of providing funds for maintenance of the apartment building;
- decide on improving the dwelling conditions in the building;
- adopt a financial plan and annual account for the apartment building;
- decide on the value of a point for advance payment of maintenance costs;
- decide on the amount of fee for the work of administrator;
- provide for the earmarked use of the common areas of the apartment building;
- make a decision on disposition of the common areas of the apartment building subject to the extension or being transformed into apartment;
- decide on transforming separate and common areas of the apartment building into business premises;

- make a decision on the use of business premises;
- deal with the protection of the apartment building and proper functioning of installations and devices;
- adopt rules on mutual relationships of owners when the number of owners exceeds 10;
- provide for the application of house rules in the apartment building;
- decide on insurance of the apartment building;
- decide on objection of owners to administrator's decision;
- decide on works needed for extraordinary maintenance, and establish in the case of need a special fund;
- decide on other issues regarding the management of apartment building.

### **President of the Assembly**

#### **Article 184**

The Assembly shall have a president.

President of the Assembly shall be elected by majority votes of members of the Assembly for the period of four years.

The President of the Assembly shall convene and conduct meetings of the Assembly.

The President of the Assembly shall be obliged to inform, in writing, submitting also the agenda, all owners about the time for holding the Assembly at least five days prior to holding it.

### **Initiative for Holding the Assembly**

#### **Article 185**

The initiative for holding the meeting of the Assembly may be given also by 1/4 of the owners.

The Assembly of Owners may establish the standing or temporary bodies for performance of administrative-technical activities, i.e. the performance of these activities may be delegated to a person from its members or third person.

### **Manner of Decision-Making of the Assembly of Owners**

#### **Article 186**

The Assembly shall make a decision if more than half of the members of the Assembly are present.

Every owner shall have one vote in the Assembly.

The Assembly shall adopt decisions regarding a regular maintenance of the apartment building and urgent works by majority of votes of the present members.

The Assembly shall adopt decisions exceeding the framework of regular maintenance of the apartment building (extension of the apartment building, transformation of separate and common areas of the apartment building in business premises, necessary works, etc.) by the consent of members of the Assembly having more than half of the total area of the separate parts of the building.

If the obligation that only some of the owners bear maintenance costs of parts of the building arises from the rules of the owners, these rules may envisage that only these owners participate in voting on decisions regarding those costs.

It shall be considered that voting is done also in the case when owners give a written consent, in accordance with the criteria for adoption of decisions determined by this Article.

### **Decisions of the Assembly**

#### **Article 187**

Decisions of the Assembly shall be binding to all owners and administrator.

Decisions of the Assembly shall be published in the manner determined by the Assembly.

The owner may submit the complaint against the decision of the Assembly to a competent court in order to annul it within 30 days from the day of publishing the decision.

### **Election and Revocation of the Administrator**

#### **Article 188**

When the number of owners is greater than four, the administrator of the apartment building shall be appointed.

The administrator shall be elected and revoked by the Assembly by majority vote of members of the Assembly, for the period of four years.

Owner or another natural person or legal entity registered for management activities may be appointed for an administrator.

The Assembly shall conclude the contract of mutual relations with the administrator.

Appointment and revocation of the administrator shall be recorded in the registry of administrators of the apartment building, kept by a competent municipal body.

Administrator, by rule, shall be entitled to a fee for the performed work provided by owners from the maintenance funds.

### **Temporary Administrator**

#### **Article 189**

If owners did not form management bodies in the manner prescribed by this Law, a competent municipal body shall appoint, at the request of one or several owners or ex officio, a temporary administrator.

A temporary administrator shall have all authorizations of the administrator referred to in Article 188 of this Law, as well as the authorization to convene the Assembly of Owners for the purpose of its constitution.

A temporary administrator shall be appointed for a defined period of time, until the election of administrator.

### **Competency of the Administrator**

#### **Article 190**

The administrator shall:

- execute decisions of the Assembly;
- propose the programme for maintenance of the building;

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- deal with the realization of the programme for maintenance of the apartment building and submit the report thereon to the Assembly;
- ensure the execution of urgent works at his own initiative;
- conclude contracts of lease of business premises;
- collect revenues and execute obligations;
- present and represent the apartment building;
- organize collections and payments on behalf of the building;
- appoint and fire a superintendent;
- provide for the compliance with the rules on strata owners;
- submit to the Assembly the report on his work in the previous calendar year and submit for inspection all documents, at the latest until the 30<sup>th</sup> of June every year;
- execute also other activities determined by the Assembly.

The owner may file the objection to acts and activities of the administrator with the Assembly.

In the case of accepting the objection referred to in paragraph 2 of this Article, the administrator shall be obliged to make compensation for the incurred damage.

### **Rules on Mutual Relations of Owners**

#### **Article 191**

Rules on Mutual Relations of Owners (hereinafter: rules on owners) shall contain provisions on separate and common areas of the apartment building, requirements for their usage, use of common areas and distribution of costs, preserving the appearance of the building, management, etc.

Rules on owners shall be adopted by majority vote of present members of the Assembly.

Every owner may initiate the adoption of the rules on owners.

Rules on owners shall be filed in the registry kept by a competent body of the local government.

Every interested person may have access to the rules on owners.

### **Disagreement of Owners over Conducting Litigation**

#### **Article 192**

When the apartment building decides to initiate litigation, the owner who does not agree may be, by submission of the request to the administrator, released from the responsibility regarding consequences of litigation in the case of failure.

The owner shall be obliged to submit the request referred to in paragraph 1 of this Article to the administrator within 30 days from the day of information on the decision of the Assembly.

If the outcome of litigation is for the benefit of owners, the owner who did not agree to have the litigation conducted, but who has the benefits thereof, shall be obliged to participate in all costs to be borne also by other owners.

## **Chapter VIII**

### **Right to Easement**

#### **Real Easement and Personal Easement**

#### **Article 193**

Easement may be real easement and personal easement.

### **1. Real Easement**

#### **General Provisions**

##### **Article 194**

Real easement shall mean the right of the owner of one immovable property (dominant estate) to perform certain activities for the needs of that immovable property on the immovable property of another owner (servient estate), or to demand from the owner of the servient estate to abstain from performing certain actions that he would otherwise have the right to perform on his immovable property.

#### **Easement in Exceptional Cases**

##### **Article 195**

Real easement may be established also in an exceptional case (easement for passing in the case of flooding, easement regarding transportation of cut forest trees through the land of another, etc.).

#### **Several Easements on the Same Property**

##### **Article 196**

Several real easements, of the different type or of the same type, may exist on the same servient estate.

Real easements of the same type may have different or same scopes.

Creation of new real easement must not violate already existing easement.

If due to changed circumstances, it becomes impossible to exercise all real easements to their full extent, the real easement acquired prior in time shall have priority; the rights acquired the latest shall be reduced in their scope or fully cease, and so on.

Real easements acquired at the same time shall have the same priority and shall be reduced proportionally.

When there are several competitive real easements of the same priority, and the reason due to which they cannot be exercised to their full extent occurs, every titular may request that a scope of easement is regulated in a fair manner, taking into account the interests of every of them.

#### **Indivisibility of Real Easements**

##### **Article 197**

If a dominant estate is divided, a real easement shall remain for the benefit of all his parts.

The owner of servient estate may request termination of the real easement of the owner of an individual part of divided dominant estate, if the real easement does serve the needs of that part.

If the servient estate is divided, real easement shall remain only on the parts that it has been exercised on.

#### **Device for Exercising the Easement**

##### **Article 198**

If the use of some device or undertaking of some action is required to exercise a real easement, the owner of the dominant estate shall defray the cost of maintenance of such device and of undertaking such action.

If the device or activity serves also the interests of the owner of the servient estate, the cost of maintenance of such device and the cost of undertaking such an action shall be defrayed, proportionally to the benefit they have, by the owner of the dominant estate and the owner of the servient estate.

### **Manner and Scope of Exercising Real Easement**

#### **Article 199**

Real easement shall be exercised in a manner least encumbering the servient estate.

New needs of the dominant estate, which are not the consequences of normal development and use of dominant estate, shall not have the impact on the scope of real easement.

### **Transfer of Real Easement**

#### **Article 200**

When real easement is exercised on one part of the servient estate, the owner of servient estate shall be entitled to request, at his expense, the transfer of easement to another place of the same estate, where its exercise shall not be impeded.

The court may, taking into account justifiable interests regarding the use of servient and dominant estate, allow the transfer of easement to another place of the same estate also in the case when its exercise would be impeded.

In the case referred to in paragraph 2 of this Article, the owner of servient estate shall owe compensation to the owner of the dominant estate.

### **Creation of Real Easement**

#### **Article 201**

Real easement shall be created by a legal transaction, decision of the court or another state body and adverse possession.

Decision on creation of easement shall be made by a court, unless another state body is determined by a separate law.

### **On the Basis of a Legal Transaction**

#### **Article 202**

Real easement shall be acquired on the basis of a legal transaction by registration in the cadastre of immovable property or in another adequate manner determined by law.

The contract on the basis of which real easement is acquired must be concluded in a written form and authenticated by a competent body or notary.

### **Adverse Possession**

#### **Article 203**

Real easement shall be acquired by adverse possession when the owner of the dominant estate enjoyed the easement for the period of 20 years, and the owner of the servient estate has not opposed it.

A good faith and legal holder of easement shall acquire real easement by the expiration of the 10-year period.

On the basis of a good faith possession, real easement shall be acquired by adverse possession by the expiration of the 15-year period.

Real easement cannot be acquired by adverse possession, if it is exercised by misusing the trust of owner or possessor of the servient estate, force, fraud, or the easement has been granted until revoked.

### **Visible Easement**

#### **Article 204**

Only visible real easement can be acquired through adverse possession.

Easement shall be visible, if its existence is followed by an external visible sign.

### **Effect of the Acquisition on a Third Person**

#### **Article 205**

Real easement acquired by adverse possession may have the effect on a third good faith person from the moment of registration in the cadastre of immovable property.

### **Acquisition on the Basis of the Decision of a State Body**

#### **Article 206**

By a decision of court or another state body, a real easement shall be established when the owner of dominant estate in the entirety or partially cannot use this estate without the adequate use of servient estate, as well as in other cases determined by law.

The easement referred to in paragraph 1 of this Article shall be acquired on the day the decision becomes final and enforceable, unless otherwise determined by law.

### **Owner of Two Immovables**

#### **Article 207**

The owner of two immovables may encumber one of them by a real easement for the benefit of the other.

### **Right to Compensation**

#### **Article 208**

At the request of the owner of servient estate, a competent state body shall determine also compensation that the owner of dominant estate is obliged to pay to the owner of servient estate.

The owner of servient estate shall be entitled to compensation for the established easement.

If the owner of servient estate and the owner of dominant estate do not agree on compensation, the amount of compensation shall be determined by the court, at the request of the owner of servient estate taking into account all circumstances, and especially the damage incurred to the owner of servient estate in the form of lost benefit and reduced value of the servient estate due to the established easement.

### **Termination of Real Easement**

**Article 209**

Real easement shall terminate if the owner of servient estate objects to the exercise of real easement, and the owner of dominant estate has not exercised his right for the three consecutive years.

Real easement shall terminate if it is not exercised for the time necessary to be acquired by adverse possession, when the same person becomes the owner of servient and dominant estate, or by the destruction of the dominant or servient estate.

**Termination of the Need**

**Article 210**

The owner of servient estate may request that the right to real easement terminates, when it becomes unnecessary for the use of dominant estate or when another reason due to which it is established terminates.

**Changed Circumstances**

**Article 211**

The owner of servient estate may, for a fair compensation, request the termination of real easement, if, due to changed circumstances, its benefit for the dominant estate has become disproportionate to the burden it represents for the servient estate.

The owner of servient estate may waive the right referred to in paragraph 1 of this Article, but at the most for the period of 10 years.

When determining the compensation referred to in paragraph 1 of this Article, the court shall take into account all circumstances, and especially how long the easement lasted and what is a gain for the servient estate, and what is the loss for the dominant estate in the case of easement termination.

**Destruction of the Property**

**Article 212**

Real easement shall terminate by destruction of the dominant or servient estate, but also when its exercise is permanently made impossible.

Real easement shall be created in the previous scope, if the servient estate is renewed within 5 years from its destruction.

**Expiration of the Period of Time**

**Article 213**

Real easement created for a defined period of time shall terminate by expiration of that period of time.

**Protection of Real Easement**

**Article 214**

Provisions of this Law on protection of the ownership right shall accordingly apply also to protection of real easement.

**Special Cases of Real Easements**

**Necessary Right-of-Way**

**Article 215**

The owner of immovable property who does not have an exit to a public road or it can reach it only with great complications (surrounded land, enclave) shall be entitled to request that he is allowed to pass through the land of another (necessary right-of-way), for compensation.

Necessary right-of-way may be created as the right to passage by pedestrians, cars, motor vehicles, agricultural machines, and similar.

If an enclave is created by division, necessary right-of-way may be allowed only through the land that made, until the division, the whole with the enclave.

A holder of the right to necessary right-of-way may be ordered to undertake measures providing that passage is done in conditions at least harmful to the immovable property through which the right-of-way is enabled.

The owner of encumbered immovable property shall be entitled to request termination of the right to necessary right-of-way, if due to the construction of new public road or otherwise, the reasons for which it was created cease to exist. In that case, he shall be obliged to return a portion of the received compensation, in accordance with the evaluation of the court.

The owner of immovable property, which is encumbered by the necessary right-of-way, shall be entitled to request from a holder of the right to necessary right-of-way to purchase a part of the immovable property that serves for a passage.

In the case of changed circumstances, the owner of immovable property shall be entitled to request a necessary right-of-way in the other place on the same immovable property.

A necessary right-of-way cannot be established through the house or yard, unless when there is no other exit to a public road.

**Installation of Utility Lines**

**Article 216**

The owner of land shall be obliged, in return for compensation, to allow the installation of utility lines on his land (water supply and sewage pipes, gas lines, electrical and telephone cables, poles, wires and similar), if the installation of utility lines in other place asks for disproportionate costs.

The owner of land shall be entitled to request from the owner of utility lines, gas lines and other devices to purchase that part, if the useful value of land is significantly reduced.

The owner of land shall be entitled to transfer utility lines, at his own expense, to another place on the same immovable property, if conditions for using the utility lines are not worse in that other place.

If the transfer is required due to changed circumstances that made the use of land disproportionately difficult, it may be requested that transfer costs are fully or partially covered by the owner of utility lines.

In determining one's share in the costs referred to in paragraph 4 of this Article, the court shall take into account all circumstances, and especially those regarding the time passed from the installation of utility lines, the extent to which the exploitation of land is made more difficult due to changed circumstances and under conditions of installation of utility lines, and what the benefits from utility lines for their owner are.

**Easements Based on Law and Created in Public Interest**

**Article 217**

It is possible to install utility lines and other devices (electrical, sewage, gas lines, water supply, heating pipeline system, telecommunication, and other) on the immovable property of another, without the consent of its owner, if it is in a public interest in accordance with law.

**Installation of Antennas**

**Article 218**

The user of radio-broadcasting receivers shall be entitled to install the antenna on the neighbouring building, if it is necessary to the user for receiving radio-broadcasting programme, and if it does not impede the tenants of that building to receive radio-broadcasting programme.

**Right to a Window**

**Article 219**

The right to a window in the wall of the servient estate shall entitle the owner of dominant estate only to light and air, and to a view only if such an authorization is specially given to him.

A person, who does not have the right to view, shall be obliged to put bars on his window, at the request of the owner of the wall.

A person, who is entitled to have a window, shall be obliged to keep an opening, otherwise he shall be responsible for damage incurred by neglect.

**Right to Have a Part of the Building and Gadget on a Servient Estate**

**Article 220**

The owner of dominant estate to whom his right to easement gives the authorization to have, on the neighbouring immovable property, on its surface, below it, or within its air space, his part of the building, another gadget or device that serves to his building, shall be obliged to maintain it at his own expense, and to pay to the owner of servient estate compensation for exploiting his immovable property in the amount of rent, unless otherwise determined by contract or law.

The rule referred to in paragraph 1 of this Article shall be applied in adequate manner also when the owner of dominant estate to whom his right to easement gives the authorization to have on the neighbouring immovable property, on its surface, below it or within its air space, utility lines or another devices (electrical, gas lines, heating pipelines, telecommunication, sewage, water supply, and other).

The owner of servient estate who is obliged to sustain an encumbrance of the neighbouring building, insertion of a rafter of another to his own wall, passage of the smoke of another through a chimney, the advertisement of another on his own roof, the advertisement of another or inscription on the façade of his building or similar, shall be obliged to proportionally contribute to maintenance of his wall, pole, rock, chimney, roof, façade and similar, used for such purposes, but he shall not be obliged to support or to repair the property of another.

**Right to Capture the Roof Rainwater and Direct it to the Servient Estate**

**Article 221**

The owner of dominant estate, who has the right to capture the rainwater from his own roof and direct it to the servient estate, may allow that the rainwater flows to the immovable property of another freely or through a gutter.

A holder of the right to capture the rainwater from his own roof and direct it to the servient estate shall be allowed to elevate his roof, but he must undertake the measures so that the easement does not become more burdensome for the owner of servient estate.

A holder of the right to capture the rainwater from his own roof and direct it to the servient estate shall be obliged to maintain the gutters intended for the flowing of water, as well as his roof, in such a manner that the torrents of rainwater do not incur damage to the encumbered immovable property, and that snow and ice are timely removed.

## **2. Personal Easement**

### **General Provision**

#### **Article 222**

Personal easements shall be: the right to enjoy fruits (usufruct), the right to use and the right to dwelling.

### **1) Right to Usufruct**

#### **Contents**

#### **Article 223**

The right to usufruct shall mean the broadest right to use the property of another (servient estate) and collect the fruits from it, with the obligation to preserve its essence.

A usufructuary shall be obliged to exercise his rights with a diligence of a conscientious custodian.

#### **Restrictions**

#### **Article 224**

The scope of the right to usufruct can be limited by excluding certain benefits generated by the property.

The right to usufruct may be established under a condition, with a deadline or by an order.

#### **Object**

#### **Article 225**

Movable and immovable property of another may be subject to the right to usufruct.

#### **Acquisition**

#### **Article 226**

The right to usufruct shall be acquired on the basis of a contract, will and adverse possession.

For the purpose of acquiring the right to usufruct on immovable property on the basis of a contract and will, it is necessary to make registration in the cadastre, and the provisions on acquiring the ownership right by adverse possession shall apply accordingly to the adverse possession of the right to usufruct.

#### **Rights of Usufructuaries**

#### **Article 227**

A usufructuary shall be entitled to hold the servient estate, to use it and to collect fruits from it.

#### **Fruits in Monetary Form**

#### **Article 228**

Fruits in monetary form shall belong to a usufructuary in proportion to the duration of the usufruct (day by day), regardless whether, at the time of occurrence or termination of usufruct, they are due or not, and whether they are at that time paid for.

### **Natural Fruits**

#### **Article 229**

A usufructuary shall acquire the ownership right on natural fruits by their separation.

A usufructuary shall be obliged to compensate the costs of producing the fruits that he acquired during the creation of usufruct, unless otherwise determined by the contract.

When the usufruct terminates, a usufructuary shall be entitled to compensation of costs of producing the fruits from the person to whom those uncollected fruits belong.

### **Transfer of Benefit**

#### **Article 230**

A usufructuary may transfer to another person benefits provided by a servient estate through a legal transaction (leasing contract, contract of making use of an object without compensation, and other), unless he is deprived of that right.

## **2) Obligations of a Usufructuary**

### **Preserving the Essence and Purpose of a Property**

#### **Article 231**

A usufructuary shall be obliged to preserve the essence of a servient estate and its previous purpose.

A usufructuary shall not be liable for reduction in the value of the servient estate that is the consequence of its regular use.

### **Insurance**

#### **Article 232**

A usufructuary shall be obliged to insure a servient estate against fire and other risks, for the benefit of the owner, at his expense, when a compulsory insurance is prescribed or when insurance is called for, in accordance with local understandings, by the rules of conduct of a conscientious custodian.

In the case the servient estate has already been insured, a usufructuary shall be obliged to pay premiums in proportion to the duration of the usufruct, if he is, under the provision of previous paragraph, obliged to insure the servient estate.

### **Taxes and Other Duties**

#### **Article 233**

A usufructuary shall be obliged to bear, in proportion to the duration of usufruct, public duties and other public obligations encumbering the fruits and the current use of the servient estate.

Other costs shall be borne by the owner of servient estate.

If a usufructuary paid the costs that should be borne by the owner of servient estate, the owner shall be obliged to compensate him for the paid amount upon termination of the usufruct.

### **Maintenance of the Property**

#### **Article 234**

A usufructuary shall be obliged to use the property as a conscientious custodian and to maintain it, at his expense, in the condition he received it when the usufruct started.

### **Notification about Extraordinary Works**

#### **Article 235**

A usufructuary shall be obliged to inform the owner on the extraordinary works necessary to be undertaken in order to preserve the property, as well as to sustain these works.

### **Maintenance Costs**

#### **Article 236**

A usufructuary shall bear the costs of regular maintenance.

With respect to the costs that he was not obliged to pay, the rules on performing the activities of another without receiving an authorization to do so shall apply.

### **Inventory**

#### **Article 237**

Owner or usufructuary shall be entitled to request, at any time, that an inventory is taken and evaluation of servient estate done, at a joint cost.

A person who required the inventory to be taken shall be obliged to deposit an advance payment in the amount necessary to cover costs.

If the inventory and evaluation are not done, it shall be presumed that a usufructuary received the property subject to usufruct in a usable condition of a medium quality.

### **Return of the Property**

#### **Article 238**

Upon termination of the usufruct, a usufructuary shall be obliged to return the servient estate to the owner in the same condition as it was when he received the property, but he is not obliged to compensate for reduction in the value of the property, if it is a result of a regular and purposeful use.

If the subject of usufruct is a consumable property, a usufructuary shall be obliged to compensate the former owner for the value of that property upon termination of the usufruct.

### **Security**

#### **Article 239**

Owner of servient estate whose rights are endangered may request the security from a usufructuary.

If a usufructuary does not provide a security at the request of the owner, the servient estate may be taken away from him and delegated to management to a person determined by the court.

Under paragraph 2 of this Article, the servient estate may be delegated also to the owner.

### **3) Termination of Rights**

#### **General Provision**

##### **Article 240**

The usufruct shall terminate:

- by expiration of the time, if it has been established for a specified time, and at the latest by the death of a usufructuary, or by cessation of a legal entity;
- when the owner and usufructuary become the same person;
- when a third party acquires the right to usufruct or the ownership right by adverse possession on the same servient estate;
- by failing to exercise the right to usufruct within the period of 5 years, if the usufructuary was not prevented from exercising the right to usufruct;
- by renunciation by a usufructuary;
- by expiration of the period of 30 years from the time the easement is established for the benefit of a legal entity.

#### **Partial Destruction of a Property**

##### **Article 241**

In the case of a partial destruction of a servient estate, the right to usufruct shall be extended to the residual part of the servient estate.

#### **Total Destruction of the Property**

##### **Article 242**

In the case of total destruction of the servient estate, the termination of the right to usufruct shall be final, even if the owner would have restored the servient estate, at his expense.

#### **Insurance Amount**

##### **Article 243**

If a destroyed or partially destroyed servient estate has been insured, the right to usufruct shall be extended to the paid out insurance amount.

The owner may use the insurance amount for restoring the servient estate, and in that case, the right to usufruct shall relate to the new servient estate.

#### **Right to Use**

##### **Article 244**

Holder of the right to use shall be authorized to use the property of another (servient estate) and collect the fruits from it, within the limits of his personal needs and needs of his family members, without violating the essence of the property.

All exceeding benefits that the servient estate generates shall belong to the owner.

#### **Non-Transferability**

##### **Article 245**

The right to use shall be non-transferable.

### **Public Charges and Maintenance Costs**

#### **Article 246**

Public charges and costs of regular maintenance of the servient estate shall be borne by both holder of the right to use and the owner of property in proportion to the benefits that each of them has from the servient estate and in proportion to the duration of the right to use.

### **Occurrence and Termination**

#### **Article 247**

The right to use shall occur and terminate in the manner and under the conditions valid for the right to usufruct.

### **Right to Dwelling**

#### **Article 248**

A holder of the right to dwelling shall be authorized to use, while excluding other persons, the apartment building or apartment of another as a separate part of the building for the purpose of dwelling.

A holder of the right to dwelling may live with the members of his household and persons who are supporting him or the persons he needs to maintain his household, only during his lifetime.

The right to dwelling shall be non-transferable.

### **Occurrence and Termination**

#### **Article 249**

The right to dwelling shall occur and terminate in accordance with the provisions of this Law applicable to the right to usufruct.

## **Chapter IX**

### **Neighbouring Rights**

#### **Concept**

#### **Article 250**

A neighbouring right shall mean a legal authorization of the owner of one immovable property to use the neighbouring immovable property, or to request from every owner of the neighbouring property to act or refrain from acting that is otherwise allowed by law.

A holder of the neighbouring right, in exercising this right, shall be obliged to act in the spirit of good neighbouring relations.

A holder of the neighbouring right shall be especially obliged to, satisfying the need that his right refers to, exercise that right in an honest manner, in accordance with local customs and in the manner that limits, encumbers or disturbs in another manner the owner of neighbouring immovable property to the lowest possible extent.

Provisions of this Chapter, with respect to the owners, shall be accordingly applied also to direct possessors of immovable property.

### **Joint Fence**

#### **Article 251**

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In the case of the fence located on a landmark (wall, hedge, wire, poles, etc.), it shall be assumed that it belongs to the neighbours as a joint ownership, if it is not proved otherwise by notches, inscriptions, signs or other proofs.

Neighbours shall use a joint fence each from his side, taking into account not to reduce the usability for another neighbour.

Costs of maintaining the joint fence shall be divided into equal parts.

Consent of owners of neighbouring lands shall be needed for installing a new joint fence instead of the existing fence.

In the case when the consent of neighbours is not reached, a decision shall be made by a competent court, taking into account all circumstances.

The court, at the request of a neighbour, may allow him, due to justifiable reasons, to build a fence on the landmark against the will of another neighbour.

A neighbour who built the fence shall have the ownership right, whereas the other neighbour shall have the right to use it.

### **Fence of the Owner of Land**

#### **Article 252**

A fence, which is located exclusively on the immovable property of one owner, shall be in ownership of the person who is the owner of land.

Every owner shall be obliged to enclose his area from the right side of his entrance, watching from the road, and separate it from the neighbour's area, unless otherwise prescribed or unless otherwise imposed by a local custom.

The owner of fence shall be obliged to maintain his fence in a good order, if there is a danger of incurring damage to the neighbour.

### **Wall that Separates Buildings**

#### **Article 253**

The wall that separates two neighbouring buildings shall be used by both neighbours, each from his side.

Each of them may make hollows up to the half of the thickness of the wall (for placing a rafter, and similar), if he does not jeopardize the stability of the wall or does not disturb the other neighbour to do the similar thing for himself.

If the wall belongs to one neighbour, the other may request to use it in return for compensation.

### **Development of a Landmark**

#### **Article 254**

If landmark signs are destroyed, damaged or moved, each owner of neighbouring lands may request determination of borders and setting of landmark signs, with a mutual consent.

In the case when neighbours cannot reach a mutual consent, the borders between neighbouring immovable properties shall be done by a court in non-adversarial procedure.

A court decision on a repeated determination of borders shall not have impact on resolving the issue of possession and ownership right on immovable properties that form a border.

### **Tree on a Landmark**

**Article 255**

Tree on a landmark shall be in a joint ownership of neighbours.

Each neighbour shall be entitled to fruits from branches located above his land.

**Branches and Roots of Tree**

**Article 256**

The owner of land shall be entitled to cut the branches within his air space and remove roots that penetrated into his land, if they disturb him.

Neighbours may cut a tree on the basis of a mutual agreement, or at the request of one of neighbours, if the court finds that such a request is justifiable.

Fruit tree and other tree shall belong to a person on whose land the trunk is located, even if the roots would penetrate in the neighbour's land or the branches would be over the neighbour's land.

The owner of fruit tree shall be entitled to enter into the neighbour's land and collect fruits that fell there from the branches that are not over the neighbour's land.

The owner of land shall be entitled to cut and keep for himself the branches and roots coming from the tree on the neighbour's land, if they disturb him, and the neighbour, at his request, did not remove them within appropriate deadline.

The owner of land who leaves the branches uncut shall be entitled to fruits from these branches.

Provisions of the right of owner of land to cut and keep for himself the branches and roots coming from the tree on the neighbouring land shall not apply to forests that form a border.

**Afforesting and Planting of Trees and Damage from Shade**

**Article 257**

In the case when only one of two neighbouring lands is under forest or orchard, the owner of the other land shall not be entitled to compensation of damage that, within the limits of local circumstances, he suffers from shade created by trees from the afforested or planted land.

When by subsequent afforesting or planting of trees, the owner of neighbouring land suffers substantial damage from shade created by those trees, the court may impose one time fair compensation to the owner of neighbouring immovable property, taking into account all circumstances, and especially the benefit occurred by afforesting or planting trees and damage arisen from that.

**Prohibition to Dig below the Neighbouring Land**

**Article 258**

The owner of land must neither dig below the neighbouring land nor undertake other activities jeopardizing the stability of a neighbouring land or building.

The owner of neighbouring land who is endangered shall be entitled to request the termination of works until the necessary security measures are undertaken, and if it is impossible to undertake successful measures, he shall be entitled to request termination of works.

**Danger from Demolishing a Building**

**Article 259**

When there is a danger of full or partial demolition of the building or another facility, a neighbour who is endangered shall be entitled to request from a person who would be liable for

damage caused by demolition of the building to undertake necessary measures to avoid the damage.

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

#### **Article 260**

The owner of land cannot, to the detriment of a neighbouring land, change a direction or strength of water that flows out naturally over his land or through his land (underground waters).

The owner of land along the shores, water currents and lakes, shall be obliged to exploit them in the manner not to disturb the natural flow of water, not to jeopardize the condition or exploitation of beds, shores and water management facilities on the shore and near the shore and not to prevent their maintenance.

The owner of land that is located lower shall be obliged to allow that water, which naturally flows from the neighbouring land that is higher, flows over that land.

The owner of neighbouring lower land shall not be entitled to arbitrarily divert this natural stream of water to the detriment of the higher land, and the owner of the neighbouring higher land cannot arbitrarily by himself do something that would encumber to a greater extent the lower land.

### **Directing the Rainwater from the Roof**

#### **Article 261**

The owner of building shall be obliged to undertake necessary measures so that the rainwater flowing down from his building does not fall to the neighbouring land.

### **Land Irrigation**

#### **Article 262**

The owner whose land is near the river or other surface water, regardless whether there are other lands between the water and the land, shall be entitled to irrigate the land, unless otherwise determined by law or another regulation.

### **Sequence of Irrigation**

#### **Article 263**

Irrigation priority shall belong to the owner of land that is closer to the water, then the following next to it, and so on until the land that was firstly irrigated dries up, and irrigation starts in the same order of priority, although more distant lands could not be irrigated due to the lack of water.

The land closer to the water shall be the one closer to its source, and not to the bed of water.

### **Use of the Land of Another**

#### **Article 264**

The owner of land may, for the purpose of irrigation, installation of pipes and performance of other activities, cross neighbouring lands, with the obligation to timely inform the neighbours and act with a diligence of a conscientious custodian.

If the owner of land, while doing so, incurs damage to the neighbours, he shall be obliged to compensate it.

### **Water Supply from the Neighbouring Land**

#### **Article 265**

The owner of land where the well or source is located shall allow the owners of neighbouring lands to be supplied with water in the case when they cannot find the other manner to get the water, i.e. when they can do so with disproportionate costs.

The existence of the possibility that the neighbouring lands are supplied with water in another manner shall be evaluated in accordance with objective criteria, bearing in mind the existing circumstances.

### **Protection from Harmful Influences (emissions)**

#### **Article 266**

The owner of immovable property shall be obliged, in using the immovable property, to refrain from the activities and remove causes arising from his immovable property, which impede the use of other immovables (spreading of smoke, unpleasant smells, heat, lampblack, blows, noise, flowing out of wastewaters and similar) over the extent that is common with respect to the nature and purpose of immovable property and local circumstances, or which cause substantial damage, or which are not allowed on the basis of provisions of a separate regulation.

Without a special legal ground, it shall be prohibited to make disturbances referred to in paragraph 1 of this Article by special devices.

Owners of immovables that are exposed to excessive emissions shall be authorized to require from the owner of immovable property that emits them to remove the causes of these emissions and compensate the incurred damage, as well as to refrain in the future from the activities that represent the cause of excessive emissions, until he undertakes all measures to make them impossible.

Exceptionally, when excessive emissions are arising from the activity, that the license of a competent body is issued for, the owners of such immovables exposed to them shall not be entitled to request prohibition of this activity during the license validity, but they may require damage to be compensated, and adequate measures to be undertaken in order to prevent future or reduce excessive emissions or damage.

The owner of the immovable property, that is under a predictable threat of danger from the immovable property of another due to prohibited emissions that he would not be obliged to sustain, shall be authorized to request that adequate measures are determined and implemented for the purpose of their prevention.

### **Right to Cross to a Neighbouring Land and Use of the Neighbouring Land**

#### **Article 267**

The owner may use parts of the neighbouring land, if it is necessary to do so due to a repair or demolition of the building located on his land.

The owner of land shall be obliged to allow the access to his land for the purpose of catching of run away or lost animal, swarm of bees, collection of fruits from the tree on the neighbouring immovable property, or return of the things that got there due to the effect of natural forces or accidentally.

A neighbour who sustained the damage by the use of his land shall be entitled to compensation.

If the damage was incurred by a run away or lost animal, the owner shall be entitled to keep it until its owner shows up, but no longer than 3 days.

**Use of the Immovable Property of Another for the Purpose of Executing Works**

**Article 268**

The owner of immovable property, on which it is necessary to perform the works required for its use, may temporarily use the land of another for the purpose of executing works (installing scaffolds, and similar), if they cannot be executed in another manner.

Appropriate compensation shall be paid for the use of the land of another, at the request of the owner.

A person, who used the land of another, shall be obliged to restore that land, as soon as there is no more need for its use, to the prior condition and make compensation for the incurred damage.

**Chapter X**

**Security Interest**

**Concept**

**Article 269**

Security interest may be created in movables, immovables and rights.

Security interest shall arise on the basis of a legal transaction, court decision and law.

Security interest in movables may be created by delivery of collateral to possession of a pledgeholder or by registration without delivery of the property (registered pledge), in accordance with law.

**1. Pledge on Movable Property**

**Concept**

**Article 270**

Pledge contract shall oblige a debtor or a third party (pledgor) to deliver a creditor (pledgeholder) a movable property on which the ownership right exists, so that he can have priority over other creditors in satisfaction of his claim by foreclosing the pledge, if his claim is not satisfied when due, whereas the creditor shall be obliged to keep the received property and return it undamaged to the pledgor upon termination of his claim.

**Acquisition of Security Interest**

**Article 271**

A pledgeholder shall acquire a security right when the property subject to the contract is delivered to him.

**Capacity**

**Article 272**

In order to conclude a valid pledge contract, it is necessary for the pledgor to be able to dispose of the property that a pledge is created in.

**Pledge on the Property already Pledged to Another**

**Article 273**

Pledge contract may be concluded for the property already pledged to another.

In the case referred to in paragraph 1 of this Article, a security interest shall arise when a pledgor informs a creditor holding the property on conclusion of the pledge contract with another creditor and orders him to deliver the property to the latter upon satisfaction of his claim.

### **Pledge for Future or Conditional Obligation**

#### **Article 274**

Pledge may be created for a future, as well as for conditional obligation.

### **Extending Pledge to other Obligations of a Pledgor**

#### **Article 275**

Pledge that secures the fulfilment of a certain obligation shall extend also to contractual obligations that would occur between a pledgeholder and pledgor after the conclusion of the pledge contract, which would be due for payment before fulfilment of the obligation that the pledge has been created for.

### **Prohibited Provisions**

#### **Article 276**

The provision of a pledge contract stating that the collateral shall be transferred to the ownership of a creditor, if his claim is not satisfied when due, shall be null and void, as well as the provision stating that in that case a creditor would be able to sell, at the price determined in advance, a collateral or keep it for himself.

If pledge is created in the property whose price is prescribed, contractual parties may agree that a creditor will be able to sell the collateral at the prescribed price or keep it at that price for himself.

## **2. Obligations of a Pledgor**

#### **Article 277**

A pledgor shall be obliged to deliver to a pledgeholder or third person determined by mutual consent the property subject to the contract or document that gives to the holder exclusive right to disposition of property.

Contractual parties may agree to jointly keep the property or document.

## **3. Obligations of a Pledgeholder**

### **Keeping the Collateral**

#### **Article 278**

A pledgeholder shall be obliged to keep the property with the diligence of a conscientious custodian, i.e. due care.

A pledgeholder shall be obliged to return the property as soon as his claim is satisfied.

### **Using the Collateral**

#### **Article 279**

A pledgeholder shall not be entitled to use a collateral or to deliver it to another for use, or to create another pledge on it (sub-pledge), unless a pledgor allows him to do so.

A pledgeholder who uses the property without the approval of the pledgor or delivers it to another for use or creates a pledge on it, shall be liable also for accidental destruction or damage of the property.

### **Fruits of the Collateral**

#### **Article 280**

If the collateral gives fruits, and it is not agreed on to whom they will belong after their separation from the property, a creditor, if he wants so, may keep them for himself.

In the case referred to in paragraph 1 of this Article, the amount of net revenues from fruits shall be deducted from the costs, the reimbursement of which the creditor is entitled to, then from the accrued interest and, finally, from the principal amount.

The same shall apply to benefits resulting from the use of the collateral.

### **Taking away the Collateral from the Pledgeholder**

#### **Article 281**

At the request of a pledgor, the court shall order that the collateral be taken away from the pledgeholder and delivered to a third party to keep it for him, if the pledgeholder does not keep the collateral as he should have, if he uses it without the pledgor's permission, or if he has given it to another to use it, or does not use it in accordance with the given permission, and, in general, if he treats it contrary to the contract and law.

### **Rights of a Pledgeholder**

#### **When a Collateral has a Defect**

#### **Article 282**

When it turns out that a collateral has a material or legal defect, so that it does not represent a sufficient security for satisfaction of the claim, the pledgeholder shall be entitled to request from a pledgor another adequate security.

### **Judicial Sale of the Collateral**

#### **Article 283**

If a creditor's claim is not satisfied when due, a creditor may request from the court to make a decision on the sale of the property through a public sale, or at the current price, when the property has an exchange or market price.

If costs of a public sale are disproportionally high against the value of the collateral, the court may decide that a creditor sells the property at the price determined by the appraisal of an expert, or keeps it for himself at that price, if he wishes to do so.

### **Extra-Judicial Sale**

#### **Article 284**

If a pledgor has the status of a business entity, pledge contract may envisage that a pledgeholder has the right to sell the collateral through extra-judicial public sale, if his claim is not satisfied when due.

### **Commencement of Extra-Judicial Foreclosure**

#### **Article 285**

A pledgeholder shall be obliged to inform, by a registered letter, a debtor and pledgor, when they are not the same person, and third party holding the property, on the intent to satisfy his due claim from the value of collateral.

Foreclosure procedure shall commence when a pledgeholder submits the notification by a registered letter to a debtor and pledgor, when they are not the same person.

### **Prohibition of Legal Disposition and Starting the Extra-Judicial Foreclosure**

#### **Article 286**

After submission of the notification of the pledgeholder, a pledgor cannot dispose of the collateral without the permission of a pledgeholder.

A pledgeholder may commence extra-judicial foreclosure of the collateral upon the expiration of the 30-day period from submission of the notification of commencement of foreclosure.

The debtor may pay out his debt, in a valid manner, at any time before the sale of collateral.

Within the deadline referred to in paragraph 2 of this Article, a pledgor may, although he is not obliged to, to fulfil the obligation of the debtor.

### **Additional Agreement**

#### **Article 287**

After submitting the notification of commencement of foreclosure to a pledgor, the pledgeholder and pledgor may agree to shorten the 30-day deadline.

### **Extra-Judicial Sale through Auction**

#### **Article 288**

A pledgeholder may commence extra-judicial public sale through auction, if such a manner is envisaged by the pledge contract.

Exceptionally, when a pledgor is a natural person, who concludes the pledge contract without being a registered entrepreneur, a pledgeholder may commence extra-judicial public sale through auction, if a pledgeholder and pledgor agreed so at the moment when the creditor's claim was due.

A pledgeholder may delegate the implementation of public sale to an expert who regularly deals with such an activity.

### **Sale at the Market or Exchange Price**

#### **Article 289**

A pledgeholder may sell the collateral at the market or exchange price, if such a manner of sale is envisaged in the pledge contract.

Exceptionally, when a pledgor is a natural person, who concludes the pledge contract without being a registered entrepreneur, it shall be possible to do so, if a pledgeholder and pledgor agreed so at the moment when the creditor's claim was due.

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Market price shall mean the price at which the same or similar things are regularly sold under the usual circumstances at the place and at the time of the sale of collateral.

If in the place and at the time of sale of collateral, the property does not have a market price, the price at the closest market shall be taken into account.

Exchange price shall mean the price at which the same or similar things are sold at the closest exchange.

If the collateral does not have a market or exchange price, a pledgeholder may sell it in the manner that a reasonable and careful man would apply, protecting the interests of debtor and pledgor.

A pledgeholder may delegate to a person whose profession is the provision of loans secured by pledge or a person whose profession is the sale of such things to sell the collateral in his name and for his account.

The pledgeholder and the person to whom the sale of the collateral is delegated shall be jointly and severally liable to a pledgor if they cause him damage during the sale.

### **Duty to Notify**

#### **Article 290**

A pledgeholder shall be obliged to notify a debtor and pledgor, when they are not the same person, and third party keeping the property, on the place and time of the sale.

If the sale of collateral is held without the presence of the debtor and pledgor, when they are not the same person, the pledgeholder shall be obliged to, with no delay, inform each of them on circumstances that can be important, and especially on the executed sale, manner in which the sale was executed, obtained price and costs.

### **Complaint of the Pledgor to the Court**

#### **Article 291**

A pledgor may contest the right of a pledgeholder to foreclose the pledge in extra-judicial procedure, if within 30 days from the submission of notification from the commencement of foreclosure, he submits the complaint to the court and proves that a creditor's claim or security interest does not exist, that the claim is not due or that the debt is paid out.

The submission of complaint does not prevent the foreclosure procedure, except if the pledgor submits a public document or private document authenticated in the manner determined by law, which contains the proof that the creditor's claim or security interest does not exist, that the claim is not due or that the debt is paid out.

When determining deadlines and hearings on the claim of the pledgor, the court shall always pay a special attention to the need of urgent resolution of these disputes.

### **Acquisition of the Ownership Right at a Public Sale and Other Types of Sale**

#### **Article 292**

A good faith person who buys a collateral through a judicial or extra-judicial public sale shall acquire the ownership right free of any encumbrances.

The ownership right acquired by a good-faith buyer cannot be contested due to potential deficiencies in the sale procedure.

The rules referred to in paragraphs 1 and 2 of this Article shall also apply to the sales during foreclosure procedure, if the person bought the collateral at the market or exchange price or at the price at which a reasonable and careful man would sell it, protecting the interests of debtor and pledgor.

**Sale of Collateral before it is due and Because of its Deterioration or Losing Value and its Replacement**

**Article 293**

When a collateral is deteriorating or when it loses its value otherwise, thus creating a danger to become insufficient for securing a creditor's claim, the court may, at the request of a pledgeholder or pledgor, and upon the hearing of another side, decide to sell the property at the public sale, or at the exchange or market price, if any, and to have the price or a sufficient portion of the price deposited with the court in order to secure the pledgeholder's claim.

The court shall reject the request of the pledgeholder, if the pledgor offers to deliver to the pledgeholder, instead of the pledged property, another property of the same value, the keeping of which does not require greater effort and care than keeping the previously pledged property.

The court shall, under the same circumstances, allow the replacement of the collateral at the request of the pledgor, also in the case when the pledgeholder does not ask for its sale.

**Sale of Collateral before it is due at the Request of a Pledgor**

**Article 294**

At the request of a pledgor, the court may allow that the collateral is sold to a certain person for a certain price, if it finds that the price is favourable and if justifiable interests of a pledgeholder are thus preserved.

The obtained price or sufficient portion of the price, which will be determined by the court allowing the sale, shall replace the collateral and be deposited in the court in order to secure the satisfaction of creditor's claim.

**Right to Priority Satisfaction**

**Article 295**

A pledgeholder shall be entitled to satisfy his claim, interest accrued, costs incurred by keeping the collateral, as well as costs incurred by foreclosing the pledge, from the price obtained by the sale of collateral prior to other creditors of the pledgor.

**Order of Priority of Security Interests**

**Article 296**

When several creditors have pledges in the same collateral, the order by which their claims will be satisfied from the value of collateral shall be determined in accordance with the date of occurrence of their security interests.

**4. Termination of Security Interest**

**Termination of Security Interest by Losing the Right to Possession**

**Article 297**

The right of creditor to have priority in collection of his claim from the value of collateral shall terminate by termination of his possession. This right shall become valid again when the creditor restores the possession of the property.

### **Termination of the Security Interest by Termination of the Claim**

#### **Article 298**

When the claim whose satisfaction was secured by pledge terminates, a creditor shall be obliged to return the collateral to the pledgor.

### **Statute of Limitations of Mutual Claims**

#### **Article 299**

Claims of the pledgor against the pledgeholder regarding compensation of damage due to deterioration of property, as well as the claims of the pledgeholder against the pledgor regarding compensation of costs incurred by improving the property, shall fall under the statute of limitations within one year from the day of returning the property.

## **5. Pledge of Claims and Other Rights**

### **1) Pledge of Claims**

#### **Notification of Debtor and Delivery of Document**

##### **Article 300**

In order to acquire a security interest in a claim (receivables), it is necessary that a debtor be informed in writing on the concluded pledge contract.

A pledgor shall be obliged to deliver to a pledgeholder the document of secured claim.

#### **Pledge of Claims based on Securities**

##### **Article 301**

A creditor shall acquire a security interest in a claim based on a bearer security, when it is delivered to him.

Pledging a claim based on a security by order shall be done by endorsement, with an indication that it is given as collateral.

#### **Duty to Preserve a Claim**

##### **Article 302**

A pledgeholder shall be obliged to undertake measures necessary for preserving the secured claim.

#### **Collection and Calculation of Interests**

##### **Article 303**

If a secured claim gives the right to interests or any other occasional claims, a pledgeholder shall be obliged to collect them. Such obtained amounts shall be set off with costs that the pledgeholder is entitled to be reimbursed, then with the interest accrued, and finally with a principle.

**Collection of Secured Claim**

**Article 304**

When a secured claim becomes due, a pledgeholder shall be obliged to collect it.

By satisfying the secured claim, the security interest shall be transferred to the property from which the claim was satisfied.

When the subject of secured claim is money, a pledgeholder shall be obliged, at the request of a pledgor, to deposit the collected amount with the court, but if the subject of his claim is also money and if it is due, the pledgeholder may keep for himself the owed amount, while he is obliged to give the rest to the pledgor.

**Objections of the Debtor of the Secured Claim**

**Article 305**

Debtor of the secured claim may state objections against pledgeholder that in the case of assigning the claim the debtor of the assigned claim may state to the recipient of the claim.

**2) Pledge of Other Rights**

**Manner of Pledging**

**Article 306**

In addition to claims, other rights may be pledged as well.

Pledge of other rights shall be done in the manner envisaged for their transfer to another, unless otherwise determined by law.

**Application of Provisions on Pledging the Property**

**Article 307**

Provisions on pledging the property shall apply also to pledging claims and other rights, unless otherwise prescribed by law.

**3) Security Interest in Immovables**

**(Mortgage)**

**Concept**

**Article 308**

Immovable property may be encumbered by a security interest (mortgage) to secure a claim for the benefit of a creditor who is authorized, in the manner prescribed by law, to demand satisfaction of his claim by foreclosing the mortgaged property with priority over creditors who do not have a mortgage created on that particular property, as well as over any subsequently registered mortgage, regardless of a change in the owner of the encumbered immovable property.

**Mortgaged Property**

**Article 309**

A mortgage can be created on an individual property that has the capacity to be monetarily valued, as well as on a percentage (aliquot part) of that property.

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If the immovable property is improved during the effectiveness of the mortgage, the mortgage shall also relate to the improvements (extensivity of a mortgage).

A mortgage agreement may be secured by a future property, but the mortgage can be registered in the cadastre of immovable property only when the property comes into existence.

The provisions of this Law shall be applied to the security interest in ships and aircrafts, unless otherwise prescribed by a separate law.

### **Mortgage on a Building under Construction**

#### **Article 310**

A mortgage may be created on a building under construction, as well as on a separate part of the building under construction (apartment, business premises, garages, and other) regardless of whether it has been already constructed or not, provided that a valid building permit is issued in accordance with the law regulating construction of buildings.

A building under construction, under this Law, shall mean also a physically completed building or its separate part not registered in the cadastre of immovable property, if it meets the requirements for registration of mortgage on the building under construction.

Risk associated with the demolition of illegally constructed building, that the mortgage is created on, shall be borne by the owner of immovable property, the debtor and the creditor, based on their internal relations.

### **Possession of Mortgaged Property**

#### **Article 311**

A mortgagee shall neither have the right to possession of the mortgaged property, nor to collect or usurp fruits and other benefits from the mortgaged property or use it in any manner, unless otherwise prescribed by this Law.

### **Attachment of a Mortgage to the Property**

#### **Article 312**

A mortgage cannot be separated from the encumbered immovable property even when a third party acquires ownership of the property.

A mortgage cannot be transferred from one immovable property to the other unless the mortgagee and mortgagor agree otherwise.

### **Immovable Property Owned by Several Persons**

#### **Article 313**

A co-owner of immovable property can mortgage his share (aliquot part) of the property.

The consent of all co-owners shall be required for a contractual mortgage on the entire property that is under co-ownership.

If immovable property is under joint ownership, the entire immovable property can be mortgaged only with the consent of all joint owners.

### **Scope of Mortgage**

#### **Article 314**

A mortgage shall attach to the entire immovable property, and to its fruits until they are separated, and to its constituent and accessory parts.

If the mortgaged property is divided, the mortgage shall continue to encumber all parts.

A mortgagee shall have the right to collect fruits of the immovable property when only the right to the fruits is pledged under the mortgage agreement.

The value of the fruits the mortgagee collected shall set off his claims, in the following sequence: the costs entitled to be compensated, interests and the principle amount.

### **Obligations Secured by a Mortgage**

#### **Article 315**

The mortgage shall secure the entire claim, interests and other ancillary claims and enforced collection costs.

A mortgage can be created to secure conditional or future claims.

If at the moment of creation of the mortgage the exact amount of the claim is not known, the maximum amount of the claim secured by the mortgage must be specified in the mortgage agreement.

A mortgage shall be used to secure the satisfaction of an obligation based on the value of the encumbered property which obligation must be a financial obligation or an obligation that can be monetarily valued.

A claim is specific enough if the creditor and debtor, the legal ground and the amount, i.e. the maximum secured amount, are determined.

### **Conditional Mortgage and Credit Mortgage**

#### **Article 316**

In the cadastre of immovable property, a mortgage securing a claim that does not have to occur can be registered (conditional mortgage).

If a mortgage secures claims that could arise from approved credit, management take over, guarantee or compensation of damage or other claims, after some time or after meeting a certain requirement, the maximum amount that credit or liability can reach should be stated (credit mortgage) in a document on the basis of which the registration is allowed.

### **Continuing Mortgage (Continuing Security Clause)**

#### **Article 317**

A mortgage securing the fulfilment of certain obligation may be extended to contractual obligations occurring between the mortgagee and mortgagor upon conclusion of the mortgage agreement, which are due before satisfaction of obligation secured by the mortgage.

The mortgagor shall not conclude with the same mortgagee a new mortgage agreement on the same property for a new loan agreement or liability up to the amount stated in a mortgage agreement (continuing mortgage).

### **Creation of a Mortgage**

#### **Article 318**

A mortgage shall be created by registration in the cadastre of immovable property, on the basis of:

- contract (contractual mortgage);
- pledge statement (unilateral mortgage);

- law (statutory mortgage);
- court decision (judicial mortgage).

Rules on contractual mortgage shall be accordingly applied to unilateral, statutory and judicial mortgage, unless otherwise determined by law.

If all requirements for the registration are not met, a mortgage can be created by pre-registration notes, provided that the pre-registration notes are justified later on and that all requirements for pre-registration notes are met.

Pre-registration notes regarding the mortgage shall be allowed if the claim and legal ground for creation of the mortgage are proved to exist.

The provisions of this Law on creation of mortgage by registration in the cadastre of immovable property shall be applied to changes and termination of the mortgage.

A mortgage cannot be created on the basis of a will.

Records on mortgages registered in the cadastre of immovable property shall be published on the web site of a body in charge of mortgage registration.

### **Mortgage Agreement**

#### **Article 319**

A mortgage agreement shall oblige a debtor or a third party (mortgagor) to register his security interest in the cadastre of immovable property in order to secure creditor's claims, whereas a creditor shall be obliged to issue a certificate to a debtor to delete the mortgage from the public book upon satisfaction of his claims.

A mortgage agreement must be concluded in writing and authenticated by a competent body.

A mortgage agreement shall include:

- the name and address, or registered seat of the mortgagor;
- the name and address, or registered seat of the mortgagee;
- a description of the obligation secured by the mortgage, or, if the obligation is set forth in a separate principal agreement, a precise reference to the principal agreement;
- the mortgaged property, the number of certificate of title, cadastre parcel and the designation of the cadastre municipality in which the immovable property is located;
- rights and obligations of the contractual parties;
- maturity date and manner of satisfaction;
- the date of conclusion of the mortgage agreement;
- name and address or registered seat of a person to whom extra-judicial sale shall be delegated to;
- the signatures of the parties.

### **Registration of Mortgage on a Building under Construction**

#### **Article 320**

Registration of a contractual mortgage on a building under construction shall be made in the following manner:

- 1) on the land where the building is constructed, a mortgage shall be registered on the building under construction, and upon registration of the building in the cadastre of immovable property, a mortgage shall be registered ex officio on the constructed building or separate part of the building;
- 2) if the investor sold to a buyer the building under construction or separate part of the building under construction, at the request of the buyer's mortgagee, a mortgage shall be registered on the building under construction or separate part of the building, and upon

registration of the building in the cadastre of immovable property, the mortgage shall be registered ex officio on the constructed building or separate part of the building.  
If the building during construction changes its owner, a new owner shall have the rights and obligations of the former owner against the mortgagees.

### **Unilateral Mortgage**

#### **Article 321**

A unilateral mortgage shall be created on the basis of a pledge statement.

A pledge statement shall mean a document prepared by the owner by which he unilaterally obliges himself to sustain, in the case the debt is not paid out when due, the satisfaction of creditor's secured claim from the value of mortgaged immovable property, in the manner prescribed by law.

The pledge statement shall correspond by the form and contents to the mortgage agreement.

Registration of mortgage on the basis of a pledge statement shall be done at the request of owner or creditors.

### **Mortgage as a Guarantee for the Debt of Another**

#### **Article 322**

Based on a mortgage agreement, immovable property can be mortgaged in order to secure the debt of a third person.

### **Joint Mortgage**

#### **Article 323**

To secure a claim, a mortgage can be created on several immovable properties.

If a mortgage is created to secure a claim from the value of several properties, a mortgagee can choose from where to satisfy his claim, unless otherwise agreed-upon or established by a decision of a competent body.

### **Several Mortgages on the Same Immovable Property**

#### **Article 324**

In the case there are several mortgages on the same immovable property, the priority of a mortgage shall be established according to the moment of submission of the request for its registration.

Creditors shall be satisfied in the order of priority.

### **Alteration of Priority**

#### **Article 325**

The priority of a mortgage cannot be changed without the agreement of all persons whose rights will be affected by the change.

### **Assignment of Mortgage**

#### **Article 326**

A mortgage can be assigned to another person only together with an assignment of the secured obligation.

A mortgage may be assigned as referred to in paragraph 1 of this Article without the consent of the debtor, but the debtor must be informed of the assignment.

The notice of assignment shall include:

- the name and address or registered seat of the assignee;
- the date the assignment was or will be completed;
- the number of the account and the name of the bank where all future payments are to be made.

The assignment of a mortgage to a third person shall be done by registration in the cadastre of immovable property.

### **Disposition of Mortgaged Property**

#### **Article 327**

A mortgagor shall have the right to keep and use the mortgaged property, to lease it or divest of it without the consent of the mortgagee, but the right of a mortgagee shall not be diminished.

A mortgagor shall be authorized to use the property according to its common purpose.

A mortgage agreement can restrict the right of mortgagor to divest of mortgaged property, or it can restrict the use of the mortgaged property.

In case of sale of the mortgaged property to a new owner, the obligation secured by the mortgaged property shall not be transferred, unless otherwise agreed by the mortgagee.

### **Obligations of a Mortgagor**

#### **Article 328**

A mortgagor shall be obliged to maintain the mortgaged property with the diligence of a conscientious custodian, i.e. due care.

A mortgage agreement can oblige the mortgagor to insure the mortgaged property.

The mortgagor shall be obliged to inform the mortgagee of all changes in the property, and especially on deterioration of its condition or loss in value, otherwise he shall be liable for any damages.

### **Protection of Mortgage**

#### **Article 329**

A mortgagee shall be authorized to protect his right against all third persons, as well as mortgagor, and especially to request the following:

- protection of violated security interest by means used for the protection of registered rights;
- that a mortgagor or a third party restrains from actions on the mortgaged property that can endanger it or diminish its value or make its condition worse in another manner;
- that he gets fruits of the mortgaged property, if he holds the security interest in the fruits in accordance with a mortgage agreement.

Rules on the protection of ownership rights shall be applied to the requests set forth by a mortgagee for the protection of a mortgage.

### **Sale of Mortgaged Property Before It is Due**

**Article 330**

If a mortgagor endangers the mortgaged property or diminishes its value or in another manner makes its condition worse, a mortgagee can request from the court to order the mortgagor to restrain from such actions. In the case he does not obey, the mortgagee can sell the mortgaged property in accordance with this Law, even before the claim becomes due.

A court may, at the request of a mortgagee, order that the property be seized from the mortgagor and handed over to a third person in possession, if a debtor does not maintain the property in accordance with the agreement and law.

**Void Provision of the Agreement**

**Article 331**

The provision of a mortgage agreement stating that a mortgagee shall be entitled to satisfy his claim in the case of default by acquiring the ownership right on the mortgaged property, collecting fruits of the mortgaged property and using the property in another manner shall be void.

**Satisfaction of Mortgage Right**

**Article 332**

A mortgagee shall be entitled to demand the satisfaction of his claims from the value of the mortgaged property regardless of whether the mortgagor or a third party owns it.

**Commencement of Foreclosure**

**Article 333**

A mortgagee shall be obliged to inform in writing a debtor and mortgagor, when they are not the same person, and any third party keeping the property, that there has been a default on the secured obligation and that if the default is not cured within 15 days of registration of the notice that the mortgagee intends to initiate foreclosure proceedings under the agreement and law.

The notice of commencement of foreclosure must be registered in the real estate registration office in which the mortgage agreement was registered.

A copy of the notice shall be delivered to other persons who hold encumbrances on the mortgaged property that were registered after registration of the mortgage.

The notice stating that the payment of debt is due shall contain:

- a description of the mortgage agreement, and the principal agreement, if any, under which the default has occurred;
- the name and address or registered seat of the mortgagee;
- the name and address or registered seat of the mortgagor, and the debtor, if that is not the same person;
- the address, cadastre number and the name of the cadastre municipality of the mortgaged property;
- a statement that a default has occurred and a description of the default;
- a manner of claim satisfaction and the time period during which the default must be cured, which shall be not less than 15 days after the date of registration of the notice.

**Prohibition against Disposal**

**Article 334**

Upon the submission of a mortgagee's notice, a mortgagor cannot dispose of the mortgaged property without the approval of a mortgagee.

### **Manner of Claim Satisfaction**

#### **Article 335**

If a default has occurred and is not cured within 15 days from the day of delivering the notice of commencement of foreclosure to the mortgagor, the mortgagee may pursue one of the following remedies determined by the agreement:

- extra-judicial foreclosure in accordance with this Law.
- judicial enforcement of the mortgage according to the law regulating enforcement procedure.

### **Extra-Judicial Foreclosure**

#### **Article 336**

The mortgagee may commence the extra-judicial foreclosure procedure upon the expiration of 15 days from the day of delivering the notice of commencement of foreclosure to the mortgagor.

The mortgagee shall commence the process of extra-judicial foreclosure by registering a notice of sale in the cadastre of immovable property in which the mortgage was registered and by delivering a copy of the notice to the mortgagor, or to the debtor from the agreement secured by the mortgage, if not the same person.

A copy of the notice shall also be delivered to other persons who hold encumbrances on the mortgaged property that were registered after registration of the mortgage.

### **Contents of the Notice of Sale**

#### **Article 337**

The notice of sale shall contain the following:

- the date and time of the sale;
- the location where the sale will be conducted, which shall be in the municipality in which the mortgaged property is located;
- the number of certificate of title, cadastre parcel number and the name of the cadastre municipality of the mortgaged property, and a type of the property;
- the total amount of the unpaid balance of the mortgage;
- estimate of the real costs, and other expenditures made since the commencement of foreclosure procedure;
- terms of sale; and
- the name, address or registered seat and phone number of the authorized person who will be conducting the sale.

### **Publishing the Notice of Sale**

#### **Article 338**

The notice of sale shall be published at least once a week for two consecutive calendar weeks, the first publication to be at least 15 days prior to the date of sale, in two separate daily newspapers published and distributed on the territory of Montenegro.

At least 15 days before the date of sale, the notice of sale shall be posted in a visible place on the property to be sold.

**Satisfaction of Contractual Obligation before Sale**

**Article 339**

The debtor or the mortgagor, if they are not the same person, or the person holding any registered encumbrance on the mortgaged property that has a lower level of priority than the mortgage which is the subject of the foreclosure may cure the default at any time before the sale of the mortgaged property by paying the amounts stated in the notice of sale.

If the default is cured, the mortgagee shall deliver to the mortgagor a notice of rescission of sale and register the notice in the cadastre of immovable property in which the mortgage was registered.

**Notice of Change of Address**

**Article 340**

The persons referred to in paragraphs 1 and 3 of Article 333 of this Law shall be obliged to register a notice of change of address in the registry in which the mortgage was registered, and inform the debtor and the other parties on whose behalf an encumbrance on the mortgaged property is registered in writing of any change in address.

**Deadline for Extra-Judicial Sale**

**Article 341**

The extra-judicial sale may be held no earlier than 30 days following registration of the notice of sale.

The mortgagee and mortgagor can agree to shorten the 30-day period between the registration of the notice of sale and commencement of the sale provided that the requirements for publishing the notice of sale have been met.

**Extra-Judicial Sale by Public Auction**

**Article 342**

Extra-judicial sale shall be done through public auction carried out by a person determined by a mortgage agreement.

A person authorized to conduct the procedure cannot be a buyer of the property subject to extra-judicial sale.

The property subject to extra-judicial sale shall be sold to a person who offers the highest price.

The mortgagee, who bids at the public sale, shall have the right to offset its bid to the extent of the full amount of the secured obligation, including unpaid interest, late charges, costs of sale, fees and other expenses related to the mortgage.

**Complaint by the Mortgagor**

**Article 343**

The mortgagor may contest the right of the mortgagee to foreclose the mortgage using the extra-judicial sale procedure, if within 15 days of receipt of the notice of sale, he submits a complaint to the competent court.

Submission of the complaint does not postpone the foreclosure, except if the mortgagor submits evidence that secured claim has been fulfilled or is not due, that there has been a breach of the procedures prescribed by this Law, or that the mortgage has not been registered in accordance with this Law.

When determining deadlines and hearings on the complaint, the court shall pay special attention to the urgency of these disputes.

### **Good Faith Buyers in Extra-Judicial Public Sale**

#### **Article 344**

Ownership of the mortgaged property which a good faith person acquires at an extra-judicial sale is acquired subject to any encumbrances that were registered prior to the mortgage and free of any encumbrances that were registered after the mortgage, except as otherwise provided by law.

Ownership right acquired by a good faith buyer cannot be contested due to potential deficiencies in the sale procedure.

### **Transfer of Ownership after Public Sale**

#### **Article 345**

Upon full payment of the purchase price by the winning bidder at the public sale, the person authorized to conduct the sale shall be authorized to sign a purchase and sale agreement on behalf of the mortgagor transferring the ownership of the property to the buyer and to authenticate his or her signature on the agreement.

### **Informing Tax Authority**

#### **Article 346**

The body where a mortgage is registered shall be obliged to inform the competent tax authority within 8 days of the moment of acquiring the ownership right on the mortgaged property.

### **Satisfaction of the Main and Subordinated Claims and Reimbursement of the Surplus**

#### **Article 347**

The proceeds of the sale shall be distributed in the following order:

1. property taxes on the mortgaged property;
2. the costs of the sale, including compensation of the person authorized to conduct the sale in accordance with this Law;
3. to the mortgagee to satisfy the amount of the main and other subordinated claims secured by the mortgage;
4. the amounts related to other encumbrances on the mortgaged property that were registered after the mortgage ;
5. any remainder to the mortgagor within 8 days from the day of sale.

If the mortgagee does not pay the remainder to the mortgagor within 8 days from the day of sale, he shall pay the mortgagor default interest provided by law.

### **Foreclosure in the Case of Bankruptcy Proceedings**

#### **Article 348**

In the case of bankruptcy proceedings against the mortgagor, the satisfaction of claims from the value of mortgaged property shall be done in accordance with the regulations governing bankruptcy.

### **Satisfaction of Claims by the Sale of Mortgaged Property**

#### **Article 349**

If a mortgaged property is a building under construction, its sale for the purpose of claim satisfaction, shall be done by transferring the right to construct approved by a final and enforceable building permit, in return for compensation, and selling the things built in the building under construction.

The body that issued a building permit, at the request of the buyer of the building under construction, shall issue to the buyer, with no delay, the same building permit in his name, and annul the previously issued building permit.

In that case, the buyer, by operation of law, shall have all rights and obligations of the seller on the basis of the permit even before issuing the permit to the buyer.

### **Termination of a Mortgage**

#### **Article 350**

A mortgage terminates when:

- the mortgagee renounces the mortgage in writing and when the mortgage is deleted from the cadastre of immovable property;
- the obligation secured by the mortgage ceases to exist or is satisfied together with interests and other subordinate claims, as well as by deletion of the mortgage from the cadastre of immovable property;
- the mortgaged property is sold at a judicial or extra-judicial sale to fulfill the secured claim;
- the mortgaged property is completely destroyed;
- a decision ordering termination of the mortgage becomes final and enforceable;
- the same person is both mortgagee and mortgagor or a mortgagee acquires the ownership right on the mortgaged property and when the mortgage is deleted from the cadastre of immovable property.

Within 8 days after termination of a mortgage, the mortgagee, or in the case of a judicial mortgage, the court shall execute and deliver to the mortgagor a certificate of termination of mortgage.

The mortgagor shall be entitled to submit a request for deletion of mortgage based on the acquired certificate to the body competent for registration of mortgages.

If the mortgagee has not delivered to the mortgagor a certificate of termination of mortgage within 8 days of termination of the mortgage, the court may be requested, by the mortgagor, to determine that a claim is satisfied and order deletion of the mortgage from the cadastre of immovable property.

A mortgagee who fails to execute and deliver a termination of mortgage shall be liable for any damages caused as a result of such failure.

### **Destruction of the Property**

#### **Article 351**

If the mortgaged property is destroyed and is not replaced by other property or right, the mortgage shall cease to exist.

If a mortgaged property was insured, a security interest shall be established in the insured amount that is deposited in a court deposit in the amount of the creditor's claim in order to secure it.

### **Mortgage Records on the Internet**

#### **Article 352**

The body in charge of real estates shall be obliged to publish created mortgages in a clear manner on the Internet.

### **3. Fiduciary Ownership**

#### **Concept of the Contract of Fiduciary Transfer of Ownership Right**

##### **Article 353**

The debtor or a third party shall transfer, with the contract of fiduciary transfer of ownership right on a movable property, the ownership right to the creditor in order to secure the satisfaction of claim, and the creditor shall be obliged to provide the debtor with an undisturbed exercise of the ownership right, after the satisfaction of his claim.

The debtor or a third party shall be obliged to transfer, with the contract of fiduciary transfer of ownership right on a immovable property, the ownership right to the creditor in order to secure satisfaction of claim, and the creditor shall be obliged to provide the debtor with an undisturbed exercise of the ownership right, after the satisfaction of his claim.

#### **Manner of Acquiring the Ownership Right**

##### **Article 354**

The ownership right on immovable property shall be acquired by registration in cadastre of immovable property, with the registration of the fiduciary transfer of ownership right.

#### **Form of the Contract**

##### **Article 355**

The contract of fiduciary transfer of ownership right must be concluded in writing, and in the case of immovables it must also be authenticated by the court or notary.

#### **Security for Future or Conditional Obligation**

##### **Article 356**

Fiduciary transfer of ownership right may be executed in order to secure a future, as well as a conditional obligation.

#### **Extension of the Security to Other Obligations of the Debtor**

##### **Article 357**

Fiduciary transfer of ownership right, securing the fulfilment of an obligation, shall also secure other obligations which may occur between the creditor and the debtor after the conclusion of the contract of fiduciary transfer of ownership right which would be due prior to satisfaction of the obligation secured by the transfer of ownership right, unless otherwise agreed upon.

#### **Prohibited Provisions**

##### **Article 358**

The provision of the contract of fiduciary transfer of ownership right stating that the property subject to this right shall be transferred to the creditor's ownership, if his claim is not satisfied when due, without previously implemented procedure envisaged by this Law, shall be null and void, as well as the provision allowing the creditor to use the encumbered property, collect fruits of the property or exploit the property in another manner.

The contractual arrangement referred to in paragraph 1 of this Article shall be allowed after the expiration of the eight-day deadline from occurrence of the claim.

### **Object Specification**

#### **Article 359**

Property serving as security for a claim must be precisely specified (principle of specialty).

Fiduciary transfer of ownership right shall attach to the entire property, its fruits until they are separated and other constituent and accessory parts.

### **Stock of Goods**

#### **Article 360**

The contract of fiduciary transfer of ownership right may also relate to the stock of finished products (machines, automobiles and other supplies of goods).

The contract shall prescribe the mandatory minimum quantity of goods in the stock of goods, the value of which secures the claim.

### **Informing the Creditor**

#### **Article 361**

The debtor shall be obliged to inform the creditor, through appropriate commercial papers, on his every transaction regarding the stock of goods.

### **Taking Away the Stock of Goods or Premature Sale**

#### **Article 362**

In the case the debtor does not take care of the stock of goods, i.e. goods from the stock of goods in a proper manner and generally treats them contrary to the contract and law, the court shall, at the request of the creditor, order the stock of goods, i.e. goods to be taken away from the debtor and delivered to a third party or order a premature sale of the property when it is justified.

### **Specification of Goods in the Stock of Goods**

#### **Article 363**

Goods serving as security must have a determined value, must be marked and located in a special place.

The debtor may, with the consent of the creditor, replace the goods in the stock of goods with the goods of the same value.

### **Right to Possession**

#### **Article 364**

In the case of fiduciary transfer of ownership right, the possession of the property shall remain with the debtor or with a third party who is the transferor of the ownership right.

The creditor and the debtor may agree to give the property, subject to the contract or documents giving the holder exclusive disposition right on the property, to the custody of a third party.

The parties to the contract may agree to jointly keep the property or document.

### **Obligation to Keep the Property**

#### **Article 365**

The debtor shall be obliged to keep the property with a diligence of a conscientious custodian, i.e. due care.

### **Delivery of the Property**

#### **Article 366**

The debtor shall be obliged to deliver the property to the creditor if he does not pay his debt within the deadline.

### **Informing on Changes in the Property**

#### **Article 367**

The debtor shall be obliged to inform the creditor on all changes occurring in the encumbered property, and especially its deterioration or loss of value, otherwise he shall be liable for the incurred damage.

### **Using the Property and Collecting the Fruits**

#### **Article 368**

The debtor shall be entitled to use the encumbered property and collect its fruits, but he shall not be entitled to give it for use to another person, unless the creditor allows him to do so.

The debtor who delivers the property to another person for use, without the permission of the creditor, shall be liable for accidental destruction or damage that would occur under such circumstance.

### **Creditor's Right to Fruits**

#### **Article 369**

The creditor shall have the right to fruits of the encumbered property from the moment of the final acquisition of the ownership right on that property.

### **Sequestration**

#### **Article 370**

At the request of the creditor, the court shall order the encumbered property be seized from the debtor and delivered to a third party, if the debtor does not keep the property in a proper manner, or delivers it to another person to use without the creditor's permission, and generally deals with the property contrary to the contract and law.

### **Right to Additional Security**

#### **Article 371**

The creditor shall be entitled to request from the debtor or a third party another property, if the encumbered property has material or legal defect, due to which it does not represent sufficient security for satisfaction of claim.

### **Premature Sale of the Property due to its Deterioration or Loss of Value**

**Article 372**

When the encumbered property deteriorates or otherwise loses its value, thus causing the danger that it shall become insufficient to secure the creditor's claim, the court may, at the request of the creditor or the debtor, and after having heard the other side, decide to sell the property at a public auction or at exchange or market price if there is one, and that the price or a sufficient part of the price is deposited at the court or notary in order to secure the creditor's claim.

The court shall reject the creditor's request, if the debtor offers to transfer to the creditor his ownership right on some other property, of at least the same value, which shall take place of the previously encumbered property.

The court shall, under the terms referred to in paragraph 1 of this Article, allow the replacement of the encumbered property at the request of the debtor even in the case when the creditor does not request its sale.

**Creditor's Right to Sell the Property**

**Article 373**

The creditor shall acquire the right to sell the debtor's property when the debtor does not meet his obligation when due.

The creditor may, with the consent of the debtor, after occurrence of the claim, sell the encumbered property to a certain person, if he concludes that the price is reasonable.

The realized price or a sufficient part of the price shall come into the place of the encumbered property and shall be deposited in the court or notary in order to secure satisfaction of the creditor's claim.

**Creditor's Request for Transfer of the Property**

**Article 374**

The creditor may request from the debtor the transfer of the property as soon as the claim becomes due.

If the debtor pays his debt, the ownership on the property shall automatically be transferred to the debtor.

**Sale or Retention of the Encumbered Property**

**Article 375**

If the creditor's claim is not satisfied when due, the creditor may sell the property at the price determined by appraisal of an expert, or, if wishes, keep it for himself at that price.

If the debtor does not satisfy the claim arising from the commercial contract when due, the creditor may proceed to sell the encumbered property at a public auction, upon the expiration of eight days upon the warning made to the debtor and to the third party who is the transferor that he shall so proceed.

The creditor shall be obliged to timely inform both persons on the date and place of the sale.

If the encumbered property have market or exchange price, the creditor may sell them at that price, upon the expiration of eight days from the warning made to the debtor or the third party who is the transferor, that he shall so proceed.

**Commercial Practices and Commercial Standards**

**Article 376**

All measures undertaken by the creditor for the purpose of claim satisfaction must comply with the existing commercial practices and be commercially reasonable.

### **Right to Satisfaction**

#### **Article 377**

The creditor shall be entitled to satisfy his claim, accrued interest, as well as the costs of claim satisfaction from the price realized by the sale of the encumbered property.

If the value of the property (realized price) is greater than the value of the claim, the creditor shall be obliged to return the difference to the debtor or third party who is the transferor within eight days from the day of claim satisfaction.

If the value of property (realized price) is lower than the value of the claim, the creditor shall be satisfied as every other regular creditor.

### **Registration of the Contract**

#### **Article 378**

The contract of fiduciary transfer of ownership right shall be registered in the public registry kept by the body in charge of real estates. If the registration is not done, the contract shall be null and void.

The contract must be registered in the registry within eight days from the day of its conclusion.

### **Application Submission**

#### **Article 379**

Application for registration of the contract shall be signed by both parties to the contract.

The application shall contain the name and address of the contracting parties, as well as data on the property that must be described.

The debtor must sign the statement indicating the entire amount of his debt with its status on a certain date. The creditor shall be obliged to confirm this statement.

The body in charge of cadastre of immovable property shall be obliged to issue the confirmation with the data contained in the application at the proposal of every third party.

### **Publicity of the Registry**

#### **Article 380**

The registry shall be public.

The registration must contain the description of particular marks of the encumbered property.

In the case such marks do not exist, the type and number of encumbered property must be designated in the registration.

### **Marking the Property**

#### **Article 381**

The body in charge of cadastre of immovable property shall mark the encumbered movable property.

The body in charge of cadastre of immovable property shall also appraise the encumbered movable and immovable property of the goods in stock and enter the data thereon in the registry (appraisal by an expert).

### **Informing the Tax Authority**

#### **Article 382**

The body in charge of cadastre of immovable property shall be obliged to inform a competent tax authority on definitive acquisition of the ownership right on immovable property within eight days from the moment of definitive acquisition.

### **Cessation of the Ownership Right**

#### **Article 383**

The ownership right of the creditor on encumbered property shall cease:

- 1) when the claim whose satisfaction has been secured ceases to exist;
- 2) when the creditor renounces the ownership right on immovable property with a written statement given before a competent state body keeping the cadastre of immovable property, whereas in the case of movable property, a written statement thereof shall suffice;
- 3) when the encumbered property is destroyed, and it is not restored.

### **Deletion of Contracts from the Registry**

#### **Article 384**

When the claim ceases to exist, the debtor may request deletion of the contract from the registry.

In the case referred to in paragraph 1 of this Article, the debtor shall request from the creditor the statement that the claim ceased to exist and that his security does not exist any more.

In the case the creditor refuses to give the statement, he shall be liable for damage incurred by such action.

The statement of the creditor may be replaced with the document from which it can be clearly seen that the claim ceased to exist.

## **Chapter XI**

### **Possession**

#### **Concept**

#### **Article 385**

Possession shall mean actual dominion over a property.

### **Direct and Indirect Possession**

#### **Article 386**

A person exercising direct actual dominion over the property shall have direct possession.

Direct possession shall also have a person who exercises actual dominion over a part of the property, which otherwise could not be an independent object of property rights (rooms or other premises in the apartment and similar).

Indirect possession shall have a person who exercises actual dominion over property through another person to whom it gave the property into direct possession on the basis of usufruct, contract of using the apartment, lease, keeping, making use of an object without compensation, or another legal transaction.

If in the case of the existence of direct and indirect possession on the same property, direct possessor delivers the property to possession of a third party, then even the former direct possessor has the position of indirect possessor of that property.

### **Possession of the Property (Ownership Possession) and Possession of Rights**

**Article 387**

Possession of property (ownership possession) shall have a person who handles the property as the owner.

Possession of rights shall have a person who handles the property as having a right more narrow than the ownership right.

Possession shall be considered to be ownership possession, unless proved otherwise.

**Possession of Right to Real Easement**

**Article 388**

Possession of right to real easement shall have a person who actually uses the immovable property of another person to the scope that corresponds to the subject of that easement.

**Legal Possession**

**Article 389**

Possession shall be legal if it is based on a valid legal ground necessary for acquisition of the property or obligation right exercised by a possessor.

Possession of a successor shall be legal if the possession of testator was legal.

**Good Faith Possession**

**Article 390**

Possession shall be deemed to be in good faith when the possessor does not or may not know that he is not the holder of property or obligation right he exercises.

Good faith of possessor shall be presumed.

Good faith of possession of legal entity shall be evaluated in accordance with good faith of his representative.

Possession of a legally incapable person, who is not capable to make decisions, shall be in good faith, if his legal representative acts in good faith.

If a legally incapable person is capable to make decisions, his possession shall be in good faith when both that person and his legal representative act in good faith.

When acquired through a contractual representative, possession shall be in good faith if both party giving the authorization and representative act in good faith.

**Flawed Possession**

**Article 391**

Possession shall be flawed if it is acquired by force, fraud, misuse of trust or other similar procedures.

**Co-Ownership**

**Article 392**

Several persons may have possession of property or rights (co-ownership).

**Exercising Actual Dominion over Property for Another Person on the Basis of an Employment**

**or Similar Contract or in a Household Without Having Possession**

**Article 393**

A person who on the basis of an employment or similar contract or in a household exercises actual dominion over the property on behalf of another, and is obliged to act in accordance with the instructions of that other person (hereinafter: the holder) shall not have the possession.

In the case referred to in paragraph 1 of this Article, a person on the basis of whose instructions the holder is obliged to act shall have the possession.

**When Someone Started to Hold the Property as the Holder**

**Article 394**

When someone started to hold the property as the holder, the assumption is that he still holds it in that capacity.

Contrary proof is possible but it cannot be established on a simple change of intention of the holder not to hold the property for another any more.

**Object of Possession**

**Article 395**

The object of possession may be property that the ownership right or another property or obligation right can exist on.

**Acquisition of Possession**

**Article 396**

Possession shall be acquired by transfer from the former possessor or without the consent of the owner or possessor.

Transfer of possession shall be done by delivery of the property.

The delivery of assets (key, goods order, warehouse receipt, bill of lading, and similar), which enables actual dominion over the property, shall mean the same as the delivery of the same property.

**Acquisition by Inheritance**

**Article 397**

A heir shall become a possessor at the moment of opening the inheritance, regardless of the time when he acquired actual dominion over the property.

When the testator's possession of one or several properties and/or rights regarding real easement have been transferred, by his death, to two or several co-heirs, all of them are becoming co-possessors of these properties and/or the right of real easement, unless otherwise determined by a will or decision of the court deciding on legacy procedures.

By transfer of testator's possession to his heirs, other possessions of the same property and/or rights shall not be affected.

**Transfer by the Contract**

**Article 398**

Transfer of the ownership possession may be done by the contract with a new ownership possessor, provided that the former ownership possessor keeps the property as direct possessor of the right.

Transfer of ownership possession from the indirect ownership possessor to the direct possessor of right or the holder (the holder under Article 393), shall be done by a contract concluded between these persons.

If a third person has the property in the form of possession of rights or as a holder (under Article 393), the transfer of ownership possession shall be done by the contract between a former and new ownership possessor and informing thereon the holder of right or the holder under Article 393.

**Acquisition through Representative**

**Article 399**

Possession may be acquired also through a representative, if the representative acquires actual dominion over property with the goal to make the represented person a possessor.

**Uninterrupted Possession**

**Article 400**

For the existing possessor, who proves that he had the possession in past, it shall be presumed that he has been a possessor also in the meantime.

For possession, which is established again through the litigation regarding possession or restored by allowed self-help, it shall be considered that it has not been interrupted.

**Termination of Possession**

**Article 401**

Possession shall be lost when a possessor ceases to exercise actual dominion over property.

Possession shall not be lost, if the possessor is temporarily prevented from exercising actual dominion regardless of his will.

It shall be considered that the possession, after it has been acquired, lasts uninterruptedly, and a person claiming that it terminated should prove that the circumstances due to which the possession terminated had occurred.

**Protection of Possession**

**Article 402**

Every possessor of properties and rights shall be entitled to protection from disturbance or taking away possession (disturbance of possession).

**Self-Help**

**Article 403**

A possessor shall be entitled to self-help against a person who disturbs his possession with no authorization or has taken away his possession, provided that the danger was direct, that the self-help was necessary and that the manner of exercising it corresponds to circumstances under which the danger exists.

The rights referred to in paragraph 1 of this Article shall belong also to the holder (under Article 393), under the same conditions.

### **Deadlines for Submitting Possession Complaint**

#### **Article 404**

Court protection from disturbance, i.e. taking away may be requested within 30 days from the day of finding out about disturbance and committer, and at the latest within a year from the occurred disturbance (litigation due to possession disturbance).

The deadlines referred to in paragraph 1 of this Article for submission of the complaint for protection against disturbance of possession shall also relate to heirs and successors who knew about acquisition of possession of a predecessor without the consent of the other party.

### **Court Protection**

#### **Article 405**

The court shall provide the protection in accordance with the last condition of possession and occurred disturbance, where the right to possession, legal ground of possession and conscientiousness of possessor shall have no effect.

A possessor who acquired the possession by force, secretly or abuse of trust shall be entitled to protection, except against the person from whom he acquired possession in such a manner, if the deadlines referred to in Article 404 of this Law did not expire from the occurred disturbance.

### **Prohibition from Further Disturbance and Returning the Taken Away Property**

#### **Article 406**

The decision on request for protection from disturbance of possession shall determine the prohibition from further disturbance of possession under the threat of pecuniary fine or return of the taken away possession, as well as other measures necessary for protection against further disturbance.

When the disturbance of possession is done by construction, the court in litigation regarding possession cannot impose the restoration into the previous condition, if the demolition of the constructed object would represent a significant damage.

### **Rights of Direct Possessor against Indirect Possessor**

#### **Article 407**

Direct possessor may ask for protection also against indirect possessor.

### **Rights of Indirect Possessor**

#### **Article 408**

Protection of possession for the benefit of direct possessor may also be asked by an indirect possessor.

If in the case of taking away the property, direct possessor does not want the property to be returned, indirect possessor may request the property to be returned to him.

Indirect possessor shall be entitled to protect his possession against the direct possessor, if the direct possessor exceeds the limit of direct possession.

**Protection against the Person Registered in the Cadastre of Immovable Property**

**Article 409**

Real possessor (indirect and direct) shall enjoy protection of possession against the person registered in the cadastre of immovable property who does not have possession of the property.

**When Only a Part of the Immovable Property is in Possession**

**Article 410**

Right to protection of possession shall also have a person holding a part of immovable property (apartment, other rooms, and similar).

**Protection of Co-Possession**

**Article 411**

Co-possessor shall enjoy protection in accordance with the provision of Article 405 of this Law against third parties, as well as in mutual relations with other co-possessors, if one of them prevents the other one to exercise, in the former manner, actual dominion over the property that is in their possession.

**Chapter XII**

**Rights of Foreign Persons**

**Application of the Provisions of the Law to Foreign Persons**

**Article 412**

Provisions of this Law shall also apply to foreign persons, unless otherwise determined by law or international agreement.

**Acquisition of the Ownership Right on Movable Property by a Foreign Person**

**Article 413**

Foreign person may acquire the ownership right on movable properties in a same way as a domestic person.

**Acquisition of the Ownership Right on Immovable Property by a Foreign Person through Inheritance**

**Article 414**

Foreign natural person may, on the territory of Montenegro, acquire the ownership right on immovable property through inheritance in a same way as a citizen of Montenegro.

**Limitations of Foreign Persons' Rights**

**Article 415**

A foreign person cannot have an ownership right on:

1. natural resource;
2. goods in general use;
3. agricultural land;
4. forest and forest land;
5. cultural monument of special importance;

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6. immovable property in the land border area within one kilometre of the border and on islands;
7. immovable property located in the area that is, for the purpose of protection of interests and safety of the country, proclaimed by law as the area that a foreign person cannot have the ownership right on.

A separate law under paragraph 1 item 7 of this Article shall be adopted in the manner and in accordance with the procedure prescribed for the adoption of this Law.

Exceptionally, a foreign natural person may acquire the ownership right on agricultural land, forests and forest land of a surface up to 5 000 m<sup>2</sup>, only if a residential building located on this land is subject to the contract of divestiture (sale, gift, exchange, etc.).

A foreign person can be entitled to a long-term lease, concession, BOT and other private public partnership arrangements on the immovable properties referred to in items 1 to 6, paragraph 1 of this Article in a same way as a domestic person.

### **Submission of Data**

#### **Article 416**

Administration body in charge of cadastre of immovable property shall be obliged to submit to the Ministry of Finance, which keeps the records thereon, the data on executed registration of ownership rights or another right of a foreign person referred to in Articles 412, 414 and 415 of this Law, within 15 days from the registration.

### **Transfer of Ownership Right**

#### **Article 417**

Foreign persons may transfer, through a legal transaction, the ownership right to a domestic person, as well as to a foreign person that may acquire the ownership right.

### **Ownership of Foreign States and Organizations**

#### **Article 418**

Buildings and apartments for official needs, as well as construction land for the purpose of construction of such buildings may be sold, with a prior consent of the Ministry of Foreign Affairs, to foreign states for the needs of their diplomatic and consular missions, as well as to organizations and specialized agencies of the UN.

## **Chapter XIII**

### **Transitional and Final Provisions**

#### **Transformation of Rights from Social Ownership**

##### **Article 419**

The right to manage, use and permanently use and dispose of the land in social, now state ownership shall become, on the effective day of this Law, the ownership right of the former holder of the right to manage, use and permanently use, unless otherwise determined by a separate law, or if an interested party proves that he has acquired the ownership right on a certain land before the effective day of this Law.

Exceptionally, the land that market compensation was not paid for in a privatization process or bankruptcy shall remain in the ownership of the state and the owners of building on that land shall have a pre-emptive right to buy or to lease it.

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The provision of paragraph 1 of this Article shall be without prejudice to the rights of former owners that they have under the Law on Restitution and Compensation of the Taken Away Property Rights.

Opinion on market compensation referred to in paragraph 2 of this Article paid in a privatization process shall be issued by the body in charge of privatization process and a competent Commercial Court in case of bankruptcy.

### **Registration of Ownership Rights**

#### **Article 420**

Administration body in charge of cadastre of immovable property shall, at the request of a person, whose rights referred to in paragraph 1, Article 419 of this Law are registered in the cadastre of immovable property, allow the deletion of social, now state ownership and rights to manage, use or permanently use and dispose of the land under Article 419 of this Law, and register the ownership right for the benefit of holders of these rights.

Owner who acquired the ownership right on the building during the privatization process or bankruptcy shall be obliged to submit, together with the request for registration of the ownership right in the cadastre of immovable property, the opinion referred to in Article 419, paragraph 4 of this Law.

Municipalities may submit the request referred to in paragraph 1 of this Article upon the effective day of the Law on State Property.

A person who claims that social, now state ownership right, and the right to manage, use, permanently use and dispose of, has ceased but there is no evidence thereof in the cadastre must prove that before the court, in order to delete that right on a basis of the court decision and then register his ownership right.

### **Superseding Former Laws**

#### **Article 421**

By coming into effect of this Law, the following shall not apply: Law on Basics of Ownership and Proprietary Relations (Official Gazette of the Socialist Federal Republic of Yugoslavia 6/1980 and 36/1990 and Official Gazette of the Federal Republic of Yugoslavia 29/1996) and Articles 966 to 996 of the Law on Obligations (Official Gazette of the Socialist Federal Republic of Yugoslavia 29/78, 39/85, 45/89, 57/89, 31/93, 22/99 and 44/99).

By coming into effect, this Law shall supersede the following: Law on Fiduciary Transfer of Ownership Right (Official Gazette of the Republic of Montenegro 23/96); Law on Mortgage (Official Gazette of the Republic of Montenegro 71/04); Articles 1-13, Article 20 and Articles 22-33 of the Law on Strata Ownership (Official Gazette of the Republic of Montenegro 71/04).

Punitive provisions in the Law on Strata Ownership, which are incorporated in this Law, shall remain in force and shall be applied also upon effective day of this Law.

### **Application of this Law**

#### **Article 422**

Procedures started before the effective day of this Law shall be finalized in accordance with the provisions of the regulations in accordance with which the procedures have started, unless otherwise prescribed by this Law.

**Coming into Force**

**Article 423**

This Law shall come into force on the eighth day following that of its publication in the Official Gazette of Montenegro.

SU-SK No 01-534/33-08

Podgorica

26 February 2009

Parliament of Montenegro

Ranko Krivokapic, Speaker of the Parliament, manu propria