

Poland
Civil Code

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(Extracts)

Article 306.

§ 1. In order to secure a receivable debt a movable may be encumbered with a right by virtue of which the creditor can satisfy his claim regardless of whose property it has become, and with priority over the personal creditors of the owner of the thing, except those who by virtue of statutory law have special priority.

§ 2. A pledge may also be established to secure a future or conditional receivable debt.

Article 307.

§ 1. For the establishment of a pledge, there must be a contract between the owner and the creditor and, barring the exception specified in statutory law, the release of the thing to the creditor or to a third party agreed upon by the parties.

§ 2. If the thing is held by the creditor, the contract shall suffice for the establishment of the pledge.

Article 308.

A debt may also be secured by a registered pledge regulated by separate provisions of law.

Article 309.

The provisions on the acquisition of ownership of a movable from a person not authorised to dispose of that thing shall apply correspondingly to the establishment of a pledge.

Article 310.

If, on the establishment of a pledge, the thing is already encumbered by other property right, the pledge established later shall take precedence before the earlier right unless the pledgee acted in bad faith.

Article 311.

The stipulation whereby the pledgor assumed with respect to the pledgee the obligation not to transfer or encumber the thing before the expiry of the pledge shall be null and void.

Article 312.

The satisfaction of the pledgee from the encumbered thing shall take place in accordance with the provisions on court execution proceedings.

Article 313.

If the object of the pledge are things which, by an order of the competent State authority, have a specified fixed price, it may be agreed that, in the case of a delay in the payment of the debt, they shall become the property of the pledgee in the appropriate proportion instead of the payment, at the price on the day when the secured receivable debt falls due.

Article 314.

Within the limits envisaged by the Code of Civil Procedure, a pledge shall also secure claims connected with the secured receivable debt, in particular claims for interests not barred by limitation, for the indemnity for the non-performance or improper performance of an obligation, for the refunding of outlays on the thing, and for the costs of satisfying the receivable debt.

Article 315.

The pledgor who is not a debtor may, regardless of the defence to which he is entitled personally against the pledgee, raise the defences to which a debtor is entitled and also those which the debtor renounced after the establishment of the pledge.

Article 316.

The pledgee may vindicate rights in the thing encumbered by the pledge regardless of the limitation of the liability of the debtor resulting from the provisions of inheritance law.

Article 317.

The limitation of a receivable debt secured by the pledge shall not infringe the pledgee's right to obtain satisfaction from the encumbered thing. The above provision shall not apply to a claim for interest or other accessory performances.

Article 318.

The pledgee to whom the thing has been released shall take care of its preservation in accordance with the provisions for safekeeping against consideration. After the expiry of the pledge he ought to return the thing to the pledgor.

Article 319.

If the thing encumbered with pledge brings fruits, the pledgee shall, if not agreed otherwise, collect them and count them towards the receivable debts and the claims connected therewith. After the expiry of the pledge he shall be obliged to present the accounts to the pledgor.

Article 320.

If the pledgee has made outlays on the thing to which he was not obliged, the provisions on the management of other person's affairs without mandate shall apply respectively.

Article 321.

§ 1. If the thing encumbered with pledge is exposed to loss or damage, the pledgor may demand either that the thing be placed in a court deposit or returned to him with the simultaneous establishment of another security of the receivable debt or the sale of the thing.

§ 2. If the thing is sold, the pledge shall be transferred upon the price obtained, which must be placed in a court deposit.

Article 322.

§ 1. The pledgor's claim against the pledgee for the redressing of the damage caused by the deterioration of the thing, as well as the pledgee's claim against the pledgor for the refunding of the outlays on the thing, shall be subject to limitation of one year from the day of the return of the thing.

§ 2. Repealed.

Article 323.

§ 1. The transfer of a receivable debt secured by a pledge shall result in the transfer of the pledge. If the receivable debt is transferred with the exclusion of the pledge, the pledge shall expire.

§ 2. A pledge cannot be transferred without the receivable debt, which is secured by it.

Article 324.

The purchaser of a receivable debt secured by a pledge may demand from the transferor to release the encumbered thing if the pledgor consents to that. In the absence of such consent, the acquirer may demand that the thing be placed in a court deposit.

Article 325.

§ 1. If the pledgee returns the thing to the pledgor, the pledge shall expire regardless of any stipulation to the contrary.

§ 2. The pledge shall not expire in spite of the encumbered thing being acquired by the pledgee to be his property if the receivable debt secured by the pledge is encumbered with a right of a third party or seized for the benefit of that person.

Article 326.

The provisions of the present Chapter shall apply correspondingly to a pledge established by operation of statutory law.

Chapter 2. Pledge on Rights

Article 327.

Rights, if transferable, may also be an object of pledge.

Article 328.

Provisions on the pledge on movables shall apply correspondingly to the pledge on rights with the observance of the provisions formulated in the present Chapter.

Article 329.

§ 1. The provisions on the transfer of a right shall apply correspondingly to the establishment of the pledge. However, the contract of the establishment of the pledge shall be concluded in writing with a authenticated date even if a contract on the transfer of that right does not require such form.

§ 2. If the establishment of a pledge on a receivable debt does not take place by the release of a document or an endorsement, the establishment of the pledge shall require a notification of the creditor by the pledgor in writing.

Article 330.

The pledgee may perform all acts and vindicate all claims, which are intended to preserve the right encumbered by the pledge.

Article 331.

§ 1. If a receivable debt encumbered by a pledge falls due upon a notice from the creditor, the pledgor may serve the notice without the consent of the pledgee. If the receivable debt secured by the pledge is already due, the pledgee may serve the notice concerning the encumbered receivable debts to the amount of the secured receivable debt.

§ 2. If a receivable debt encumbered by a pledge fall due upon a notice from the debtor, the notice shall also be served to the pledgee.

Article 332.

In the case of the fulfilment of the performance, the pledge on a receivable debt shall be transferred upon the object of the performance.

Article 333.

The pledgor of the receivable debt and the pledgee shall be jointly entitled to receive the performance. Each of them may demand the performance to both of them jointly or the depositing of the object of the performance with the court.

Article 334.

If the debtor of a receivable debt encumbered by a pledge has made the performance before the secured receivable debt becomes due, both the pledgor and the pledgee may demand that the object of the performance be placed in a court deposit.

Article 335.

If a pecuniary receivable debt secured by a pledge is already due, the pledgee, instead of the payment, may demand that the pledgor transfer upon him the encumbered receivable debt, if it is pecuniary, to the amount of the receivable debt secured by the pledge. The pledgee may vindicate his part of that receivable debt with precedence to the part of the pledgor.

Title IV. Possession

Article 336.

The possessor of a thing is both the person who has an actual control of it like the owner (autonomous possessor) and the person who has an actual control of it as a usufructuary, pledgee, lessee, tenant or holder of other right connected with a specified control of a thing belonging to another person (dependent possessor).

Article 337.

An autonomous possessor shall not lose possession by the fact that he gives the thing to another person as a dependent possessor.

Article 338.

Whoever has the actual control of a thing on behalf of another person shall be an actual holder thereof.

Article 339.

It is presumed that the person who has the actual control of a thing shall be an autonomous possessor.

Article 340.

The continuity of the possession is presumed. The inability of possession caused by a transient obstacle shall not interrupt the possession.

Article 341.

It shall be presumed that possession is consistent with the state of law. This presumption shall also apply to possession by the previous possessor.

Article 342.

Possession cannot be wilfully infringed even if the possessor acted in bad faith.

Article 343.

§ 1. The possessor may recourse to necessary defence in order to repel a wilful infringement of his possession.

§ 2. The possessor of a immovable property may, immediately after a wilful infringement of his possession, restore the previous state by his own act; however, when doing so, he may not apply violence with respect to persons. The possessor of a movable, if threatened by the danger of an irreparable damage, may immediately after having been wilfully deprived of possession, recourse to necessary self-help in order to restore the previous state.

§ 3. The provisions formulated in the preceding paragraphs shall be correspondingly applicable to a holder.

Article 343¹.

Provisions on the protection of possession shall apply to the protection of the control of premises, respectively.

Article 344.

§ 1. The possessor can claim the restoration to the previous state and abstention from infringements against the person who wilfully infringed possession as well as against the person to whose benefit the infringement took place. That claim shall not be dependent upon the good faith of the possessor nor upon the compliance of possession with the state of law unless a valid decision of the court or another State authority entitled to examine such cases has stated that the state of possession resulting from the infringement is in agreement with statutory law.

§ 2. The claim shall expire if not vindicated within one year from the infringement.

Article 345.

Possession restored shall be deemed uninterrupted.

Article 346.

The right to claim the protection of possession shall not be enjoyed by co-possessors of the same thing if the scope of co-possession cannot be established.

Article 347.

§ 1. The possessor of an immovable property shall be entitled to claim the suspension of the construction of a building if such construction might infringe his possession or threaten it with a damage.

§ 2. The claim may be vindicated before the beginning of the construction; it expires if not vindicated during one month from the beginning of the construction.

Article 348.

The transfer of possession shall take place by the release of the thing. The release of the documents which make it possible to dispose of the thing as well as the release of the means which give actual control of the thing shall be tantamount to the release of the thing itself.

Article 349.

The transfer of autonomous possession may also take place so that the previous autonomous possessor retains the thing under his control as a dependent possessor or as a holder by virtue of the legal relationship simultaneously established by the parties.

Article 350.

If the thing is in dependent possession or is held by a third party, the transfer of autonomous possession shall take place by a contract between the parties and by a notice to the dependent possessor or the holder.

Article 351.

The transfer of autonomous possession upon the dependent possessor or the holder shall take place by virtue of a contract between the parties.

Article 352.

§ 1. Whoever actually uses another person's immovable property within the scope corresponding to the contents of servitude, shall be the possessor of the servitude.

§ 2. The provisions on the possession of a thing shall apply respectively to the possession of servitude.