

Croatia
Law on Ownership and other Real Property
Rights
(adopted in 1996)

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(Extracts)

Part VII

Article 297 The Term

1. A pledge right is a limited real property right on a determined asset (pledge) which authorises its bearer (pledgee)¹ to settle a determined claim, not settled upon becoming due, from the value of the asset and its owner (pledgor)², whoever he is, must endure this.
2. Regulations determining a pledge right shall suitably apply to transfer of title as security and likewise to any other manner of securing a claim with assets or rights belonging to the debtor or third party³, unless otherwise provided by law.

Article 298 The Pledge

1. Any individually determined movable or immovable asset, which can be realised,⁴ and any undivided interest⁵ in such an asset may be encumbered by a pledge.
2. Any individually determined property right, which can cover the creditor's claim, may be encumbered by a pledge in the same way as an asset, unless otherwise provided by law.
3. A pledge may encumber several immovables in the same way as it encumbers a single asset. The immovables shall be encumbered as if they formed a single unit (joint, simultaneous mortgage)⁶.

¹ The **pledgee** is the holder of the pledge right. Solely the person who is the creditor in a contractual relationship can have the role of **pledgee**, provided a pledge right is created as security of his claim... As long as a pledge right securing the claim exists, the creditor of the claim is also the **pledgee**. If the creditor of the contractual relationship changes (by cession, general succession), the pledge right will pass to the new creditor... or terminate. (GAVELLA N., JOSIPOVIĆ T., GLIHA I., BELAJ V., STIPKOVIĆ Z., *Real Property Right*, Zagreb 1998, p.742-743)

² The **pledgor** is the one who must endure the creditor's right to settle his claim from the pledged asset or right. This must be endured by the one whose pledge it is, i.e. the owner of the pledged asset, or the bearer (authorised person) of the pledge subjective right. (Ibid. p. 744)

³ The pledgor may, but need not be the same person as the **debtor** in the contractual relationship. If the creditor's claim is secured by a pledge right whose object is an asset or subjective right of the **debtor** – the **debtor** from the contractual relationship (personal debtor) is also the pledgor. In this case the main, i.e. contractual relationship will exist between the creditor and **debtor**, while the subordinate, i.e. pledge relationship will be created between the creditor and the third person who pledges his asset or right in order to secure the creditor's claim. (Ibid. 744)

⁴ The ability to be **realised** means it is possible to settle the creditor's monetary claim from the value of the asset.

⁵ See footnote no. 11.

⁶ A **joint (simultaneous) mortgage** is a pledge right which encumbers several immovables, in such a way as if they were together one immovable, in order to secure a claim... All the immovables encumbered in such a way are jointly responsible for settling the same claim. This enables the mortgage creditor to freely choose which immovable he will

4. All appurtenances⁷ of an asset shall be pledged together with the asset, unless otherwise provided by law.
5. The right to fruits that an asset may provide through any legal relationship (rent, lease etc.) may be individually pledged.
6. If a debtor pledges an asset to a creditor, and later pledges its fruit to another creditor, the latter pledge shall cover only the fruit, which had already been separate, or picked, at the time of pledging.
7. The provisions of this Law determine pledges on ships and airplanes, unless otherwise regulated by a separate law.

Article 299 Inseparability

1. A pledge right may not be detached from the pledge object it encumbers, so whoever acquires the object of a pledge on legal grounds acquires it encumbered by the pledge right, unless otherwise provided by law.
2. A pledge right may not be transferred from one pledge object to another, unless otherwise provided by law.

Article 300 The Pledgee

A pledge is encumbered by a pledge right to the benefit of the pledgee of a certain claim thus securing settlement of this claim.

Article 301 Claim and Pledge

1. A pledge right shall secure, from the value of the pledge, settlement of a certain monetary claim, or settlement of a claim whose value is expressed in money. A claim is considered determined by specifying the creditor and debtor, legal grounds⁸ and the amount or at least the highest amount up to which the claim is being secured.

settle his claim from. He can settle his claim from the value of any one immovable, several of them, or all. (Ibid. 841-842)

⁷ An **appurtenance** of a thing is a movable, physically independent, which its owner intended as a subordinate to permanently serve the purpose of another thing as main (*res principalis*), but only if it can be understood from a commercial standpoint ?? that it can be a pertinence of another thing, and if (and while) it stands in such a special relationship with the main thing so as to serve this intention (Art. 7, Par. 1, Law on Ownership and Other Real Property Rights)

⁸ A right can be acquired, thus created and transferred, only in accordance with appropriate **legal grounds**... Taken generally, **legal grounds** for acquiring real property rights are the following: 1) contracts aimed at acquiring this right; 2) court decisions, or decisions by other governmental bodies with jurisdiction (administrative bodies), aiming at the acquisition of this right; 3) inheritance; 4) the Law directly, which actually means – preconditions are fulfilled which are neither a contract, governmental body decision, or inheritance, but it has been determined by Law that their

2. Like securing an existing claim, a pledge right may secure, from the value of the pledge, a claim which has yet to be created within a specified period or after the fulfilment of a condition, if this claim meets all requirements from Paragraph 1 of this Article.
3. As well as securing the main claim from Paragraph 1 of this Article, a pledge right simultaneously secures, with the value of the pledge, settlement of all subsidiary claims i.e. interest, expenses for safekeeping and expenses for collecting the claim.
4. As long as a pledge right exists settlement of a claim shall be secured by the pledge object as an entity including all its appurtenances. If the pledge object is partitioned, the pledge right continues to encumber all partitions into which that pledge split or that were separated from the pledge. If the pledge is destroyed and another right replaces it (right to compensation, to insurance etc.), the pledge acts on that right.
5. A pledge right shall secure settlement of an entire claim from the value of the pledge, and therefore the encumbrance on a pledge shall not decrease if the claim decreases, unless otherwise provided by law.
6. If a pledge right securing settlement of a certain claim is created from the value of several immovables as a single pledge object (joint, simultaneous mortgage), the pledgee may freely choose which part he will settle his claim from, unless otherwise provided by law.
7. A pledgor who secured a creditor's claim with a pledge right shall not be obligated to settle this claim, or permit deletion of the pledge entered in the Land Registry if the creditor does not return the pledge object.
8. Termination of the pledge right securing a claim does not mean the claim itself terminates.

Article 302 Priority Rank for Settling a Claim

1. During settlement from the value of a pledge, the claim secured by a pledge right shall have priority over all other claims not secured by a pledge right on this pledge, unless otherwise provided by law.
2. If several pledge rights encumber a pledge, the claim that is higher in the priority rank shall have priority during settlement.
3. The position in the priority rank is determined by the moment in which the pledge right is created, unless otherwise provided by law.
4. Priority of mortgages, and the preconditions, under which it is possible to validly cede this priority, is determined by land registry regulations.

fulfilment produces certain right. (GAVELLA N., JOSIPOVIĆ T., GLIHA I., BELAJ V., STIPKOVIĆ Z., *Real*

Article 303

1. A pledge right may be alienated or inherited only together with the claim it secures.
2. A pledge right may be encumbered with a sub-pledge.
3. Unless otherwise provided by law or inherent in the nature of the pledge, the provisions regulating a pledge shall also regulate a sub-pledge.

Article 304 Pledge as Mortgage

1. A mortgage is a voluntary non-possessory pledge right which is created on an asset without giving the asset into the possession of the pledgee, and which does not empower the pledgee to possess the pledge.
2. A pledge right on immovables may be created only as a mortgage.
3. A mortgage may be created on movables and rights acquirable only by registration in a public registry, or which may not be used unless registered, under the preconditions and in the way prescribed by law (registered pledge).
4. Special legal provisions regulate mortgages created on assets in Paragraph 3 of this Article, and subordinate to them provisions of this Law which determine pledge rights on immovables, unless in contradiction with special legal provisions or the nature of such a mortgage.

Acquiring

Section 1 Creating a Secured Right

Article 305 Pledging

1. A pledge right shall be created on a determined asset or right, making them a pledge, based on a contract (legal act) with the person owning the pledge (voluntary pledge), court decision (judicial lien) or based on law (statutory lien). It shall be created in the manner provided by law.
2. A pledge right shall be created when all the preconditions determined by law are fulfilled.

a) Creating a voluntary pledge right

Article 306 Deriving from the Ownership of a Pledge

1. A voluntary pledge right shall be established by contract creating a pledge on a determined asset or right in order to secure the settlement of a certain claim from the value of the pledge object. Such a voluntary pledge right shall derive from the ownership of the asset, or from holding the right encumbered by it, and in the way provided by law.
2. If the asset being pledged belongs to several co-owners⁹ or joint owners¹⁰ or several people bear one right, which is pledged, they must all together decide to pledge the assets or right. However, anyone who owns undivided interest¹¹ in an asset or right can pledge it without the other person's consent.

Article 307 Pledge Agreement

1. In order to create a pledge right to secure a creditor's claim, the Pledge or Mortgage Agreement compels the debtor, or third party (pledge giver¹²), to do one of the following: hand over the determined movable to the creditor as collateral; allow the creditor to register his right in a public book as an encumbrance on the asset; transfer his right as a security. Simultaneously, the opposite party is obligated to keep/maintain the movable pledge and, upon the termination of the claim, return it to the pledge giver. Also he must take all necessary steps to delete the pledge form the public book; or transfer back the right.
2. Regulations valid for payable agreements shall be applied to the Pledge Agreement, unless otherwise determined.

⁹ **Co-ownership** (lat. *condominium*) is such participation of several persons in the ownership right of one asset in which each co-owner owns a part of the ownership right of the asset, calculated in proportion (expressed in fraction or percentage) of the entire ownership right. (Art. 36, Par.1, Law on Ownership and Other Real Property Rights)

¹⁰ **Joint ownership** is such participation of several people in the ownership right of one asset, in which the asset belongs to all of them, because they all have a share of the ownership right, but the size of the share is not determined for any of them, though it is determinable (married couple, heirs). (Art. 36, Par. 1, Law on Ownership and Other Real Property Rights)

¹¹ When co-ownership is established on an asset, it is taken that this asset is divided into imaginary parts – **undivided interest**. These parts match, in size, the co-owner's parts. Each individual co-owner owns an undivided interest in the asset, so each one of them alone is the owner of his **undivided interest** (non-tangible entity), and all the co-owners together are the owner of the entire asset (tangible entity). There is no co-ownership without division into **undivided interest** and no undivided interest without co-owned parts. (GAVELLA N., JOSIPOVIĆ T., GLIHA I., BELAJ V., STIPKOVIĆ Z., *Real Property Right*, Zagreb 1998, p. 496)

¹² A **pledge giver** may but need not be the debtor or pledgor. The debtor is in a contractual relationship with another person (creditor) because he is obliged to perform an action. If he wants to secure the creditors claim by creating a pledge and creating a real property right, i.e. pledge right, the person giving the asset or right to be pledged is a **pledge giver**.

The pledgor, on the other hand, is the owner of the pledge, or the bearer of the pledged subjective right. The **pledge giver** is the same person as the pledgor only if he pledges his own asset or right... Croatian contemporary law (like German or Swiss law) protects reliance in the judicial system and enables the pledge right to be created even when the asset or right are given by someone who is not authorised to do so, because he is not the owner or holder of the right he is pledging. (GAVELLA N., JOSIPOVIĆ T., GLIHA I., BELAJ V., STIPKOVIĆ Z., *Real Property Right*, Zagreb 1998, p. 746)

3. All provisions of the Agreement contrary to the nature of the pledge and the claim secured by the pledge shall be void.
4. All provisions shall be void claiming: that the creditor shall become the owner of the pledge object if the debt is not settled within a certain time; that the debtor may never settle the claim; that the debtor may not allow anyone else to create a pledge right on the same pledge object; or that the creditor may not request the pledge object to be sold even after the due date of the claim.
5. All provisions shall be void allowing the creditor to willingly, or according to a previously determined price, alienate the pledge object or keep it for himself. However, such provisions shall not be void if the pledge object has a prescribed price.
6. A Pledge Agreement on pledging immovable property (Mortgage Agreement) shall be valid only if it is in written.

Article 308 Manner of Voluntary Pledging Movables

1. The creditor acquires a voluntary pledge on a movable when he, or the person that he determines, gains possession of the asset on the basis of a Pledge Agreement.
2. If the asset from Paragraph 1 of this Article is already pledged, the new creditor shall not acquire a new pledge right on the asset until the pledge giver informs the original creditor, who is in actual possession of the pledge, about the new pledge right and instructs him to hand the asset over to the new creditor upon termination of his pledge right.

Article 309 Manner of Voluntary Pledging Immovable Property

1. A creditor acquires a voluntary contractual pledge right on an immovable (Voluntary Mortgage Agreement) and on a right equalised with the immovable, by registering this right in the Land Registry as an encumbrance on the immovable burdened by the right, unless otherwise provided by law.
2. If someone requests registration of a pledge right on an immovable and the preconditions required by the Land Registry are not fulfilled, the pledge shall be created by conditional pre-notation¹³ with subsequent justification of the entry, providing the preconditions for pre-notation are fulfilled.

¹³ **Conditional pre-notation** shall include entries whereby registrable rights are acquired, transferred, restricted or terminated, but only on condition that and inasmuch as such rights are subsequently justified. (Art.30, Par.3, Land Registry Act).

3. A voluntary pledge shall be created on an immovable not registered in the Land Registry by depositing an authenticated document in court stating the owner allows registration of this right on the immovable. This deposit shall be considered to be registration, or pre-notation, and the regulations on acquiring the right by such entries in the Land Registry are applied suitably, unless otherwise provided by law.
4. Provisions of this Law regulating contractual creation of a pledge right on immovables by registration in the Land Registry shall accordingly apply to any changes and termination of a pledge right on immovables created by contract.

Article 310 Manner of Voluntary Pledging Rights

1. A creditor shall acquire a voluntary pledge right on registered securities¹⁴ in the same way as he would on movables; on securities payable to the order¹⁵ by pledge endorsement¹⁶; on securities payable to the bearer¹⁷ and on claims – by cession as security and by informing the debtor's debtor about this cession. The creditor shall gain a voluntary pledge right on other rights in such a manner as provided for their transfer, unless otherwise provided by law.
2. If a right is realised by registration in public books or other public registries, and no bonds have been issued about this, a pledge right shall be created on such a right by registration in this book or registry on the basis of a request for noting the creation of a pledge. The person whose right is pledged submits this request.
3. Pledges created as described in Paragraph 2 of this Article shall be prioritised by applying land registry right regulations, unless otherwise provided by law.

Conditional pre-notation inflicts identical legal effect as registration but conditioned by subsequent justification of the pre-notation. (GAVELLA N., JOSIPOVIĆ T., GLIHA I., BELAJ V., STIPKOVIĆ Z., *Real Property Right*, Zagreb 1998, p. 230)

¹⁴ **Registered securities** are such securities where the person authorised to bear the right provided by the security is the person owning the security, and the holder of the paper by nature of possession is legitimate as the bearer of the right towards everyone (except towards the one who knows, or should know with due caution, that the holder is not the owner). A pledge right on the **registered security** is created like on movables – by handing over the security to the creditor. (Ibid. p. 859)

¹⁵ **Securities payable to the order** are such where the person authorised to bear the right provided by the security is the named person, but who is also authorised to order (by endorsement) another person as authorised. He may subsequently order another person as authorised, who may order another etc. The holder of the security to whom the endorsement was ordered (a continuous range is necessary) is legitimate as the bearer of the right provided by the security. (Ibid. p. 859)

¹⁶ To create a pledge right on securities payable to the order, mere handing over the security is not sufficient but the pledge right is created by **pledge endorsement**. An endorsement is a written statement of will of the current owner by which he transfers his right incorporated in the security to someone else. (Ibid. p. 859)

¹⁷ **Securities payable to the bearer** (*recta papiri*) are such securities where the person authorised to bear the right provided by the security is a person specified by name. Typical such security is a bank book with the bearers name. (Ibid. p 858)

b) Creating judicial and statutory lien

Article 311 Creating Contested Judicial Lien

1. A contested judicial lien is created on the basis of a Court decision made in the procedure for securing contested claims. Provisions of the law, which regulate the court procedure for securing monetary claims, also determine the preconditions under which the court shall make a decision about creating a contested lien.
2. Based on the court decision from Paragraph 1 of this Article, a contested lien shall be created under the provisions on execution and compulsory security.
3. A person who acquires a lien on immovables by court decision may procure registration of the acquired right in the Land Registry.

Article 312 Creating Non-Contested Judicial Lien on Movables and Immovable property

1. A judicial lien on movables and immovable property shall be created voluntarily by a Pledge Agreement. This Pledge Agreement is in the form of court minutes (minutes about the agreement of the parties to secure the claim with a lien), and is signed by the parties before the court in the procedure for securing a monetary claim.
2. Legal provisions that regulate the court procedure for securing monetary claims also determine how a Pledge Agreement is incorporated into the court minutes (minutes about the agreement of the parties to secure the claim with a lien) and its legal effect.
3. A non-contested judicial lien shall be created on the basis of an agreement between the parties from Paragraph 1 of this Article according to the provisions on execution and contested security.
4. A person who acquires a lien on immovable property according to the provisions of this Article may procure registration of the acquired right in the Land Registry.

Article 313 Creating a Non-Contested Judicial Lien on Rights

1. A judicial lien on rights shall be created voluntarily by a Pledge Agreement. This Pledge Agreement is in the form of court minutes (minutes about the agreement of the parties to secure the claim with a lien) and is signed by the parties before the court in the procedure of securing a monetary claim.
2. Legal provisions that regulate the court procedure for securing monetary claims determine the procedure and legal effects of the agreement between the parties, agreement on securing the

claim by pledging movables and immovable property. These provisions appropriately regulate pledging rights.

3. A judicial lien shall be created on the basis of an agreement between the parties from Paragraph 1 of this Article as regulated by provisions on execution and contested security for creating a contested lien on a right.

Article 314 Creating Statutory Lien

1. A Statutory lien shall be created by fulfilling the preconditions that are determined by a separate law.
2. A Statutory lien on immovable property shall be noted in the Land Registry at the request of the pledgee.

c) Creating a sub-pledge

Article 315 Voluntary Sub-Pledge

1. The pledgee may subsequently pledge his movable pledge within the scope of his right to settlement. This is done on legal grounds and in the way prescribed for creating a non-contested lien. By doing this, a sub-pledge is created by a sub-pledgee.
2. The creditor of a claim secured by a pledge right on an immovable may, within the scope of his right to settlement from the immovable, create a mortgage for a third person (sub-mortgage) on the existing pledge (mortgage) even without the approval of the pledgor. This is done on legal grounds and in the way prescribed for creating a non-contested pledge on immovables. By doing this, a sub-mortgage is created on the mortgage as a sub-pledge of the sub-pledgee.
3. If the pledgor is informed that the pledge has been further pledged with a sub-pledgee, he may settle his claim with his pledgee only if the sub-pledgee agrees to this, or he may deposit his debt in court; otherwise the pledge remains pledged for the sub-pledgee.

Article 316 Judicial and Statutory Sub-Pledge

1. A contested judicial sub-pledge shall be created on a pledge securing the pledgee's claim by a court decision in the same way as a judicial pledge.
2. A non-contested judicial sub-pledge shall be created on a pledge securing the pledgee's claim by a Pledge Agreement. Such a Pledge Agreement shall be incorporated into the court minutes (minutes on the agreement of the parties to secure a certain claim with a pledge) in the

procedure of securing a monetary claim. This is done in the same way as creating a judicial pledge.

3. A statutory sub-pledge shall be created on a pledge securing the pledgee's claim by fulfilling the preconditions determined by a separate law for the creation of a statutory pledge. After it is created, a statutory sub-pledge on an immovable shall be registered in the Land Registry at the request of the pledgee.

d) Securing reliance

Article 317 Acquiring from a Non-Owner

1. If a creditor has legal grounds to acquire a non-contested pledge right and obtains another person's movable as a pledge without the owner's consent, he shall actually acquire the pledge right provided certain preconditions are fulfilled; preconditions under which he may also acquire ownership of the asset from the non-owner, or person who is not authorised to dispose with the asset. This shall accordingly apply if he acquires a registered security as a pledge.
2. Provisions of Paragraph 1 of this Article shall suitably apply to the acquisition of a non-contested sub-pledge right provided the creditor acquires the pledge right without the consent of the pledgee whose claim is secured by the pledge.

Article 318 Protection of Reliance in the Land Books

The provisions of Articles 122 and 125 of this Law suitably apply to the protection of reliance in the Land Registry regarding pledges on immovables (mortgage), unless contrary to the real nature of the right.

Section 2 Acquiring Another Person's Pledge Right

Article 319 Transfer

If a claim secured by a pledge right is transferred to another person on legal grounds, the pledge right shall also be transferred with no separate legal grounds and with no separate manner of acquisition, unless otherwise determined.

Article 320 Possession and Entry

1. If the pledgor does not allow the new creditor, who has a claim secured by a pledge, to take direct possession of the pledged movable, this pledge shall remain in possession of the claim transferor who shall keep the pledgee as an indirect possessor. This shall also apply when transferring registered securities.
2. The new creditor shall be able to realise the authority he has, based on a mortgage that was transferred to him together with the claim it secures, upon its registration in the Land Registry as his right.

Creditor's Rights until Settlement

Section 1 Authority Regarding Pledged Movables

Article 321 Right to Possession

1. A pledgee has the right to possess the asset on the basis of a non-contested pledge right on a movable.
2. Unless otherwise provided, the pledgee may directly possess the pledge.
3. A pledgee who has acquired a pledge right on an asset, which had already been pledged to another person, shall be satisfied by indirect possession of this asset. Indirect possession shall last as long as the person who initially acquired the pledge right directly possesses the asset.
4. A pledgee whose claim is secured by a judicial, statutory or registered right on a movable does not have the right to possess the asset.

Article 322 Keeping and Returning the Pledge

1. A pledgee is obliged to keep the pledge he possesses as a good host, otherwise he is responsible for any damage.
2. A pledgee may use the pledge he possesses and have someone else use it only with the pledgor's permission, or if he cannot fulfil his obligation of safekeeping it without so doing. When the claim secured by a pledge terminates, the pledgee is obligated to return the pledge to the person he received it from immediately.
3. If the pledgor needs to possess the pledge object directly he may request the pledgee to return it, even before the claim terminates, by giving the pledgee a substitute asset which is not worth less, and its keeping does not require greater effort, expense and care than the primarily pledged asset.

4. The pledgee's right to reimbursement of any expenses he had for the pledge, or right to keep the pledge until he is reimbursed, shall be determined by suitably applying regulations on the possessor's complaints in the case of the owner requesting the asset to be returned.
5. The pledgor has a limitation period of 1 year, from the day the asset was returned to him, to file a request against a pledgee for deteriorating the pledged asset. Within the same period the pledgee can file a request against a pledgor for reimbursement of expenses he had to improve the pledged asset.

Article 323 Fruits of a Pledge

1. The fruits and other benefits of the pledged asset belong to the pledgor.
2. The pledgee who is in direct possession of the pledge object may use or pick its fruits and use other benefits, provided by the object, for himself, unless he committed not to do so.
3. The fruits picked by the pledgee thus become his property, and their value is balanced with his claim. They are firstly balanced with the reimbursement of expenses to which the creditor is entitled, and then with the interest that the debtor owes him, and finally with the principal.

Article 324 Taking from a Creditor's Possession

A pledgor may judicially request the pledge to be taken from the pledgee's direct possession and given to a third party to keep as a mediator possessor for the creditor. This shall be done if the pledgee does not keep the asset in a rightful manner, if he uses it or allows another person to use it without authorisation, or takes its fruits or benefits though he committed no to.

Article 325 Sub-Pledging

A pledgee may sub-pledge a pledge he possesses, even if disapproved by the pledgor or pledge giver, but he will also be responsible for any accidental damage or deterioration of the pledge object that would otherwise not occur.

Article 326 Hidden Faults

1. If it is proven that the pledge had some real or legal fault, which the creditor was not aware of or should not have known of when he accepted the pledge, and due to which the pledge is not sufficient security for settling the claim secured by it, the pledgee may request the pledge giver another suitable pledge object.
2. Fault in the pledge, even if the pledge is ruined, destroyed, does not empower the pledgee to terminate the obligational relationship in which his claim is secured by that pledge.

Article 327 Compulsory Sale of a Pledge

1. If the movable acquired by the pledgee as a pledge breaks or loses value for some reason which is not considered a hidden fault, and the danger exists it may become insufficient to secure the pledgee's claim, the pledgor may immediately request sale of the pledge object for its stock or market value and submit a sufficient portion of the proceeds to the court as security for the creditor's claim.
2. The pledgee also has the right described in Paragraph 1 of this Article. However, if he requests compulsory sale of the pledge object, the pledgor may avoid sale if he offers another asset as substitute, the value of which is not less, and its keeping does not request greater effort, expense and care than the primarily pledged asset.

Article 328 Protection of a Pledge

A pledgee may require any other person, even the owner of the pledged property, to do anything he finds necessary to protect his right on the pledge and especially he has the right to:

- request any person possessing the pledged asset illicitly to hand it over; the rules for the owner shall apply to that suitably, or for the presupposed owner who is protecting his ownership right,
- request any person illicitly disturbing him regarding the pledged property in any way other than taking it from him, to stop disturbing him; the rules for the owner shall apply to that suitably, or for the presupposed owner who is protecting his ownership right,
- request from the pledge giver another more suitable pledge to replace the pledge with hidden faults; the rules on the liability for real and legal faults shall accordingly apply to this,
- request compulsory sale of the pledge.

Section 2 Authority Regarding Pledged Immovable

Article 329 Pledge without Possession

1. The creditor of a claim secured by a pledge right on an immovable (mortgage creditor) may not take possession of the pledged immovable, nor enjoy the right to pick or take possession of its fruit and other benefits it offers, or in any way use this immovable.

2. A provision of a contract or any other legal act contrary to Paragraph 1 of this Article shall be void, unless otherwise provided by law.
3. Regulations determining the legal position of a creditor, whose claim is secured by a pledge right on an immovable, shall apply accordingly to a creditor whose claim is secured by a judicial or statutory lien on a movable, or who has registered his pledge.

Article 330 Preserving the Value of a Pledge

1. If a mortgage debtor engages in an action, which endangers or reduces the value of the immovable encumbered by the mortgage, the mortgage creditor may request the mortgage debtor to stop. If the mortgage debtor does not stop, the mortgage creditor may request compulsory settlement of the claim secured by a mortgage even before the due date.
2. Any action undertaken by the mortgage debtor from Paragraph 1 of this Article, even if it ruins the pledge, does not authorise the pledgee to terminate the obligational relationship in which the claim is secured by the mortgage.

Article 331 Civil Fruits of an Immovable as a Pledge

1. When the right to fruits provided by an immovable as a result of some legal relationship are pledged, the pledgee may pick them.
2. If the pledgee picks the fruits from Paragraph 1 of this Article, their value is balanced with his claim. They are firstly balanced with the reimbursement of expenses to which the creditor is entitled, and then with the interest that the debtor owes him, and finally with the principal.

Article 332 Protection

1. A pledgee may require any other person, even the owner of the pledged property, anything he finds necessary to protect his right on the pledge and especially he has the right to:
 - request protection of his breached pledge right by any means prescribed by the Land Registry for the protection of registered rights,
 - request the pledgor or third party not to undertake an action on a pledged property which would endanger it or reduce its value,
 - request anything provided by the pledged asset through some legal relationship to be handed over to him, if he has a pledge right on those fruits.

2. The regulations valid for the owner, or presupposed owner who is protecting his right of ownership, shall apply to any requests filed by the pledgee for the realisation of his authority regarding the pledged asset.

Section 3 Authority Regarding Pledging Rights

Article 333 General Rule

1. If a pledge right is pledged in the same way as a movable, the pledgee has the same authority and responsibilities regarding this right as he would have if a movable was pledged, unless the law provides otherwise or something different emerges from the legal nature of the pledged right.
2. If a pledged right is pledged in the same way as an immovable, the pledgee has the same authority and responsibilities regarding this right as he would if an immovable was pledged, unless the law provides otherwise or something different emerges from the legal nature of the pledged right.

Article 334 Special Rules on Pledged Claims

1. The pledgee must take all measures necessary to preserve the claim that is pledged to him.
2. If the pledged claim produces interest or any other occasional benefits, the pledgee is obligated to take them. Their value shall firstly be balanced with the reimbursement of expenses to which the creditor is entitled, and then with the interest that the debtor owes him, and finally with the principal.
3. When a pledged claim becomes due, the pledgee is obligated to do whatever is necessary for the debtor to settle it and he must accept the settlement.
4. When the claim is settled, the pledge right is transferred to the asset used to settle the claim, but if the pledgee accepts money as settlement of the claim, he is obligated to deposit it in court. Only if the pledgor's claim is already due may the pledgee keep the amount owed to him from the received money and he is obligated to hand over the remaining amount to the pledge giver.

Article 335 Protection of a Pledge

1. A pledgee may require any other person, even the owner of the pledged property, to do anything he finds necessary to protect his right on the pledge and especially he has the right to:

- request due interest and other occasional benefits provided by the claim from the debtor of the pledged claim, or request from a third party whatever he received as a result of due interest and other occasional giving,
 - request the debtor to fulfil the due pledged claim, or request from a third party what he received in the name of the fulfilment of the pledged claim.
2. Requests that the pledgee files in order to realise his authority on a pledged right shall suitably be regulated by regulations valid for corresponding requests filed by the pledgee of a pledged movable, or immovable. Subordinate to that they are regulated by legally binding regulations valid for the pledgee who is realising his right.

Realising the Right to Settlement

Article 336 Pledgee's Right to Settlement

1. If the claim secured by a pledge is not settled upon becoming due, the pledgee may realise his right to settlement from the value of the pledge.
2. The pledgee shall realise his right to settle his secured claim from the value of the pledge through court. He shall do this in accordance with regulations provided by this law and regulations on execution of monetary claims, unless otherwise provided by law.
3. The pledgor has the right to request the owner of the pledged property or any third person to endure settlement of the claim secured by a pledge right from the value of the pledge object, unless otherwise provided by law.
4. The pledgee may, whether his debtor were the owner of the pledge object or not, freely choose whether he shall settle his claim first from the value of the pledge or from his debtor's property, or simultaneously from the pledge and the debtor's property.
5. If the pledgee requests settlement from the value of the pledge, but does not succeed in settling the entire claim from the proceeds got for it, the debtor owes him the difference. On the other hand, if the pledge is sold for more than the claim amount, the surplus belongs to the debtor.
6. The pledgee whose pledge right encumbers an asset subject to sale for the compulsory settlement of another person's claim, may buy off this person's claim, but he must do this before the public sale begins.
7. The pledgee, whose pledge encumbers an asset or right which may provide fruits or other benefits whose the value of which may settle the claim secured by the pledge right, may request the court to appoint temporary management of the pledge and appoint a manager who shall be

authorised to collect the fruit or benefits and realise them, and deposit in court any acquired money so that the claim may be settled from this deposit.

Article 337 Out-of-Court Settlement

1. The pledgee may settle his claim secured by a pledge from the value of this pledge out-of-court, if the pledge object is a movable or a right not considered an immovable, and provided the pledgor approved such settlement in writing either at the moment of creating the pledge or later.
2. If a movable or a right not considered an immovable is pledged as security for a claim in commerce, the pledgee may realise his right to settle this claim out-of-court from the value of the pledge, unless the pledgor explicitly prohibited such settlement when creating the pledge.
3. The pledgee who may realise his right to settlement out-of-court, may do so through a public auction (public bid), and in some other way only if he may realise it by contract or by law or if this is the only possible way to realise his right to settlement in the given circumstances.
4. If the pledged movable or right has a stock or market value, the pledgee, who may settle his claim out-of-court, may sell that property for the determined value without a public auction but through a person publicly authorised to sell on the stock market, or at public sale of such things and rights.
5. If money is the object of a pledge, the pledgee may settle his due claim, which this pledge secures, by keeping a corresponding amount for himself. The same applies to any money that the creditor receives for the pledged claim or interest or other occasional benefits provided by it, or from pledged fruit, which the immovable provides through some legal relationship.
6. If the pledgee is authorised to pick the fruit of the pledged movable for himself, by law its value is balanced with the claim secured by the pledge, at the moment of picking, even if the pledge is not due. The pledgor may, at any moment, request the creditor to issue a certificate of the balance at the creditor's expense. The same applies to the value of any other benefits provided by the pledged asset, which the pledgee may to use.
7. The creditor, who realised his right to out-of-court settlement without authorisation, or realised it in any other way he was not authorised to, is liable for any damage caused by his actions.

Article 338 Notation of Cancellation and Complaint

1. The creditor may, in order to settle his claim from the value of the immovable, request notation of a complaint against the owner of the immovable in the Land Registry if he must, by a legally valid court decision obtained through litigation, order the pledgee to endure settlement from the

value of the pledge, or order the debtor to directly settle the creditor's claim. He may also request notation of the cancellation on which the due date of the claim depends.

2. The noted cancellation or complaint shall act against any subsequent owner of the immovable. Therefore execution shall be conducted by settlement from the immovable on the basis of an execution decision procured by the noted complaint or noted dismissal regardless of who became its owner in the meantime.

Protection

Article 339 Request to Respect the Pledge

1. The pledgee may request the owner of the pledge to recognise and endure his pledge right as an encumbrance on the pledged asset, and to endure the authorised person executing his right on it. Especially he may request the owner to endure settlement of the due claim from the value of the pledge, and not to use the pledge in any way prevented by the authorised person's right. He may also request the same from any other person negating his pledge right by some action or illicitly hindering or disturbing him in executing his right.
2. Each individual authorised person of the same pledge right, if there are more than one, has the right described in Paragraph 1 of this Article.
3. The right from Paragraph 1 of this Article does not have a statutory period.

Article 340 Pledgee's Complaint

The pledgee may realise his right in Article 339 of this Law through court procedure, or before another authorised body, by proving his pledge as well as the defendant's actions of hindering or disturbing him in executing that right.

Article 341 Complaint of the Presupposed Pledgee

1. Any person who proves legal grounds and the true manner in which he acquired possession of a pledge, or at least that an entry of his pledge right on the immovable existed in the Land Registry, and does this through court or before another authorised body (presupposed pledgee) has the right to protection of his presupposed pledge, as the person who proved his pledge right.
2. Regulations on a complaint against the presupposed owner are suitably applied to the right, which the presupposed pledgee has to protection.

Article 342 Protection from Violation by Registration in the Land Registry

If anyone breaches the pledge right on an immovable with an invalid entry in the Land Registry, the pledgee has the right to protect himself by any means provided by the Land Registry regulations for the protection of registered rights.

Cession

Article 343 Ruin, Destruction of Pledge

If the pledge is destroyed and is not replaced by another asset or right, the pledge right is terminated, but the claim still continues to exist.

Article 344 Renunciation

1. The pledge right is terminated by the pledgee's valid renunciation.
2. The pledgee is considered to have renounced his pledge right if he unconditionally returns possession of the pledge to the debtor; otherwise the pledge right does not terminate by losing possession of the pledge.
3. A single creditor, of several, of a claim secured by a pledge right cannot validly renounce that pledge right without the consent of the others.
4. The creditor of a claim encumbered by another person's sub-pledge, or by the right of personal servitude, cannot validly renounce the pledge securing the claim without the consent of the authorised persons of that right.
5. If the pledge right is entered in the Land Registry, it will not terminate before it is deleted from the Land Registry due to renouncement.

Article 345 Expiry of Due Date and Fulfilment of Termination Condition

1. The pledge right, limited by a deadline or termination condition, terminates when the due date expires or the condition is fulfilled, but a pledge right registered in the Land Registry shall not terminate until the right is deleted.
2. The pledge right shall not terminate when the due date expires or the termination condition is fulfilled if it belongs to a pledgee who did not know or could not tell from the Land Registry about this limitation at the moment he was acquiring the claim secured by this pledge right.

Article 346 Cession of Secured Claim

The pledge right terminates when the whole claim secured by it and all subsidiary claims such as interest and expenses terminate, unless otherwise provided by law.

Article 347 Disposing of Undeleted Mortgage

1. A pledge right on an immovable shall not terminate solely by termination of the claim securing it, but the mortgage terminates with its deletion from the Land Registry.
2. Until the mortgage is deleted the owner of the immovable encumbered by it may, based on a receipt or other document proving termination of the claim secured by this mortgage, transfer it to a new claim which is not bigger than the registered one that terminated.¹⁸
3. The owner may not give up his right to dispose with the mortgage from Paragraph 2 of this Article while creating the mortgage, but if he commits to someone that he shall procure deletion of a certain mortgage, and this is noted in the Land Registry beside the mortgage, he may not dispose with the mortgage.
4. If a claim secured by a mortgage terminates and the immovable is sold in an execution procedure to settle a monetary claim or it is put under compulsory administration, and the mortgage is not deleted nor is the immovable or pledge transferred to another person, this mortgage shall not be taken into account while splitting the proceeds.
5. The owner has the right to part of the proceeds only if the claim secured by the mortgage still exists towards a third person, or if the owner has the right to compensation for fulfilling the claim.

Article 348 Notation of Priority Rank

1. If a mortgage is deleted, the owner may simultaneously procure notation of a new mortgage in the Land Registry keeping the old one's priority rank, up to the amount of the deleted mortgage, for a period of three years from the moment the notation was approved. If the owner changes, that priority rank shall act to the benefit of the new owner. This is, however, not the case if the immovable is sold in a compulsory public auction in which case this priority rank is not taken into consideration, unless used before the decision permitting execution on the immovable for the realisation of someone's monetary claim is noted.
2. The owner of an immovable may request a mortgage securing a new claim to be entered in the priority rank up to the amount of the mortgage by which the immovable has been encumbered.

¹⁸ The existence of such a right, **right to dispose with an undeleted mortgage**, is very useful for the owner because if he disposes with a high place in the priority rank this increases his credit rating (he stands a greater chance to get a loan

The new mortgage shall have legal effect only if the deletion of the old mortgage is registered within one year from the approval for entering the new one.

3. If no one requests deletion of the old mortgage within the period determined in Paragraph 2 of this Article, or this deletion is not permitted, the new mortgage shall terminate as soon as the due date expires and it shall be deleted ex officio together with all entries referring to it. Both the mortgage debtor and the creditor to whose benefit the new mortgage is entered may request deletion of the old mortgage.
4. If the older mortgage is encumbered, the new mortgage entered in its place in the priority rank shall have legal effect if the encumbrance is deleted or transferred to the new mortgage with the approval of the participants. If the older mortgage encumbers several immovables simultaneously, the new one gains effect only if the older mortgage is deleted on all the immovables it encumbers.
5. The Provisions of this Article shall apply suitably to a new claim replacing two or more mortgage claims that, in the priority rank, follow one another.

Article 349 Protection of Another Person's Trust

The pledge on an immovable, which is not entered in the Land Registry, terminates if the person who acquired the immovable encumbered by it did not know or should not have known it existed.

Article 350 Cession of Pledgee

The pledge terminates if the legal person that is the pledgee loses its personality¹⁹, and there is no legal heir; but the pledge entered in the Land Registry shall not terminate until it is deleted.

Article 351 Termination

1. A pledge on immovables is terminated by a Land Registry Court decision permitting amortisation of the mortgage after procedures provided for this in the provisions of the Land Registry Act have been conducted.
2. In case of Paragraph 1 of this Article the pledge shall terminate upon deletion in the Land Registry.

Article 352 Disburdening by Law or Decision of Authority

which will be secured by a mortgage in that place etc.). (GAVELLA N., JOSIPOVIĆ T., GLIHA I., BELAJ V., STIPKOVIĆ Z., *Real Property Right*, Zagreb 1998, p. 821)

¹⁹ Losing **Legal Personality** means the legal person stopped existing in some way.

1. Pledges terminate when the preconditions determined by a special law are fulfilled.
2. If the pledge is entered in the Land Registry, it shall not terminate until it is deleted, unless otherwise provided by law.
3. If abolishing a pledge has the meaning of expropriation, the pledgee has the right to full compensation, as well as the bearers of the real property rights on a claim which was secured by the terminated pledge.

Article 353 Cession of Judicial and Statutory Pledge

1. Unless otherwise provided by law, a contested pledge right terminates when the decision abolishing the performed actions and measures serving as the basis for creating that right become legally valid, and if the claim was settled during the procedure – with the decision on settlement becoming legally valid, with the mortgage being terminated upon deletion from the Land Registry.
2. A statutory pledge right terminates in the same way as a non-contested pledge right, and by cession of circumstances based on which this right was created, unless otherwise provided by law. If it is registered in the Land Registry, it terminates upon deletion from the Land Registry.