

Estonia

Law on Property

(adopted in June 1993, entered into force on 1 December 1993; subsequently amended)

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Chapter I - General provisions

1 - Purpose of Act

The Law of Property Act provides for real rights, their content, creation and extinguishment and is the basis for other laws regulating real rights.

2 - (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

3 - (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

4 - (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

5 - Real rights

- (1) Real rights are ownership (right of ownership) and restricted real rights: servitudes, real encumbrances, right of superficies, right of pre-emption and right of security.
- (2) The law may provide for other real rights in addition to those specified in subsection (1) of this section.

6 - Owner

- (1) (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)
- (2) All owners have equal rights unless otherwise provided by law. The property of a legal person or a legal person shall not belong to other persons.

(15.02.95 entered into force 18.03.95 - RT I 1995, 26-28, 355)
- (3) (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

Chapter II

7.-31. (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

Part 2 - Possession and Land Register

Chapter 1 - Possession

Division 1 - General provisions

32 - Definition of possession

Possession is actual control over a thing.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

33 - Possessor

- (1) A possessor is a person who has actual control over a thing.
- (2) A person who possesses a thing on the basis of a commercial lease, residential lease, deposit, pledge or other relationship which grants the person the right to possess the thing of another person temporarily is a direct possessor, while the other person is an indirect possessor.
- (3) A person who exercises actual control over a thing according to the orders of another person in the housekeeping or enterprise of the other person is not a possessor.

34 - Legal and illegal possession

- (1) Possession is legal or illegal depending on whether or not it is founded on a legal basis.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (2) Possession shall be deemed legal until the contrary is proved.

35 - Possession in good faith and bad faith

- (1) Possession is in good faith if a possessor does not or need not know that the possession by the possessor lacks a legal basis or that another person has a greater right to possess the thing.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (2) Possession is in bad faith if a possessor knows or must know that the possession by the possessor lacks a legal basis or that another person has a greater right to possess the thing.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (3) Possession shall be deemed in good faith until the contrary is proved.

Division 2 - Acquisition and Termination of Possession

36 - Acquisition of possession

- (1) Possession is acquired by gaining actual control over a thing or over the means which enable actual control over the thing.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) Agreement between the current possessor and the acquirer is sufficient for the acquisition of possession if the acquirer is able to exercise actual control over the thing.
- (3) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

37 - Acquisition of indirect possession

Indirect possession is acquired by assignment to the acquirer of the right to demand delivery of a thing if the transferor of the thing themselves or a third person remains in possession of the thing.

38 - Transfer of possession to successor

Possession transfers to a successor.

39 - Termination of possession

- (1) Possession terminates if a possessor relinquishes actual control over a thing or loses it in any other manner.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (2) A temporary impediment or interruption in the exercise of actual control does not terminate possession.
- (3) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Division 3 - Protection of Possession

40 - Arbitrary action and arbitrary possession

- (1) Possession is protected by law against arbitrary action.
- (2) Arbitrary action is the unlawful violation of possession of a thing or the unlawful deprivation of possession without the consent of the possessor. Possession obtained in this manner is arbitrary.
- (3) Violation of possession is an impediment to the exercise of actual control by a possessor over a thing or an attempt or threat to deprive the possessor of the thing if there is reason to fear execution thereof.
- (4) A successor to possession and any other legal successor is also liable for the consequences of arbitrary possession if upon acquiring possession the latter knew of the arbitrariness of the possession of the predecessor.

41 - Self-help

- (1) A possessor may protect the possessor's possession by force against arbitrary action without exceeding the limits of self-defence.

- (2) If a possessor is deprived of a movable arbitrarily in secret or by force, the possessor has the right to immediately deprive the user of arbitrary action who is apprehended in the act or pursued of the movable.
- (3) If a possessor is deprived of possession of an immovable arbitrarily in secret or by force, the possessor has the right to banish the user of arbitrary action from the immovable and to regain control over the immovable.
- (4) A person specified in subsection 33 (3) may also use the right of a possessor to self-help provided for in this section.

42 - Right to search

- (1) If a movable ceases to be under the control of a possessor and is on an immovable in the possession of another person, the possessor of the immovable is required to permit a search for and removal of the thing unless someone has taken possession of the thing in the interim.
- (2) The possessor of an immovable has the right to demand compensation for any damage arising from a search for and removal of a thing. If there is reason to presume that damage will arise, then until receipt of security the possessor of the immovable has the right to refuse to grant permission to search for and remove the thing. Refusal is not permitted if delay is hazardous.

43 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

44 - Claim arising from violation of possession

- (1) In the event of violation of possession, a possessor has the right to demand elimination of the violation and prevention of a subsequent violation.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (2) A claim shall not be satisfied if possession of the claimant is arbitrary with respect to the violator or a predecessor of the violator and is acquired within one year before the violation.

45 - Claim arising from deprivation of possession

- (1) Upon deprivation of possession, the possessor has the right to demand restoration of possession from the person who is the arbitrary possessor with respect to the claimant.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (2) A claim shall not be satisfied if possession of the claimant is arbitrary with respect to the depriver or a predecessor of the depriver and is acquired within one year before the deprivation of possession.

46 - Objections of possessor

A possessor may refuse to satisfy the claims specified in §§ 44 and 45 of this Act if the possessor proves that the violation or deprivation of possession was not arbitrary and that the possessor had the right to violate the possession or to possess the thing.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

47 - Rights of indirect possessor

- (1) A claim specified in sections 44 and 45 may also be submitted by an indirect possessor.
- (2) If possession is taken away, an indirect possessor may demand restoration of possession to the direct possessor. If the direct possessor cannot receive or does not want restoration of possession, the indirect possessor may demand transfer of possession to themself.
- (3) An indirect possessor has the right to search (section 42) under the conditions specified in subsection (2) of this section.

48 - Termination of claim for protection of possession

- (1) A claim specified in §§ 44 and 45 of this Act terminates after one year from the violation or deprivation of possession if the claim is not enforced by filing a corresponding action with a court.
- (2) A claim specified in §§ 44 and 45 of this Act also terminates if, after the taking of arbitrary action, it is established by a court judgment which has entered into force that the person who took arbitrary action holds a right in respect of a thing which is such that the person may claim possession of the thing on the basis of the right.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

49 - Protection of partial possession

A person who possesses a physical share of a thing may protect possession of the share pursuant to the procedure provided for in sections 40–48.

50 - Protection of common possession

- (1) If several persons possess a thing jointly (common possession), each co-possessor or the co-possessors jointly may protect possession pursuant to the procedure provided for in sections 40–48.
- (2) The provisions for protection of possession do not apply in a dispute between co-possessors over the extent of the right of use of possession.

Chapter 2 - Land Register

Division 1 - General provisions

51 - Definition of land register

- (1) A land register shall be maintained concerning immovables and related real rights.
- (2) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (3) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

52 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

53 - Information entered in land register

- (1) Only information prescribed by law is entered in the land register.
- (2) (Repealed - 17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

54 - Merger and division of immovables

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (1) Immovables may be merged into one immovable, or an immovable may be divided into several immovables only at the request of the owner.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) In the event of a merger of immovables or the division of an immovable, rights entered in the land register remain valid. If it is impossible for rights to remain valid in their previous form, the rights entered in the land register shall remain valid according to the notarised agreement of the persons concerned.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) In the event of a merger of immovables, the real rights which encumbered the immovables extend to the entire created immovable.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

55 - Access to land register

- (1) The land register is public. Everyone has the right to examine land register information and to receive extracts therefrom pursuant to the procedure provided by law.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

- (2) No one may be excused by ignorance of information in the land register.

56 - Presumption of correctness of land register

- (1) Information entered in the land register is presumed correct.
- (2) If a right entered in the land register is deleted, it shall be presumed to have extinguished.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) and (4) (Repealed - 22.04.2004 entered into force 01.05.2004 - RTI, 30.04.2004, 37, 255)

56¹- Ownership in Good Faith

- (1) If a person acquires an immovable or a restricted real right in good faith with a transaction relying on information in the land register, the information entered in the land register regarding this person is presumed correct, except in the case if an objection concerning the correctness of the information entered in the land register has been entered in the land register or if the acquirer knew or should have known that the land register entry was incorrect.
- (2) If a right of disposal of a right of an entitled person, entered in the land register, is restricted for the benefit of a third person, the restriction is valid with respect to the acquirer if it is entered in the land register or if the acquirer knew or should have known of the restricted right of disposal.
- (3) If making an entry in the land register is required to acquire an immovable or a restricted real right, the time for the submission of registration application is determinative concerning the acquirer's good faith.
- (4) The provisions of this Article are also applicable if a registration act concerning a person is made relying on information in the land register or a transaction, including a disposition concerning a right entered in the land register, not mentioned in this Article, is made with a person relying on information in the land register.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

57 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

57¹- Specification of content of real right

Upon the entry of a real right in the land register, documents which are the basis for the making of the land register entry may be referred to in order to specify the content of the right, unless otherwise provided by law.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

58 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

59 - Ranking of real rights

- (1) Real rights shall receive a ranking by entry in the land register.
- (2) Entries in the land register shall be made in the order of arrival of applications.

59¹ - Relationship between the ranking of rights

- (1) If several entries are made in the same register division, each entry receives a ranking which corresponds to the ranking of the registration in the land registry journal. If applications are submitted concurrently, they are granted the same ranking and it shall be indicated in corresponding entries.
- (2) If entries are made in different divisions on the same day on the basis of registration applications submitted on different dates, the entries shall indicate that an entry applied for later has a lower ranking than an entry applied for earlier.
- (3) The provisions of subsections (1) and (2) of this section do not apply if the persons concerned have agreed on a different relationship between the ranking of rights and an entry has been made in the land register concerning such agreement.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (4) A notation made on the basis of a ruling on the securing of an action and a judicial mortgage are entered in the land register pursuant to the general procedure.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

60 - Change of ranking

- (1) The ranking of a real right entered in the land register may be changed unless otherwise provided by law.
- (2) In order to change a ranking, an agreement between the persons the ranking of whose rights is changed and the making of a corresponding entry in the land register are required. In order to lower the ranking of a mortgage, the consent of the owner of the immovable is also required. Consent cannot be withdrawn.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) If the right lowered upon a change extinguishes, the elevated right does not, as a result, lose the position received by the change of ranking.

- (4) A change of ranking shall not damage a right which is ranked between the lowered and elevated rights.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

61 - Privileged ranking

- (1) In encumbering an immovable with a right, an owner may reserve a privilege to enter another right the extent of which is determined ahead of the encumbering right.
- (2) A privilege shall be entered as a notation in the land register next to the right which must be lowered in the exercise of the privilege.
- (3) Upon transfer of an immovable or upon succession, the privilege specified in subsection (1) of this section transfers to the actual acquirer.

Division 2 - Classification of Entries

62 - Entries

Real rights and notations shall be entered in the land register.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

62¹ - Making of entry

- (1) A land register entry shall be made, amended or deleted on the basis of a registration application. A registration application is a unilateral application which expresses the desire for an entry to be made in the land registry. A registration application may also be contained in a real right contract.
- (2) On the basis of a court judgment or court ruling which has entered into force, a land register entry shall be made on the basis of a copy of a court decision which has entered into force.
- (3) In the cases provided by law, an entry is *ex officio* made without a registration application.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

63 - Notation in land register

- (1) A notation may be entered in the land register:
 - 1) to secure a claim for the acquisition or deletion of a real right, for the change of content or ranking of a right, including a future or conditional claim (preliminary notation);

- 2) to secure a demand for the amendment or deletion of an incorrect entry (§ 65) in the land register (objection);

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- 3) for the complete or partial prohibition of the disposal of ownership or restricted real right (notation concerning prohibition);
- 4) for the demonstration of other circumstances, the entry of which in the land register is permitted by law (notation).

(2) A notation concerning a prohibition prohibits the making of entries in the land register completely or partially according to the contents of the notation.

(3) The disposal of a real right after the entry of a preliminary notation in the land register is void to the extent that this prejudices or restricts a claim secured by the preliminary notation. This does not prevent entries from being made in the land register.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

(4) The provisions of subsection (3) of this section apply also with regard to disposal in the course of compulsory execution, by a trustee in bankruptcy or on the basis of a court decision which has entered into force.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

(5) If a disposal is void on the bases provided for in subsections (3) or (4) of this section, the person for whose benefit a preliminary notation has been entered in the land register may request from the person for whose benefit a real right or notations have been registered the person's consent to the making or deletion of the entry necessary for the fulfilment of the claim secured by the preliminary notation.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

(6) The ranking of a right concerning which a notation is made shall be specified according to the notation.

(7) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

(8) A person whose ownership or limited real right a preliminary notation or objection concerns has the right to require deletion of the notation from the person for whose benefit the notation was made if the exercise of the right secured by the notation is precluded, in particular, in case the claim for the securing of which the notation was made has terminated.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

63¹- Entry of notation in land register

- (1) A preliminary notation shall be entered in the land register on the basis of an application or with the consent of the person whose ownership or limited real right the preliminary notation concerns.
- (2) A preliminary notation may also be entered in the land register on the basis of a ruling on the securing of an action. A person demanding entry of a preliminary notation in the land register is not required to prove that fulfilment of the claim secured by the preliminary notation may become impracticable or impossible for the preliminary notation to be entered in the land register on the basis of a ruling on the securing of an action.
- (3) Upon the entry of a preliminary notation in the land register, a ruling on the securing of an action or another document which is the basis for the making of the land register entry may be referred to in order to specify the claim secured by the preliminary notation.
- (4) An objection shall be entered in the land register on the basis of an application or with the consent of the person whose ownership or limited real right the objection concerns.
- (5) An objection may also be entered in the land register on the basis of a ruling on the securing of an action. A person demanding entry of an objection in the land register is not required to prove that fulfilment of the claim secured by the objection may become impracticable or impossible for the objection to be entered in the land register on the basis of a ruling on the securing of an action.
- (6) A notation concerning a prohibition shall be entered in the land register on the basis of a ruling on the securing of an action or on another basis provided by law.
- (7) A notation shall be entered in the land register in the cases prescribed by law.
- (8) In a notation concerning a lease contract or commercial lease contract, the date of expiry of the lease contract or commercial lease contract entered into for a specified term or the term for ordinary cancellation of the contract, if the term is longer than the term for cancellation provided by law, shall be indicated.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

63²- Demand for deletion of preliminary notation

- (1) If the whereabouts of the creditor of a claim secured by a preliminary notation are unknown, the owner may demand the deletion of the preliminary notation provided that ten years have passed since the last land register entry concerning the preliminary notation was made and the debtor of the claim secured by the preliminary notation has not accepted the claim secured by the preliminary notation during that time.

- (2) Upon the submission of a demand specified in subsection (1) of this section, the court shall determine the term for submission of objections and shall publish a corresponding announcement in the official publication *Ametlikud Teadaanded*². If objections are not filed during the specified term or are rejected, the court shall issue an order for the deletion of the preliminary notation.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Division 3 - General Provisions Concerning Real Rights in Respect of Immovables

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

64 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

64¹ - Transfer and encumbrance of immovable property ownership

For the transfer of immovable property ownership or encumbrance of an immovable with a real right and for the transfer or encumbrance of a real right encumbering an immovable or the amendment of the content of such real right, a notarised agreement between the entitled person and the other party (a real right contract) is required and a corresponding entry shall be made in the land register, unless otherwise provided by law.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

64² - Termination of right

For the termination of a real right encumbering an immovable, a notarised application for the termination of the right from the entitled person is required and the right shall be deleted from the land register, unless otherwise provided by law. The application shall be submitted to a land registry department or to the person for whose benefit the right is terminated.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

65 - Amendment or deletion of incorrect entry

- (1) A person whose right is violated by an incorrect entry, e.g. the right of the person is not entered in the land register, is incorrectly entered or the person's right is prejudiced by the entry of a nonexistent encumbrance or restriction, may demand amendment or deletion. The consent of the person whose rights are affected by the correction is required for the making of the correction. If the person fails to grant consent within one month, the person who wishes to amend the entry has the right to file an action.
- (2) Until amendment or deletion of an entry, the person demanding the making of an amendment in the land register may request from the court the entry of an objection in the land register for restriction of a person's right of disposal

entered in the land register. A person demanding entry of the objection is not required to prove violation of the person's rights or danger of their violation for entry of such notation in the land register.

- (3) The demand specified in subsections (1) and (2) of this section shall not be submitted with respect to real rights entered in the land register acquired by a third person in good faith.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

66 - Deletion of entry upon extinguishment of real right

- (1) If an entry loses all legal effect due to extinguishment of a real right, the owner of the encumbered immovable has the right to demand deletion of the entry.
- (2) A real right in an immovable entered in the land register does not extinguish solely for the reason that the owner of the immovable acquires this right or the owner of this right acquires the immovable.

67 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Part 3 - Ownership

Chapter 1 - General provisions

Division 1 - Definition and Classification of Ownership

68 - Definition of ownership

- (1) Ownership is full legal control by a person over a thing. An owner has the right to possess, use and dispose of a thing, and to demand the prevention of violation of these rights and elimination of the consequences of violation from all other persons.
- (2) The rights of an owner may only be restricted by law or the rights of other persons.
- (3) Ownership is created only in the cases provided by law.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

69 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

70 - Shared ownership

- (1) Shared ownership is ownership belonging to two or more persons concurrently.
- (2) Shared ownership is common ownership or joint ownership.

- (3) Common ownership is ownership in legal shares of a shared thing belonging to two or more persons concurrently.
- (4) Joint ownership is ownership in undefined shares of a shared thing belonging to two or more persons concurrently.
- (5) Shared ownership is common ownership unless otherwise provided by law.
- (6) Provisions concerning common ownership apply to joint ownership unless otherwise provided by the law providing for joint ownership.
- (7) If a right belongs to several persons (community), the provisions concerning joint ownership are applied thereto unless otherwise provided by law.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

Division 2 - Common Ownership

71 - Extent of common ownership

- (1) The shares of co-owners in a shared thing are equal unless otherwise provided by law or a transaction.
- (2) The share of the fruit of a shared thing corresponding to a co-owner's share belongs to the co-owner unless otherwise provided by law, a transaction or agreement.
- (3) With respect to other co-owners, a co-owner has the rights of an owner with regard to the co-owner's share in the shared thing, considering the rights of the other co-owners.
- (4) With respect to third persons, a co-owner has all the rights of an owner with regard to the shared thing.

72 - Possession and use of common ownership

- (1) Co-owners shall possess and use a shared thing according to an agreement or a decision of a majority of the co-owners if the majority owns the larger share in the shared thing.
- (2) Income corresponding to the share of a co-owner that the co-owner has the right to receive shall not be reduced by the majority specified in subsection (1) of this section without the consent of the co-owner.
- (3) A co-owner has the right to use a shared thing in so far as this does not hinder common use by the other co-owners.
- (4) A co-owner has the right to perform acts necessary for preservation of a thing without the consent of the other co-owners, but the co-owner may demand

reimbursement of the expenses necessary for preservation of the thing from the other co-owners in proportion to their shares.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (5) A co-owner has the right to demand from the other co-owners that possession and use of a thing in common ownership be effected according to the interests of all co-owners. Co-owners shall act in good faith in their relations with one another and they shall refrain, in particular, from damaging the rights of other co-owners.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

73 - Disposal of legal share of common ownership

- (1) A co-owner may transfer, bequeath, pledge or in any other manner dispose of the legal share in a shared thing belonging to the co-owner.
- (2) Upon the sale of a legal share in an immovable to a person who is neither a co-owner nor privileged pursuant to law, the other co-owners have the right of pre-emption to the legal share being sold.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) The right of pre-emption specified in subsection (2) of this section is also valid upon the sale of a legal share of a co-owner in an immovable by compulsory auction.
- (4) The provisions of subsection (2) of this section do not apply if a co-owner transfers a legal share in immovables to a descendant or parent.

74 - Disposal of common ownership as whole

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (1) A thing in common ownership may be transferred or encumbered, and a thing or its economic purpose may be significantly changed only by agreement of all co-owners.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

75 - Bearing of encumbrances and expenses

- (1) A co-owner shall bear the encumbrances incumbent on a shared thing corresponding to the size of the share belonging to the co-owner, and any damage and expenses relating to the maintenance, possession and use of the thing.

(2) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

76 - Demand for termination of common ownership

- (1) A co-owner has the right to demand the termination of common ownership at any time.
- (2) The right to demand the termination of common ownership may be precluded by an agreement between the co-owners.
- (3) If the right to demand the termination of common ownership is precluded by an agreement, termination may be demanded only for good reason. Where a term was set for the cancellation of common ownership, common ownership may be cancelled for good reason without adhering to the set term.
- (4) Any agreement not specified in this section which precludes or restricts the right to demand the termination of common ownership is void.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

77 - Division of thing upon termination of common ownership

- (1) Upon termination of common ownership, a thing shall be divided according to the agreement of the co-owners.
- (2) Failing agreement of the co-owners with respect to the manner of division of a thing in common ownership, a court shall decide at the request of the plaintiff whether to divide the thing among the co-owners in physical shares, to give the thing to one or several co-owners and impose on them the obligation to pay the other co-owners for their shares in money, or to sell the thing by public auction or auction among the co-owners and divide the money received among the co-owners according to the size of their shares.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) Upon division of common ownership as physical shares, if the value of the physical shares does not correspond to the value of the legal shares belonging to the co-owners, the court may order a monetary set-off for equalisation of the shares or encumber individual shares with a servitude for the benefit of the other shares.
- (4) The division of shares in real terms determined by the court may also be effected by lot, where necessary.

78 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

79 - Validity of agreement and majority decision of co-owners with respect to legal successors

- (1) Any agreement between co-owners concerning the possession and use of common ownership and termination of common ownership shall be valid with respect to the legal successors of the co-owners.
- (2) If an immovable is in common ownership, any agreement specified in subsection (1) of this section shall be valid with respect to the legal successors of co-owners only if it has been entered in the land register as a notation.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Division 3 - Protection of Ownership

80 - Reclamation of thing from illegal possession

- (1) An owner has a right of claim against anyone who possesses a thing of the owner without legal basis.
- (2) The claim of the owner shall be for recognition of the right of ownership and reclamation of the thing from illegal possession into the owner's possession.

81 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

82 - Proof of possession

- (1) In the case of a dispute, the owner shall prove that the possessor possesses a thing belonging to the owner.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) If a possessor relinquishes possession with the purpose of being released from a claim, the court may deem the possessor a possessor regardless of the relinquishment.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

83 - Objections of possessor

- (1) A possessor has the right to refuse to deliver a thing if the possessor has the right to possess the thing in respect of the owner.
- (2) A direct possessor has the right to refuse to deliver a thing if an indirect possessor from whom the direct possessor obtained the right to possess the thing has the right to possess the thing in respect of the owner. If the indirect possessor is not entitled to transfer possession to the possessor, the owner may demand that the direct possessor deliver the thing to the indirect possessor or,

in case the latter refuses to assume possession, that the direct possessor deliver the thing to the owner.

- (3) The possessor of a thing acquired by assignment of a demand for delivery pursuant to § 93 of this Act may submit objections, which the possessor could present in respect of the assigned demand, to the new owner.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

84 - Liability of possessor for thing and accessories

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (1) A possessor in bad faith is required to compensate the owner for damage caused as a result of the destruction of or decrease in value of the thing and its accessories pursuant to the provisions of the Law of Obligations Act (RT I 2001, 81, 487; 2002, 60, 374; 2003, 78, 523) concerning unlawful causing of damage.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) A person who obtained possession of a thing as a result of arbitrary action is liable for the destruction of or decrease in value of the thing and its accessories, unless the destruction or decrease in value would also have occurred had the thing been in the possession of the plaintiff.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) If a possessor is in good faith, the possessor is not liable for the destruction of or decrease in value of the thing and its accessories if the destruction or decrease in value occurs before the possessor becomes aware of the filing of an action. The possessor is liable for the destruction of or decrease in value of the thing and its accessories which occur by the fault of the possessor after the possessor becomes aware of the filing of an action.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (4) If a possessor transfers a thing during the court proceeding after the possessor became or should have become aware of the filing of the action, the possessor is liable as a possessor in bad faith, except if the transfer was absolutely necessary to prevent violation of the thing.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

85 - Delivery of and compensation for gains

- (1) A possessor is liable for the delivery of or compensation for gains derived from a thing pursuant to §§ 1037-1040 of the Law of Obligations Act.

- (2) A person who obtained possession of a thing as a result of arbitrary action is, in addition to the provisions of subsection (1) of this section, also required to compensate for gains which the owner would have received had the owner been in possession of the thing.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

86 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

87 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

88 - Reimbursement of expenses to defendant

- (1) A possessor has the right to demand reimbursement of necessary expenses made on a thing by the possessor, unless the possessor obtained possession as a result of arbitrary action. A possessor may demand compensation for other costs pursuant to § 1042 of the Law of Obligations Act.
- (2) A possessor has the right to remove from a thing the improvements made by means of the expenses made on the thing provided that the possessor restores the previous condition of the thing to be delivered. Such right is precluded if it is impossible to remove the improvements without damaging them or if the possessor is compensated for the value the improvements made by means of the expenses would have after their separation from the thing.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

89 - Protection of ownership in case of violation unrelated to loss of possession

An owner has the right to demand elimination of any violation of the right of ownership even if the violation is not related to a loss of possession. If there is reason to presume recurrence of such violation, the owner may demand avoidance of the violation. A demand is precluded if the owner is required to endure the violation.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

90 - Presumption of ownership of possessor

- (1) A possessor of a movable and any earlier possessor shall be deemed the owner of the thing during the possessor's possession until the contrary is proved.
- (2) In the case of indirect possession, the presumption specified in subsection (1) of this section is valid only with respect to an indirect possessor.

91 - (Repealed - 17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

Chapter 2 - Movable Property Ownership

Division 1 - Creation of Movable Property Ownership

Subdivision 1 - Delivery

92 - Creation of movable property ownership by delivery

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (1) Movable property ownership is created by delivery of a movable if the transferor delivers possession of the thing to the acquirer and they have agreed that ownership transfers to the acquirer.
- (2) If a movable is already in the possession of the acquirer, an agreement between the transferor and acquirer concerning the transfer of ownership is sufficient for the creation of ownership.
- (3) (Repealed - 17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)
- (4) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

92¹ - Unregistered sea-going vessel

For the creation of ownership in a sea-going vessel which has not been entered in a register of ships kept by a court of Estonia, delivery of the sea-going vessel is not required if the transferor and acquirer agree on the immediate transfer of the ownership.

(11.03.98 entered into force 01.07.98 - RT I 1998, 30, 409)

93 - Acquisition by assignment of right to demand delivery of thing

If a thing is in the possession of a third person, a transferor may with the agreement of the acquirer substitute delivery of possession of the thing by assignment of the right to demand delivery to the acquirer.

94 - Acquisition by leaving thing in possession of transferor

Where the owner of a thing is the direct possessor of the thing, transfer of the possession of the thing upon transfer of ownership may be replaced by a contract to be entered into between the transferor and the acquirer on the basis of which the acquirer obtains indirect possession of the thing.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

95 - Acquisition in good faith

- (1) A person who has acquired a thing by delivery in good faith is the owner of the thing as of the time of receipt of the thing into the person's possession even if the transferor was not entitled to transfer ownership.

(1¹) If a thing transferred pursuant to § 93 of this Act does not belong to the transferor, the acquirer shall become the owner of the thing by assignment of demand only if the acquirer obtains possession of the thing from a third person and is in good faith at the time of obtaining possession.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

(1²) If a thing transferred pursuant to § 94 of this Act does not belong to the transferor, the acquirer shall become the owner by delivery of the thing to the acquirer provided that the acquirer is in good faith at the time of delivery.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) An acquirer is in bad faith if the acquirer knew or should have known that the transferor was not entitled to transfer ownership.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) Acquisition pursuant to subsections (1)-(1²) of this section is not effected if a thing was stolen, lost or dispossessed in any other manner from the owner against the will of the owner. If the owner was an indirect possessor, the same applies in case the thing is stolen, lost or dispossessed in any other manner from the direct possessor against the will of the direct possessor. This subsection does not apply to money or bearer securities or to a thing acquired by public auction.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (4) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (5) If a sea-going vessel transferred pursuant to § 921 of this Act did not belong to the transferor, the acquirer shall become the owner as of the moment of delivery of the sea-going vessel except if the owner was in bad faith at the time. If a part of the vessel is the object of the transaction, the time of acquisition of common ownership is decisive.

(11.03.98 entered into force 01.07.98 - RT I 1998, 30, 409)

95¹ - Extinguishment of encumbrances

- (1) Upon transfer of ownership, the rights of a third person to the transferred thing which encumbered the movable extinguish.
- (2) Upon transfer of ownership pursuant to subsection 92 (2) of this Act, the rights of a third person extinguish only if the acquirer obtained possession from the transferor. Upon transfer pursuant to §§ 92¹ or 94 of this Act or if a thing transferred pursuant to § 93 of this Act was not in the indirect possession of the transferor, the right of a third person extinguishes only if the acquirer obtains direct possession of the thing.
- (3) The right of a third person does not extinguish if the acquirer does not act in good faith with respect to the right at the time of transfer of ownership. The acquirer acts in good faith if the acquirer is not aware and should not be aware of the right of a third person.
- (4) If, pursuant to § 93 of this Act, a right belongs to a possessor who is a third person, the right does not extinguish with respect to an acquirer who is in good faith.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Subdivision 2 - Occupation

96 - Content of occupation

- (1) Movable property ownership is created by occupation if a person takes possession of an ownerless movable with the intention of becoming its owner.
- (2) A thing is not acquired if occupation is prohibited by law or the taking of possession violates the right of another person to occupy the thing.
- (3) A thing is ownerless if it has not yet been in the ownership of anyone or if the owner has terminated possession with the intention of relinquishing ownership.
- (4) A wild animal is ownerless if it is free in nature.

97 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Subdivision 3 - Finding

98 - Notification obligation

- (1) A person who has found a lost thing and taken possession thereof shall promptly notify the loser or owner. If the loser or owner is unknown to the

finder, the finder is required to notify the police of the finding if the value of the thing exceeds one hundred kroons.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) Upon finding a thing in a residential building, public establishment or means of transport, the person finding the thing is required to deliver the thing to the house owner, tenant, an employee of the corresponding establishment, the driver of the means of transport or the police. The house owner, tenant, establishment, transport organisation or police to whom the found thing is delivered shall be deemed the finder.

99 - Safe-keeping and sale of finding

- (1) A finder is required to keep a found thing in a manner which ensures its preservation.
- (2) After public notification, a finder has the right to sell the thing by public auction if safe-keeping of the thing is excessively expensive, if the thing is highly perishable or if a public establishment or the police have kept the thing for six months.
- (3) Money received at an auction from which the safe-keeping and sales expenses are deducted replaces the thing.

100 - Acquisition of finding

- (1) If a finder has performed the finder's obligations and the owner has not become known within one year after notification of the finding, the finder acquires the thing or the money replacing it.
- (2) If the value of a thing does not exceed one hundred kroons, the term provided for in subsection (1) of this section commences from the day of finding.
- (3) The local government of the place of finding acquires the thing or the money replacing it if the police have kept the finding for one year after taking possession of the thing.
- (4) A finder does not acquire a thing if the finder violates the notification obligation or conceals the finding.
- (5) The rights of a third person which encumbered a thing extinguish upon the acquisition of the finding.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

101 - Finder's fee and reimbursement of expenses

- (1) If a finder has not yet acquired a thing, the owner recovers the thing or the money replacing it if the owner reimburses the necessary expenses and pays a

finder's fee to the finder. The finder's fee shall be specified by agreement of the finder and the owner. In the case of a dispute, the finder's fee shall be specified by a court but the fee shall not exceed one third of the value of the finding from which the necessary expenses incurred by the finder in connection with the finding have been deducted.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

(1¹) A finder's fee cannot be claimed if the finder violates the notification obligation or conceals a finding.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) The necessary expenses specified in subsection (1) of this section are expenses which the finder makes for preservation of the found thing, for seeking the entitled person and for selling the found thing.
- (3) The persons specified in subsection 98 (2) shall not receive a finder's fee.

101¹ - Finder's liability

A finder is liable for a violation of a finder's obligations only if the finder acts intentionally or with gross negligence.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

§ 102. (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Subdivision 4 - Treasure

103 - Definition of treasure

- (1) Treasure is money or valuables such as gems, pearls or precious metals buried in the ground or hidden in any other manner whose owner cannot be ascertained.
- (2) Treasure belongs to the person on whose immovable or movable it was found.

104 - Finder's fee

- (1) A finder of treasure has the right to receive a finder's fee equal to one-half of the value of the treasure.
- (2) The value of a treasure shall be specified by agreement of the finder and the owner, or, in the case of a dispute, by a court.
- (3) A finder who searches for treasure without the consent of the owner of the immovable or movable shall not receive a finder's fee.

105 - Treasure with special value

- (1) An ownerless natural thing or a thing with historical, scientific, artistic or other cultural value belongs to the state regardless of on whose immovable it was found.
- (2) A person on whose immovable a thing specified in subsection (1) of this section is found is required to permit unearthing of the thing if the person is compensated for the damage caused thereby.
- (3) A finder has the right to receive remuneration if the finder is not required to search for and unearth the things specified in subsection (1) of this section.
- (4) Other rights and obligations arising from the finding of treasure with special value and the amount of remuneration shall be provided by law.

Subdivision 5 - Specification, confusion and accession

106 - Specification

- (1) If someone processes a movable of another in good faith, the new thing belongs to the processor if the work is more valuable than the original thing, but otherwise to the owner of the original thing.
- (2) If the processor acted in bad faith, the owner of the original thing has the right to demand a new thing for themselves regardless of whether the work is more valuable than the original thing.

107 - Accession and confusion

- (1) If movables of several owners are joined in such a way that they become essential parts of an integrated thing, the integrated thing created by joining shall be in common ownership of the current owners of the things. The sizes of shares in the common ownership shall be specified according to the value of the joined things which they had at the time of accession.
- (2) If one of the joined things is to be considered the principal thing, the owner of that thing shall become the sole owner of the integrated thing created as a result of the accession.
- (3) If an immovable is joined to a plot of land in such a way that it becomes an essential part of the plot of land, ownership of the plot of land shall extend to the thing joined to the plot of land.
- (4) The provisions of subsections (1) and (2) of this section also apply if the movables of several owners are inseparably confused or confused in such a way that separating them would involve unreasonable costs.

- (5) If ownership of a thing extinguishes in accordance with subsections (1)-(4) of this section, other rights which encumbered the thing also extinguish. If the owner of an encumbered thing becomes a co-owner of an integrated thing created as a result of accession, the rights which encumbered the thing shall remain valid with respect to the co-owner's share in the common ownership. If the owner of an encumbered thing becomes the sole owner of an integrated thing created as a result of accession, the rights which encumbered the thing shall remain valid with respect to the integrated thing.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

108 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

109 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Subdivision 6 - Prescription

110 - Content of prescription

- (1) Movable property ownership is created by prescription if a person possesses movables without interruption for five years as an owner.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

111 - Preclusion of prescription

- (1) Prescription is precluded if a possessor is in bad faith.
- (2) A possessor is in bad faith if upon obtainment of possession, the possessor knew or should have known that the possessor did not acquire the thing by the obtainment of possession or if the possessor became aware of this before the end of the prescription period.

112 - Calculation of prescription period

- (1) A person in whose possession a thing is at the beginning and end of a specific period of time is also presumed to be the possessor in the interim.
- (2) Upon acquisition of possession as a legal successor, a possessor may add the prescription periods of the possessor and the predecessor of the possessor.

113 - Suspension of prescription

Prescription does not commence or is suspended as of the moment when the limitation period for a claim for the protection of ownership of the owner of a movable is suspended.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

114 - Interruption of prescription

(1) Prescription is interrupted:

1) if the possessor loses the possession specified in § 110;

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

2) upon filing of a claim for protection of ownership against a direct or indirect possessor;

3) upon filing of a claim for protection of ownership against a person specified in subsection 33 (3) whom the owner erroneously considers the possessor;

4) if the owner commences to exercise the right of ownership with the knowledge of the possessor and the latter does not contest this.

(2) Interruption of prescription on the bases provided for in clauses (1) 2)-4) of this section is only valid with respect to the person who caused the interruption.

(3) Prescription is not interrupted if the possessor loses possession against the possessor's will and recovers possession within one year or recovers possession on the basis of an action filed within this period.

(4) After an interruption of prescription, the running of the prescription period recommences. The time passed up to the interruption of prescription is not included in the new prescription period.

114¹ - Rights of third persons

The rights of third persons to a thing shall extinguish upon the creation of ownership by prescription provided that the rights were created before the running of the prescription period commenced. A right shall not extinguish if the possessor knows or ought to know about the right of a third person upon acquisition of possession or if the possessor becomes aware of the right of a third person during the prescription period.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Subdivision 7 - Natural fruit

115 - Acquisition of natural fruit

(1) An owner of a thing or a possessor of a thing of another who has the right to acquire the natural fruit becomes the owner of the fruit upon severance of the fruit from the thing.

- (2) If a person who does not possess a thing of another has the right to acquire the natural fruit of the thing, the person becomes the owner of the fruit by taking possession of the fruit.

Division 2 - Rights of Third Persons

116 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

117 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Chapter 3 - Immovable Property Ownership

Division 1 - Creation and Extinguishment of Immovable Property Ownership

118 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

119 -. Transaction for acquisition of immovables

- (1) A transaction by which acquisition or disposal of an immovable is undertaken shall be notarised.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

- (2) A transaction constituting an obligation entered into without observing the formality provided in subsection (1) of this section becomes valid if a real right contract is entered into for the performance of the transaction and a corresponding entry has been made in the land register.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

120 - Real right contract for transfer of immovable property ownership

- (1) A real right contract required for the transfer of immovable property ownership shall be notarised. A judicial compromise may also contain a real right contract.

- (2) Any real right contract required for the transfer of immovable property ownership which is entered into conditionally or by setting a term is void.

- (3) A notary shall notarise a real right contract specified in subsection (1) of this section only if the document specified in subsection 119 (1) of this Act is submitted to the notary or if the document is notarised at the same time as the real right contract.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

121 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

122 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

123 - Acquisition of immovables by prescription of land register entry

- (1) If a person is entered in the land register as the owner of an immovable without legal basis, the person becomes the owner of the immovable if the person possesses the immovable as an owner for ten years without interruption.
- (2) The provisions concerning prescription of movables apply to the calculation of the term specified in subsection (1) of this section. The running of the term shall be suspended for the period during which an objection is entered in the land register concerning the correctness of the land register entry.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

124 - Acquisition of immovables by prescription

- (1) If a person has without interruption and for thirty years possessed an immovable which is not entered in the land register, whose owner is not evident from the land register or whose owner was deceased before the acquisition of possession by the possessor and no land register entry has been made in the land register during thirty years for the making of which the consent of the owner is required, the possessor may demand entry in the land register as the owner of the immovable.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) A claim for the making of an entry on the bases specified in subsection (1) of this section shall be filed with the court, which shall specify the time for filing of objections and shall publish a corresponding announcement. If no objections are filed within the set term or objections are rejected, the court shall issue an order which shall be the basis for the making of the entry in the land register.
- (3) The provisions concerning prescription of movables apply to the calculation of the period specified in subsection (1) of this section and to possession without interruption.
- (4) If, prior to making the ruling specified in the second sentence of subsection (2) of this section public, a third person is entered in the land register as the owner or an objection is entered in the land register concerning the correctness of the land register entry as a result of the ownership of a third person, the ruling specified in the second sentence of subsection (2) of this section shall have no legal consequences with respect to the third person.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

125 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

126 - Relinquishment of immovable property ownership

- (1) The owner of an immovable may relinquish immovable property ownership.
- (2) Relinquishment shall be entered in the land register on the basis of a notarised application from the owner.
- (3) The state has the right to occupy immovables which have been relinquished. For the creation of ownership of an immovable by occupation, a corresponding entry shall be made in the land register.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Division 2 - Extent of Immovable Property Ownership

127 - Spatial extent of immovable property ownership

- (1) Immovable property ownership extends to the ground, airspace above and into the earth beneath the surface to such height or depth to which the interest of the owner extends in the use of the immovable.
- (2) The owner of an immovable shall not prohibit an activity which occurs at such height or depth to which the interest of the owner does not extend according to the purpose of the use of the immovable.

128 - Boundary

- (1) The boundary between adjoining plots of land shall be specified by plans and boundary markers pursuant to procedure provided by law.
- (2) The owner of an immovable shall ensure the preservation of the boundary markers. The owner shall not change or re-arrange the boundary markers.
- (3) The owner of an immovable may demand at any time that the owner of a neighbouring immovable install boundary markers on the boundary between the immovables. The costs relating thereto shall be borne by the owners of the neighbouring immovables in equal shares.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

129 - Determination of boundary

- (1) The owner of an immovable shall assist in determination of a boundary on the justified demand of a neighbour.
- (2) If a boundary cannot be determined in any other manner, the extent of possession shall be taken as the basis. If the extent of possession cannot be determined, an equal share of the land in dispute shall be added to each immovable.

- (3) If determination of a boundary in the manner provided for in subsection (2) of this section gives a result which is contrary to verified information concerning the size and other circumstances of the immovable, the boundary shall be specified considering the size and other circumstances of the immovable.
- (4) Expenses for determination of the boundary shall be borne by the neighbours equally unless otherwise provided by law, a court judgment or transaction.

130 - Extent of immovable property ownership to mineral resources

- (1) Immovable property ownership does not extend to mineral resources the list of which shall be provided by law.
- (2) The procedure for use of mineral resources and the preferential right of the owner of an immovable to use the mineral resources specified in subsection (1) of this section shall be provided by law.

131 - Extent of immovable property ownership to body of water

- (1) A body of water within the boundaries of one immovable belongs to the owner of the immovable.
- (2) The part of a body of water within the boundaries of several immovables which belongs to each shore-owner shall be between the perpendicular imaginary lines drawn from an imaginary line in the middle of the body of water to the shore boundary markers of the corresponding owner, or between the imaginary lines drawn from the centre of the body of water to the shore boundary markers of the corresponding owner, unless otherwise provided by law or the agreement.

132 - Extent of immovable property ownership to land created from body of water

- (1) A dried-up riverbed or an island created in a river is in the ownership of the owners of the nearest shores.
- (2) The part of a riverbed or island which is between the perpendicular imaginary lines drawn from an imaginary line in the middle of the river to the shore boundary markers of the corresponding owner is in the ownership of the shore-owner.
- (3) A piece of land which is torn from one immovable and carried to another by a current or other force of nature becomes part of the other immovable if the piece of land firmly joins with it. The former owner may demand compensation for the torn away piece of land according to the benefit to the new owner.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (4) Earth which is washed onto the shore or with which the shore is filled remains a part of the shore.

133 - Shore-line of sea

- (1) Immovable property ownership extends to the shore-line of the sea. The shore-line is the ordinary boundary of water of the sea.
- (2) A construction located in the sea permanently attached to the bottom of the sea may be entered in the land register as an individual immovable pursuant to the procedure provided by law.
- (3) If a construction or a part thereof located in the sea permanently attached to the bottom of the sea which is constructed on a legal basis is not entered in the land register as an individual immovable and is permanently attached to the shore, the construction belongs to the immovable on shore.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

134 - Ground-water

Immovable property ownership does not extend to ground-water.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

135 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

136 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

137 - (Repealed - 17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

138 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

139 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Division 3 - Restrictions on Immovable Property Ownership

Subdivision 1 - General provisions

140 - Classification of restrictions

Immovable property ownership restrictions shall be established by law, a court judgment or transaction.

141 - Validity of restrictions

- (1) A restriction pursuant to law is valid without entry in the land register.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

(1¹) A restriction pursuant to law may be amended by an agreement between the owner of an immovable and the entitled person. The agreement shall be entered in the land register as a real right, in particular as a servitude.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) A restriction in public law may be amended or terminated only in the cases provided by law. Amendment or termination of restrictions is valid without entry in the land register.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) A restriction established by a court judgment or transaction, or amendment or termination of such restriction is valid with respect to third persons if it is entered in the land register.

142 - Entry on plot of land of another

- (1) Without the permission of the owner, other persons shall not enter an immovable which is in the ownership of a natural person or a legal person in private law and which is fenced or marked by the owner unless otherwise provided by law.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) Without the permission of the owner, other persons shall not enter an immovable which is in the ownership of a natural person or a legal person in private law and is neither fenced nor marked from sunset to sunrise unless otherwise provided by law.

(12.01.98 entered into force 16.02.98 - RT I 1998, 12, 152; 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Subdivision 2 - Neighbourhood rights

143 - Damaging nuisances

- (1) The owner of an immovable does not have the right to prohibit the spread of gas, smoke, steam, odour, soot, heat, noise, vibrations and other such nuisances coming from another immovable to the owner's immovable unless this significantly damages the use of the owner's immovable or is contrary to environmental protection requirements. The intentional direction of nuisances to a neighbouring immovable is prohibited.

- (2) If a nuisance specified in subsection (1) of this section significantly damages the use of an immovable but the person causing the nuisance cannot be expected to eliminate the nuisance for economic reasons, the owner of the nuisanced immovable has the right to demand compensation from the owner of the immovable causing the nuisance.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

144 - Prohibited construction and installation

- (1) An owner of an immovable has the right to demand that a construction or installation be not erected or preserved on a neighbouring immovable if there is reason to presume that it will cause or causes a prohibited nuisance to the owner's immovable.
- (2) If a construction or installation specified in subsection (1) of this section is erected in accordance with law, the right to demand removal of the construction or installation exists only after the actual occurrence of a prohibited nuisance.

145 - Constructions in danger of collapse

- (1) A construction shall be maintained in such condition that damage to a neighbouring immovable would be excluded upon collapse of the construction or severance of parts of the construction.
- (2) An owner whose immovable is endangered by circumstances specified in subsection (1) of this section may demand removal of the danger from the person liable for the harmful effect. If the person liable for the harmful effect is not known, the owner may demand removal of the danger from the possessor.

146 - Prohibited excavation

- (1) A plot of land shall not be excavated in such a manner that a neighbouring immovable would lose the necessary support of earth or such that the constructions situated thereon would be damaged in any other manner.
- (2) Excavation shall be permitted if the excavator installs other support or takes measures for prevention of danger or damage.

147 - Use of neighbouring immovables

If construction or repair of a construction can be done only by constructing scaffolding on or over a neighbouring immovable, or by moving or placing building materials on the immovable, or by walking or driving over the immovable, the owner of the neighbouring immovable shall allow this, if it is absolutely necessary, on the condition that the owner is guaranteed compensation for damage.

148 - Constructions over boundary of neighbouring immovables

- (1) A construction which projects over the boundary of an immovable is part of the immovable from whose boundaries it emerges if a real right permitting the cross-boundary construction of the immovable is entered in the land register or if the owner of the neighbouring immovable is required to allow the cross-boundary construction pursuant to subsection (2) of this section.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) If a construction specified in subsection (1) of this section is erected without a real right but in good faith, the owner of the neighbouring immovable shall allow this. In this case, the owner has the right to demand acquisition of or periodic compensation from the builder for the piece of land under the part of the construction which projects over the boundary of the owner's immovable.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) The owner of a neighbouring immovable may demand from the builder removal of the part of the construction which projects over the boundary of the owner's immovable if the builder is in bad faith or if the owner of the immovable contested this before commencement of construction or, at the latest, at a time when removal of the part did not involve excessive expenses.
- (4) A claim for receipt of compensation shall be preferred to all other claims which are incumbent on the immovable from whose boundaries the construction emerges. An agreement concerning the amount of compensation or waiver of compensation is valid if it is entered in the land register as a notation

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (5) The provisions concerning real encumbrances apply to compensation in addition to the provisions of subsection (4) of this section.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (6) If a right of superficies or a servitude is damaged due to a construction which projects over the boundary of an immovable, the provisions of subsections (1)-(5) apply with respect to the entitled person accordingly.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

149 - Roots, branches and fruit projecting over boundary

- (1) The owner of an immovable has the right to cut off and take for themselves the roots, branches and fruit of trees and bushes projecting from a neighbouring immovable onto the owner's immovable if they damage the use of the immovable and the neighbour has not removed them during the required time regardless of a warning.
- (2) If the owner of an immovable permits the branches projecting over the owner's immovable to remain, the owner has the right to the fruit of those branches to the extent that the branch is within the boundaries of the owner's immovable.

- (3) The owner of an immovable has the right to the fruit which has fallen on to the owner's immovable from a tree or bush growing on a neighbouring immovable.
- (4) The fruit of a tree growing on the boundary of an immovable and the tree itself belongs to the neighbours in equal shares upon felling or falling of the tree.

150 - Trees and bushes growing on boundary

Trees and bushes growing on a boundary are in the common ownership of the neighbours.

151 - Boundary constructions

- (1) If two immovables are separated from each other by a wall, hedge, ditch, garden bed or other such thing, it is in the joint use of the neighbours regardless of the ownership of the thing.
- (2) The use of a thing specified in subsection (1) of this section shall not be contrary to the purpose of the thing or cause damage to a neighbour.
- (3) If a thing specified in subsection (1) of this section is used by both neighbours, they shall bear the maintenance expenses equally. If the thing is necessary in the interest of one neighbour, the thing shall not be removed or changed without the consent of the neighbour.

152 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

153 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

154 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Subdivision 3 - Roads and utility networks and constructions

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

155 - Public roads

(17.02.99 entered into force 23.03.99 - RT I 1999, 26, 377)

- (1) An owner through whose immovable a public road passes shall not hinder or terminate use of the road even if the road is not entered in the land register as a public road.

(17.02.99 entered into force 23.03.99 - RT I 1999, 26, 377)

- (2) The owner of an immovable shall observe the restrictions established by law for the shoulder of a public road.

(17.02.99 entered into force 23.03.99 - RT I 1999, 26, 377)

- (3) A private road is designated for public use pursuant to procedure provided by law.

156 - Access to public road

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (1) An owner whose immovable lacks a necessary access from a public road or from a separate part of the immovable has the right to demand access over an immovable of another. The location and the term and remuneration for use of the access shall be specified by agreement. Failing agreement, the access and remuneration for use thereof shall be specified by a court. Upon specification of the access, the interests of the owner of the immovable being encumbered shall be considered.
- (2) If as a result of a transfer of part of an immovable the transferred or remaining part loses contact with a public road, the owner of the part through which contact was effected previously shall enable the owner of the other part to maintain contact through the owner's immovable under the conditions specified in subsection (1) of this section.
- (3) The owner of an immovable does not have the right to demand access if the previous contact with a public road or between parts of the immovable was discontinued at the intention of the owner.

157 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

158 - Utility networks and utility works

Utility networks or utility works (heating, water supply or sewerage systems, telecommunications or power networks, weak current installations, gaseous fuel installations, electrical installations, or pressure assemblies and construction works necessary for servicing thereof) located on an immovable belonging to another person are not essential parts of the immovable.

(13.11.2002 entered into force 01.01.2003 - RT I 2002, 99, 579)

Subdivision 4 - Water

159 - Public bodies of water

- (1) A body of water in the ownership of a legal person in public law is public. The territorial sea, inland sea, other transboundary bodies of water, and the seabed and other bodies of water specified by law are in the ownership of the state.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) A public body of water may be used by everyone. The use of a public body of water may be restricted by law or other legislation.

- (3) In the cases provided by law, a body of water in the ownership of a natural person or a legal person in private law may be designated for public use (body of water for public use). In this case, the owner of the body of water has the right to demand compensation pursuant to procedure provided by law.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (4) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

160 - Restriction of rights of shore-owner

- (1) A shore-owner shall not worsen the state of another immovable or restrict the possibilities for its use through use of the part of a body of water belonging to the shore-owner.
- (2) A shore-owner shall not build bridges or other constructions which may hinder the traffic of water-craft in a public body of water or a body of water for public use.

161 - Shore paths

- (1) A shore-owner of a body of water shall leave a strip of shore at the edge of the body of water for use as a shore path.
- (2) A shore path may be used by everyone for moving and being at the edge of a body of water, for fishing and for beaching water-craft. The restrictions provided for in section 142 are not valid with respect to shore paths.
- (3) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (4) The use of the shore of a private body of water may be restricted in the cases and pursuant to procedure provided by law.
- (5) A private body of water within the boundaries of one immovable need not have a shore path if the body of water is not designated for public use.

162 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

163 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

164 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

165 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Subdivision 5 - Forest

166 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

167 - Use of forest of another

- (1) Everyone has the right to be in a forest in the ownership of a legal person in public law (public forest) and to gather berries, mushrooms and other forest products unless otherwise provided by law.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

- (2) In a private forest which is fenced or marked by the owner, other persons are permitted to gather berries, mushrooms and other forest products with the permission of the owner of the forest.
- (3) In a private forest which is not fenced or marked, other persons have the right to gather berries, mushrooms and other forest products if they do not cause excessive damage to the owner.

168 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Subdivision 6 - Other restrictions

169 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

170 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

171 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Part 4 - Servitudes

Chapter 1 - Real Servitudes

Division 1 - Definition, creation and extinguishment

172 - Definition of real servitude

- (1) A real servitude encumbers a servient immovable for the benefit of a dominant immovable such that the actual owner of the dominant immovable is entitled to use the servient immovable in a particular manner or that the actual owner of the servient immovable is required to refrain to a particular extent from the exercise of the owner's right of ownership for the benefit of the dominant immovable.
- (2) A real servitude shall not require the owner of the servient immovable to perform any acts except acts which assist in the exercise of the real servitude.

173 - Creation of real servitude

- (1) A real right contract required for the establishment of a real servitude shall be notarised.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (3) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (4) An owner may only encumber an immovable encumbered with a right of superficies or usufruct with a real servitude with the consent of the superficiary or usufructuary.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (5) A real servitude cannot be created by prescription.

174 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

175 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

176 - Termination of real servitude on demand of owner of dominant immovable

- (1) Failing agreement on termination of a real servitude, the owner of the dominant immovable has the right to demand for good reason that the owner of the servient immovable consent to the termination of the real servitude provided that the owner of the dominant immovable shall compensate the owner of the servient immovable for any damage arising from termination of the servitude.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) The owner of the dominant immovable shall notify the owner of the servient immovable of the termination of a real servitude of an unspecified term or of the premature termination of a real servitude of a specified term six months in advance.

177 - Termination of real servitude on demand of owner of servient immovable

- (1) If the benefit receivable from a real servitude is unreasonably small in comparison to the encumbrance of the servient immovable, the owner of the servient immovable has the right to demand that the owner of the dominant immovable consent to the termination of the real servitude provided that the owner of the servient immovable shall compensate the owner of the dominant immovable for any damage arising from termination of the servitude.
- (2) If the owner of a dominant immovable has lost interest in exercising the rights arising from a real servitude, the owner of the servient immovable has the right to demand that the owner of the dominant immovable consent to the termination of the real servitude. A loss of interest is presumed if the owner of the dominant immovable has not used the real servitude for ten years or if the owner has allowed the use of the servient immovable in a manner which is contrary to the real servitude during the same period.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Division 2 - Content

178 - Manner of exercise of real servitude

- (1) A real servitude grants the right to perform only those acts which in view of the content of the servitude are necessary in the interests of the dominant immovable. The content of a real servitude shall be determined by agreement of the parties unless otherwise provided by law.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) A real servitude shall be exercised in a manner which is least cumbersome to the servient immovable.
- (3) An increase in the needs of the dominant immovable does not in itself increase the encumbrance incumbent on the servient immovable.

179 - Exercise of real servitude by means of construction or installation

- (1) If a real servitude is exercised on the servient immovable by means of a construction or installation, the owner of the dominant immovable is required to construct and maintain it and upon the extinguishment of the servitude, to remove it at the expense of the owner of the dominant immovable on demand of the owner of the servient immovable unless otherwise provided by law or the transaction establishing the servitude.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

- (2) If the construction or installation can also be utilised in the interests of the servient immovable, the owners of the dominant and servient immovables shall bear the construction and maintenance expenses corresponding to the received benefit.
- (3) If the owner of a servient immovable has a maintenance obligation with respect to a construction or installation, the corresponding provisions concerning real encumbrances apply.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (4) The owner of a dominant immovable has the right to use the servient immovable for performance of construction and maintenance work necessary for use of the servitude.

180 - Change in manner of exercise of real servitude

- (1) The owner of a servient immovable has the right to demand a change in the manner of exercise of the real servitude at the expense of the owner if the change in the manner of exercise may also achieve the current economic

purpose of the real servitude and if the current manner of exercise as compared to the new manner is considerably more prejudicial to the interests of the owner of the servient immovable. The expenses related to the change in the manner of exercise of a servitude shall be paid by the owner of the servient immovable in advance.

- (2) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

181 - Change of place of exercise of real servitude

- (1) If the exercise of a real servitude is confined to use of one part of the servient immovable and some other part is as suitable for such use, and the exercise of the real servitude on the current part as compared to some other part is considerably more prejudicial to the owner of the servient immovable, the owner has the right to demand that the real servitude be exercised on the other part of the immovable. The expenses relating to relocation shall be paid by the owner of the servient immovable in advance.

- (2) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

182 - Indivisibility of real servitude

- (1) A real servitude is indivisible.
- (2) If a dominant immovable is divided, the real servitude remains valid for the benefit of all parts. After division of a dominant immovable, exercise of the real servitude is not permitted in the extent where it becomes more encumbering with respect to the servient immovable.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) If after division of a dominant immovable, exercise of the real servitude is confined to the interest of one part, the owner of the servient immovable has the right to demand deletion of the real servitude from the land register with respect to the other parts.
- (4) Upon division of a servient immovable, the real servitude remains valid with respect to all parts.
- (5) If after division of a servient immovable, the real servitude does not encumber or cannot encumber some of its parts, the owner of an unencumbered part has the right to demand deletion of the real servitude from the land register with respect to the owner's part.

183 - Rights of use of one and same ranking

If several servitudes or a servitude and another right of use which rank equally in the land register encumber an immovable and these rights cannot be fully or partly exercised together, each entitled person may demand exercise of the rights in a manner which most complies with the interests of all entitled persons.

184 - Removal of interference with real servitude

In the event of interference with the exercise of a real servitude, the entitled person shall have the rights specified in § 89 of this Act.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

184¹ - Protection of possession of person exercising real servitude

If the possessor of a dominant immovable is prevented from exercising a servitude entered in the land register for the benefit of the actual owner of the dominant immovable, the provisions concerning protection of possession apply accordingly, provided that the servitude has been exercised at least once within a year before the violation.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

185 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Division 3- Individual Real Servitudes

186-200 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Chapter 2 - Personal Servitudes

Division 1 - Usufruct

Subdivision 1 - Definition, creation and extinguishment

201 - Definition of usufruct

- (1) A usufruct encumbers an immovable in such a way that the person for whose benefit the usufruct is established is entitled to use the immovable and to acquire the fruits thereof.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) A usufruct may be restricted by the exclusion of a particular manner of use.

- (4) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

202 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

203 - Creation of usufruct

A real right contract entered into for the establishment of a usufruct shall be notarised.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

204 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

205 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

206 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

207 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

208 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

209 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

210 - Extinguishment of usufruct by death of usufructuary

(1) A usufruct extinguishes by the death of the usufructuary unless otherwise provided by law.

(1¹) If a usufruct is established for the benefit of several persons, in the event of death or dissolution of one of the usufructuaries, the shares in the usufruct of the other usufructuaries increase in accordance with their size, unless agreed otherwise.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

(2) If the law or a transaction designates that a usufruct shall transfer to a successor of the usufructuary, the usufruct shall remain valid with respect to the successor.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

211 - Extinguishment of usufruct with respect to legal person

(1) A usufruct extinguishes upon dissolution of the usufructuary who is a legal person.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

(2) A usufruct of a legal person extinguishes in every case after 100 years after creation of the usufruct.

212 - Termination of usufruct

(1) A usufruct may be terminated by agreement of the usufructuary and the owner.

(1¹) A usufructuary has the right to demand termination of the usufruct provided that the usufructuary compensates the owner of the immovable for any damage caused as a result of the termination of the usufruct. A

usufructuary shall notify the owner of the immovable of the usufructuary's desire to terminate the usufruct six months in advance.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) The owner of an immovable may demand termination of a usufruct if:

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- 1) the usufruct has lost all importance for the usufructuary;
- 2) the damage to the owner is significantly greater than the benefit to the usufructuary;
- 3) the usufructuary does not give security to the owner of the immovable (§ 224).

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) In the cases specified in subsections (1) – (2) of this section, the corresponding provisions concerning termination of a real servitude apply unless otherwise provided by law.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Subdivision 2 - Content

213 - Determination of content of usufruct

The rights and obligations arising from a usufruct shall be determined by law or the transaction which is the basis for the creation of the usufruct.

214 - Rights of usufructuary

- (1) A usufructuary has the right to possess and use the thing subject to usufruct.
- (2) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (3) A usufructuary has the right to the fruit of the thing.
- (4) The natural fruit which ripens and is severed during the usufruct period belongs to the usufructuary.
- (5) The civil fruit which is created during the usufruct period belongs to the usufructuary regardless of the time of its collection.
- (6) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

215 - Prohibition of transfer of usufruct

A usufruct is not transferable. The rights and obligations arising from a usufruct may be exercised by another person unless otherwise provided by law or the transaction which is the basis for the creation of the usufruct.

216 - Return of object of usufruct

Upon extinguishment of a usufruct, the usufructuary or legal successor thereof is required to return the object of the usufruct to the owner in the state provided for in subsection 218 (1).

217 - Division of immovables subject to usufruct

Upon division of an immovable which is subject to usufruct, the real servitude provisions concerning division of a servient immovable apply (subsections 182 (4) and (5)).

218 - Preservation and use of thing

- (1) A usufructuary is required to preserve the current economic purpose of a thing and to use the thing in a regular manner and prudently. The usufructuary shall not significantly change or transform the thing.
- (2) The rights of a usufructuary with respect to the use of a thing which is subject to usufruct shall not be greater than the rights of the owner.
- (3) Pursuant to procedure provided by law, a usufructuary may use the mineral resources and forest to the extent necessary for regular management of the immovable.

219 - Maintenance of thing

- (1) A usufructuary is required to maintain a thing which is subject to usufruct at the expense of the usufructuary and to make repairs and renovations necessary for ordinary maintenance of the thing.
- (2) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (3) A usufructuary is not liable for a change of or decrease in value of a thing which accompanies the regular exercise of the usufruct.

220 - Notification obligation of usufructuary

- (1) If a thing subject to usufruct is damaged, or repairs or renovations which exceed ordinary maintenance are necessary for the preservation of the thing, the usufructuary is required to notify the owner promptly.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) A usufructuary is required to notify the owner if a third person gives notice of the person's right to the thing subject to the usufruct.

221 - Disposal of accessories of immovable

- (1) A usufructuary has the right to dispose of the accessories of an immovable.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) In the case of a decrease or severance of accessories due to regular management of an immovable, the usufructuary is required to replace these things with new ones. Things used to replace accessories transfer into the ownership of the owner of the immovable. If accessories did not belong to the owner of the immovable, the things used to replace the accessories transfer into the ownership of the owner of the replaced accessories.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

222 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

223 - Payment obligation of usufructuary and encumbrances

- (1) Taxes and debt interest incumbent on the object of a usufruct shall be paid and the encumbrances, management and other expenses shall be borne by the usufructuary according to the duration of the rights of the usufructuary.
- (2) If the taxes, encumbrances or expenses are collected from the owner, the usufructuary is required to compensate the owner to the same extent.

224 - Right of owner to demand security

The owner of a thing has the right to demand security from the usufructuary if the danger of a significant violation of the rights of the owner is evident from the activities of the usufructuary.

Division 2 - Personal Right of Use

225 - Definition of personal right of use

- (1) A personal right of use encumbers an immovable such that the person for whose benefit it is established is entitled to use the immovable in a particular manner or to exercise with respect to the immovable a particular right which in substance corresponds to a real servitude.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) In the case of doubt, the extent of personal right of use shall be determined according to the needs of the entitled person.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

226 - Transfer of personal right of use

- (1) A personal right of use may be transferred to another person with the consent of the owner of the immovable without changing the duration of the personal right of use. The acquirer of a personal right of use and initial holder of the right shall be solidarily liable to the owner of the immovable for the performance of the obligations arising from the personal right of use.
- (2) Where the object of a personal right of use is a utility network or construction, consent of the owner of the immovable shall not be required for the transfer or encumbrance of the personal right of use.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

227 - Personal right of use in residential building

- (1) A personal right of use in a residential building encumbers the immovable such that the person for whose benefit it is established has the right to use the residential building or a part thereof situated on the immovable for habitation.
- (2) A person who has the right specified in subsection (1) of this section may house in the residential building members of his or her family and persons who are needed for taking care of him or her.
- (3) If a right of use is granted to several persons jointly, the right of use continues as long as any of these persons is alive unless otherwise provided by the basis for the creation of the right of use.
- (4) If a right of use is granted in part of a residential building, the entitled person may also use the rooms, furnishings and fixtures designated for common use by the residents.

228 - Application of provisions concerning real servitude and usufruct

In addition to the provisions of sections 225–227, the corresponding provisions for a real servitude apply to a personal right of use. If a personal right of use is related to possession, the corresponding provisions concerning usufruct apply.

Part 5 - Real Encumbrances

Chapter 1 - Definition, creation and extinguishment

229 - Definition of real encumbrance

- (1) An immovable may be encumbered such that the actual owner of the immovable must pay periodic payments in money or in kind to the person for whose benefit the real encumbrance is established, or perform particular acts.

- (2) A real encumbrance may also be established for the benefit of the actual owner of another immovable.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

230 - Classification of real encumbrances

- (1) A real encumbrance is an encumbrance in public law if it is established pursuant to law for the benefit of the state, a local government or other legal person in public law.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

- (2) A real encumbrance is an encumbrance in private law if it is established for the benefit of a natural person, a legal person in private law or the actual owner of another immovable.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

231 - Creation of real encumbrance

- (1) A real right contract entered into for the establishment of a real encumbrance shall be notarised.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) Upon the establishment of a real encumbrance, the monetary value of the real encumbrance shall be determined, if possible, and entered in the land register.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

232 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

233 - Termination of real encumbrance on demand of entitled person

An entitled person may demand termination of a real encumbrance and its redemption by an obligated person if:

- 1) the encumbered immovable is divided and thereby the rights of the entitled person are considerably damaged; or
- 2) the obligated person considerably decreases the value of the encumbered immovable and does not give security for performance of the obligations arising from the real encumbrance; or
- 3) the obligated person fails to perform the obligations arising from the real encumbrance for three consecutive years.

234 - Termination of real encumbrance on demand of obligated person

- (1) An obligated person may demand termination of a real encumbrance by its redemption from the entitled person if:
 - 1) the entitled person does not perform the agreement which is the basis for the creation of the real encumbrance; or
 - 2) the real encumbrance has continued for thirty years regardless of a longer term indicated in the land register entry or disallowance of redemption.
- (2) If redemption of a real encumbrance is demanded on the basis provided for in clause (1) 2) of this section, one year advance notice shall be given.
- (3) Redemption shall not be demanded if the real encumbrance is established for the benefit of a particular natural person, is established pursuant to law or is related to a real servitude.

235 - Redemption price

- (1) The value of a real encumbrance indicated in the land register entry shall be taken as the basis for specification of the redemption price of the real encumbrance.
- (2) If the value of a real encumbrance is not entered in the land register, the entry is insufficient or the monetary value of acts arising from the real encumbrance has changed significantly, the redemption price shall be specified by a court, which shall consider the actual circumstances and deem the duration of the real encumbrance to be thirty years.

236 - Expiration of obligation arising from real encumbrance

- (1) A real encumbrance is not created by prescription or extinguished by expiration.
- (2) Each individual obligation arising from a real encumbrance expires after the same period as the general limitation period of a claim from the date it becomes a personal debt of the obligated person (subsection 239 (1)).

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Chapter 2 - Content

237 - Connection of real encumbrance to immovable

- (1) A real encumbrance transfers to each acquirer of an immovable together with the encumbered immovable regardless of the consent of the acquirer.
- (2) A real encumbrance established for the benefit of the actual owner of an immovable shall not be severed from the immovable.

- (3) A real encumbrance established for the benefit of a particular person shall not be connected to the immovable.

238 - Transferability of real encumbrance

- (1) A real encumbrance established for the benefit of a particular person may be transferred to another person if the real encumbrance is transferable by its nature and does not increase thereby.
- (2) A real encumbrance is not transferable if an individual obligation arising from the real encumbrance is not transferable.

239 - Liability for obligations arising from real encumbrance

- (1) An owner is liable with the encumbered immovable for performance of the individual obligations arising from a real encumbrance. The owner of an immovable is also personally liable for the performance of each individual obligation which falls due within the duration of the owner's ownership, unless otherwise agreed.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (3) If an encumbered immovable is divided, the real encumbrance continues to be valid with respect to the individual parts and the owners of the individual parts are solidarily liable for performance of the obligations.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

240 - Validity of real encumbrance upon division of dominant immovable

- (1) Upon division of an immovable for the benefit of whose actual owner a real encumbrance is established (dominant immovable), the real encumbrance continues to be valid for the benefit of the parts.
- (2) If the obligations arising from a real encumbrance are divisible, the real encumbrance shall be divided among the parts specified in subsection (1) of this section according to their size. If the obligations are not divisible, the owners of these parts are solidarily entitled to demand performance.
- (3) Upon division of a dominant immovable, the owner of the immovable may specify that the real encumbrance is valid with respect to only one or several parts. The specification shall be entered in the land register.
- (4) If the owner of a dominant immovable transfers one part of the immovable without making provision for division of the real encumbrance, the real encumbrance remains valid with respect to the part of the immovable which is retained by the owner.

- (5) If due to its nature a real encumbrance is connected to one of the parts created upon division of the immovable, the obligated person may demand extinguishment of the real encumbrance with respect to the other parts.

Part 6 - Right of Superficies

Chapter 1 - Definition, creation and extinguishment

241 - Definition and extent of right of superficies

- (1) An immovable may be encumbered such that the person for whose benefit a right of superficies is constituted has a transferable and inheritable right for a specified term to own a construction permanently attached to the immovable. Only one right of superficies may be established on an immovable.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) In addition to the land under a construction, a right of superficies extends to the part of the immovable which is necessary for use of the construction.
- (3) The extent of a right of superficies shall not be confined to one part of the construction, such as a storey.
- (4) The provisions concerning immovables apply to a right of superficies unless otherwise provided by law.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

- (5) A construction which is constructed on the basis of a right of superficies or exists at the time of its constitution and to which the right of superficies extends is an essential part of the right of superficies.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

242 - Establishment and transfer of right of superficies

- (1) A transaction by which the establishment or transfer of a right of superficies is undertaken shall be notarised.
- (2) A real right contract entered into for the establishment or transfer of a right of superficies shall be notarised.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

243 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

244 - Termination of right of superficies by agreement

Consent of the owner of the immovable is required for termination of a right of superficies. Consent shall be given to a land registry department or the holder of the right of superficies (superficiary). Consent cannot be withdrawn.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

244¹- Reversion of right of superficies

- (1) If a superficiesary has not erected the required construction within the term set upon the establishment of the right of superficies or if a superficiesary materially violates contractual obligations thereof, the owner of the immovable has the right to demand that the superficiesary consent to entry of the right of superficies in the name of the owner (reversion).

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) The right of an owner to demand entry of a right of superficies in the name of the owner shall not be separate from the immovable.

- (2¹) Instead of demanding entry of the right of superficies in the name of the owner, the owner may demand transfer of the right of superficies to a person designated by the owner.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) The limitation period of the claim specified in subsection (1) of this section expires six months after the date the owner of the immovable became aware of the existence of the relevant prerequisite, however, not later than two years after the creation of the claim.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

244²- Compensation for right of superficies

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (1) Upon reversion of a right of superficies, the owner shall pay compensation to the superficiesary. The content of a right of superficies may be an agreement concerning the amount of compensation and method of payment or preclusion of compensation. If the amount of compensation is not agreed upon, the amount shall be deemed to equal the usual value of the right of superficies.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) If a right of superficies is established for the erection of a residential building, no agreement shall be made for the payment of compensation in an amount less than two thirds of the usual value of the right of superficies.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

244³ - Preservation of encumbrance

(1) Upon the reversion of a right of superficies, the following encumbrances incumbent on the right of superficies are preserved:

- 1) a mortgage or real encumbrance which does not belong to the superficiary;
- 2) other restricted real right which encumbers an immovable also encumbered by the right of superficies.

(2) Other real rights incumbent on a right of superficies become invalid.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

245 - Extinguishment of right of superficies upon acquisition by owner of immovable

(1) If one and the same person becomes the owner of a right of superficies and the plot of land, the right of superficies shall be deleted from the land register on the basis of the application of the person. Until deletion of the entry, the right of superficies continues as a real right unless the owner submits an application for the deletion of the right of superficies.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

(2) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

246 - Preservation of right of superficies upon destruction of construction

A right of superficies does not extinguish by destruction of the construction.

Chapter 2 - Content of Right of Superficies

247 - Exercise of rights of superficiaries

(1) A superficiary shall not violate the rights of the owner of the encumbered immovable in the exercise of the superficiary's rights.

(2) A superficiary shall ensure the preservation of the construction unless otherwise agreed by the superficiary and the owner of the immovable.

248 - Prohibition of restriction of right of superficies

(1) A right of superficies shall not be restricted by conditions which are contrary to the nature of the lease.

(2) A right of superficies shall not be established with a resolutive condition. Any agreement whereby the extinguishment of a right of superficies is bound to a

resolutive condition and any agreement whereby the extinguishment of a right of superficies is bound to the death of the superfiiciary is void.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

249 - Disposal of right of superficies

- (1) A superfiiciary has the right to transfer or bequeath a right of superficies or to encumber it with real security, a servitude, a real encumbrance or a right of pre-emption. A right of superficies shall not be encumbered with another right of superficies.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

(1¹) The consent of the owner is required for transfer of a right of superficies if such condition is entered in the land register. The owner may also establish, as a condition for the grant of consent, that all agreements under the law of obligations entered into between the owner and the superfiiciary are assumed by the acquirer of the right of superficies.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

- (2) The consent of the owner is required for encumbrance of a right of superficies with a real right if such condition is entered in the land register.
- (3) (Repealed - 17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)
- (4) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

249¹ - Granting consent

- (1) If in the case provided for in subsection 249 (1¹) it may be presumed that the objective sought by the constitution of the right of superficies is not essentially changed or endangered and that the acquirer ensures proper performance of the obligations arising from the content of the right of superficies, the superfiiciary may demand that the owner grant consent for the transfer of the right of superficies.
- (2) If in the case provided for in subsection 249 (2) it may be presumed that the encumbrance may be integrated with regular management and that the objective sought by the constitution of the right of superficies is not essentially changed or endangered, the superfiiciary may demand that the owner grant consent for the encumbrance of the right of superficies.
- (3) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

250 - Ranking of right of superficies

A right of superficies may only be constituted with a first ranking in the land register. Other real rights or notations shall not have the same ranking as a right of superficies.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

251 - Term of right of superficies

- (1) A right of superficies may only be established for a certain term but for not more than 99 years.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) If the term is unspecified or more than 99 years, the term shall be deemed to be 99 years.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) After the term has elapsed, the owner of an immovable and the superficiary may extend the right of superficies by agreement but for not more than 99 years. Extension of the right of superficies shall be entered in the land register.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

252 - Fate of construction upon end of term of right of superficies

- (1) A superficiary has the right to remove the superficiary's construction within one year before the due date of the right of superficies unless the owner of the immovable uses the right specified in subsection (3) of this section. If the owner of the immovable presents a demand for removal not later than four months before the end of term, the superficiary is required to do so.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) A construction which is not removed by the end of term becomes an essential part of the immovable and transfers into the ownership of the owner of the immovable. If the owner of the immovable presents a demand for removal in time, the owner of the immovable may demand payment for removal of the construction from the superficiary if the owner of the construction removes it within one year after the end of term.

- (3) The owner of an immovable has the right to demand, not later than one year before the due date, that the construction be left to the owner of the immovable for payment equal to the damage arising to the superficiary from the loss of the right of removal specified in subsection (1) of this section.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (4) The provisions of subsections (1)–(3) of this section are valid insofar as the entry in the land register does not specify otherwise.

253 - Compensation upon end of term of right of superficies

- (1) If a right of superficies extinguishes due to expiry of its term, the owner of the immovable shall pay the superficiary compensation for the construction which remains on the immovable. Upon the establishment of a right of superficies, agreement may be made concerning the amount of compensation and method of payment or preclusion of compensation. If the amount of compensation is not agreed upon, the amount shall be deemed to equal the usual value of the right of superficies.

(1¹) If a right of superficies is established for the erection of a residential building, no agreement shall be made for the payment of compensation in an amount less than two thirds of the value of the right of superficies.

- (2) The owner of the immovable shall be relieved of the obligation to pay compensation if the owner of the immovable extends the term of the right of superficies to the end of the period of the presumed life of the construction. If the superficiary does not consent to extension of the term, the superficiary loses the right to compensation.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

254 - Payment for right of superficies

- (1) A superficiary shall make a payment for the right of superficies to the owner of the immovable unless otherwise agreed.
- (2) The payment for a right of superficies shall be made according to an agreement in money or other fungible things such that upon constitution of the right of superficies, the amount of payment or the bases for calculation of the amount of payment may be specified in advance for the whole term of the right of superficies.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

- (3) A change in the amount of payment payable for a right of superficies according to changing conditions may be agreed to upon the constitution of the right of superficies if the time and extent of change of the conditions can be determined.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

- (4) The payment obligation for a right of superficies may be entered in the land register as a real encumbrance.

(4¹) The consent of the lower ranking owners in the land register is required for the change of a real encumbrance established to secure the right of superficies payment due to a change in the amount of payment payable for the right of superficies pursuant to subsection (3) of this section only if the increase in the payment significantly exceeds the change of the conditions.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

(4²) It may be agreed concerning the right of superficies payment that:

1) differently from the provisions of subsection 64²⁰ (1) of the Code of Enforcement Procedure (RT I 1993, 49, 693; 2002, 83, 489; 84, 492; 110, 654; 2003, 13, 64; 20, 116; 23, 142; 146; 26, 156; 31, 195; 83, 556; 88, 591), the real encumbrance established to secure payment shall be preserved if the owner on the basis of a real encumbrance or another person with a restricted real right of a higher or same ranking claims payment for the right of superficies;

2) the actual superficiary has the right with regard to the actual owner of the real encumbrance to encumber the right of superficies with a mortgage of a determined extent of the same or higher ranking.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

(4³) If a right of superficies is encumbered with a restricted real right of the same ranking with the real encumbrance established to secure the right of superficies payment, the consent of the person for whose benefit the restricted real right is established is required for entry in the land register of the mortgage specified in clause (4²) 2) of this section.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

(5) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

(6) The co-owners of a right of superficies are solidarily liable for the right of superficies payment.

255 - Taxes and encumbrances

All taxes incumbent on a plot of land encumbered with a right of superficies shall be paid and real encumbrances in public law shall be borne by the superficiary, unless otherwise agreed.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

255¹ - Agreements

The content of the right of superficies also includes the agreements between the owner and superficiary concerning:

- 1) the construction, maintenance and use of a construction;
- 2) the insurance of a construction and its reconstruction in the case of its destruction;
- 3) the obligation of the superficiary to pay contractual penalties;

- 4) the obligation of the superficiary to transfer, upon the arrival of a corresponding prerequisite, the right of superficies to the owner;
- 5) the compensation to be paid to the superficiary for the construction upon the extinguishment of the right of superficies or upon the reversion of the right of superficies;
(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)
- 6) the bearing of encumbrances in public law and private law and payment of taxes;
(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- 7) the grant of preferential right to the superficiary to renew the right of superficies after its extinguishment;
(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- 8) the obligation of the owner of the immovable to sell the immovable to its actual superficiary.
(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Part 7 - Right of Pre-emption

256 - Definition of right of pre-emption

- (1) An immovable may be encumbered with a right of pre-emption relating to real rights.
(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)
- (2) A right of pre-emption may be established for the benefit of a particular person or the actual owner of another immovable.
- (3) A legal share of an immovable may be encumbered with a right of pre-emption only if it is the share of a co-owner.

257 - Establishment and meaning of right of pre-emption

- (1) A transaction by which the establishment of right of pre-emption is undertaken shall be notarised.
(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (2) A real right contract required for the establishment of right of pre-emption shall be notarised.

- (3) Right of pre-emption entered in the land register has the same legal force with regard to third persons as a preliminary notation securing a claim for the transfer of ownership. Right of pre-emption with respect to an immovable which is created pursuant to law and with regard to which a notation has been entered in the land register, and the right of pre-emption of a co-owner of an immovable have the same legal force.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (4) The provisions of the Law of Obligations Act concerning right of pre-emption apply to relationships between an owner and a person with the right of pre-emption, unless otherwise provided by this Act.

- (5) The right of pre-emption specified in subsection (3) of this section also applies upon the sale of an immovable by compulsory auction or in bankruptcy proceedings.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

258 - (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

259 - (Repealed - 19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

260 - Restrictions on transfer of right of pre-emption

- (1) A right of pre-emption established for the benefit of the actual owner of an immovable shall not be severed from the immovable.
- (2) A right of pre-emption established for the benefit of a particular person shall not be connected to any other immovable.
- (3) The right of pre-emption established for the benefit of a particular person is not transferable or inheritable.

Chapter 2 - Content

261 - (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

261¹ - Rights of purchaser

- (1) A purchaser or the legal successor of a purchaser may refuse to grant their consent to entry of a person with the right of pre-emption in the land register as an owner and to transfer the immovable until the purchaser or the legal successor of a purchaser is compensated for the purchase price paid.
- (2) After entry of a person with the right of pre-emption in the land register as an owner, a purchaser may refuse to transfer the immovable until the purchaser is compensated for the purchase price paid by the purchaser.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

261²- Payment of purchase price

If, pursuant to § 261¹ of this Act, a person with the right of pre-emption is required to pay the purchase price to a purchaser or the legal successor of a purchaser, the person with the right of pre-emption is released from the obligation to pay the purchase price to the seller.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

261³- Release of purchaser from obligation to pay purchase price

If a purchaser or the legal successor of a purchaser loses immovable property ownership due to the exercise of right of pre-emption, the purchaser or the legal successor shall be released from the obligation to pay the purchase price. A purchaser may request that a seller repay the purchase price already paid only if the purchaser withdraws from the contract of sale.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

261⁴- Right of pre-emption upon division of immovable

Upon the division of an immovable, the right of pre-emption remains with respect to each immovable created as a result of the division.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

Part 8 - Right of Security

Chapter 1 - General provisions

276 - Definition and classification of pledge

- (1) A thing may be encumbered with a pledge (right of security) such that the person for whose benefit the pledge is established has the right to satisfaction of the claim secured by the pledge out of the pledged property, unless the claim is appropriately performed.
- (2) A pledge is security over movables or real security.

277 - Object of pledge

- (1) Things and proprietary rights the pledging of which is not prohibited by law may be pledged (object of pledge).

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) Property for which a claim for payment is not permitted by law shall not be pledged.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

(3) Several pledges may be established on one and the same object of pledge for the benefit of one or several creditors unless otherwise provided by law or a pledge contract.

(4) A co-owner's legal share in a thing may only be encumbered as a whole.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

278 - Pledgor

A debtor or a third person may be a pledgor.

279 - Claim secured by pledge

(1) Any claim which can be valued in money may be secured by a pledge.

(2) A conditional claim may also be secured by a pledge.

(3) A future claim may be secured by a pledge.

(4) Collateral claims relating to a claim, including interest and penalties, are also secured by a pledge unless otherwise provided by law or a contract.

(5) A transaction which is entered into after the establishment of a pledge and by which the liability of the debtor of the claim secured by the pledge is increased is not valid with regard to the owner of the thing encumbered with the pledge, unless otherwise provided by a contract.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

(6) Court expenses, expenses relating to the sale of the thing and expenses necessary for the preservation of a pledged object which are incurred by the pledgee are also secured by the pledge.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

280 - Preference of claim secured by pledge

A claim secured by a pledge shall be preferred to all other claims with respect to the pledged property unless otherwise provided by law.

Chapter 2 - Security over Movable

Division 1 - Possessory Pledge

Subdivision 1 - Definition, creation and extinguishment

281 - Definition of possessory pledge

- (1) A movable may be encumbered with a pledge such that the pledged thing is transferred into the possession of the pledgee and the establishment of a possessory pledge is agreed upon. A thing may also be encumbered by a pledge so that the thing is transferred to a third person and the pledgee obtains indirect possession of the pledged thing.
- (2) The provisions concerning possessory pledges apply correspondingly to any right of security over movables which is created pursuant to law, unless otherwise provided by law.
- (3) If a movable is encumbered with several rights of security, the rankings of the rights of security shall be specified according to the time of creation of the rights of security.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

282 - Creation of possessory pledge

- (1) A possessory pledge is created by transfer of possession of a thing from the pledgor to the pledgee if they have agreed on the establishment of the pledge. If the thing is already in the possession of the pledgee, a pledge is created by entering into a pledge contract.

(1¹) A possessory pledge is not created if, upon establishment of a possessory pledge on the thing encumbered with the pledge, the pledgee obtains common possession together with the owner of the thing encumbered with the pledge.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

(1²) Upon the pledging of a thing for which a document of title has been issued, transfer of the document of title is deemed to equal transfer of the possession of the thing.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) An agreement for establishment of a pledge (possessory pledge contract) shall be entered into in writing if the value of the pledged thing exceeds five hundred kroons.
- (3) Several possessory pledges shall not be established on the same movable.

282¹ - Acquisition of right of security in good faith

- (1) A pledgee also obtains a right of security in the cases specified in § 282 of this Act if the pledgor was not entitled to establish a pledge, unless the pledgee did not act in good faith upon encumbrance of the object with a right of security.

- (2) A pledgee acted in bad faith if the pledgee knew or ought to have known upon encumbrance of an object with a right of security that the pledgor had no right to encumber the object with a pledge.
- (3) Acquisition of a right of security in good faith pursuant to subsection (1) of this section is not effected if a thing is stolen, lost or dispossessed in any other manner from the owner against the will of the owner. This provision does not apply to the pledging of bearer securities.
- (4) If a pledged thing is encumbered with the right of a third person, the right of security obtains a higher ranking than that right, unless the pledgee knew or ought to have known about the existence of the right at the moment of obtaining the right of security.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

283 - Possessory pledge on several things

- (1) Upon establishment of a possessory pledge on several things, the entire claim is secured by each thing.
- (2) A pledgee may claim payment for the pledged thing at the pledgee's discretion unless otherwise provided by the pledge contract.

284 - Extinguishment of possessory pledge by termination of claim

A possessory pledge extinguishes by termination of the secured claim.

285 - Extinguishment of possessory pledge by destruction of movable

- (1) A possessory pledge extinguishes by destruction of the pledged movable.
- (2) If a pledged thing was insured, the pledgee has the right to take possession of the insurance proceeds in the case of complete or partial destruction of the thing. Insurance proceeds shall be deposited on the demand of the pledgor.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) In the event of complete or partial destruction of a pledged object, the pledgee may demand that the owner of the pledged object transfer or deposit that which is acquired in compensation for the destruction of the object.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

286 - Other bases for extinguishment of possessory pledge

A possessory pledge extinguishes if:

- 1) one and the same person becomes the pledgee and the owner of the pledged thing, unless the owner has legitimate interest in the continuation of the right of security;

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- 2) the pledged thing is no longer in the possession of the pledgee and the pledgee cannot reclaim the thing;
- 3) the pledgee returns the pledged thing to the pledgor or notifies the pledgor of discharge of the pledge;
- 4) a third person specified in subsection 281 (1) of this Act return the pledged thing to the pledgor.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Subdivision 2 - Content

287 - Obligations of pledgee upon safe-keeping of pledged thing

- (1) A pledgee is required to:
 - 1) preserve and maintain the pledged thing;
 - 2) notify promptly the pledgor of a danger of destruction of the thing;
 - 3) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (2) The expenses for preservation and maintenance of a pledged thing shall be borne by the pledgor unless otherwise provided by the pledge contract.
- (3) If the pledgee violates the obligations in safe-keeping the pledged thing, the pledgor has the right to satisfy the claim and demand return of the pledged thing.

288 - Right of pledgee to use pledged thing

- (1) A pledgee does not have the right to use a pledged thing unless otherwise provided by the pledge contract.
- (2) A pledgee who uses a pledged thing is required to report on it to the pledgor pursuant to procedure provided by the pledge contract.
- (3) The income received from use of a pledged thing shall be calculated to cover expenses, interest and the debt unless otherwise provided by the contract.

289 - Transfer of possessory pledge together with claim

- (1) Upon transfer of a claim to a new creditor, a possessory pledge also transfers to the new creditor and the new creditor has the right to claim the pledged thing from the pledgee.
- (2) By taking possession of a pledged thing, the rights and obligations of the current pledgee transfer to the new pledgee.
- (3) If upon transfer of a claim it is agreed that a possessory pledge will not transfer, the possessory pledge extinguishes.
- (4) A possessory pledge shall not transfer without a claim.
- (5) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

290 - Return of pledged thing

Upon extinguishment of a possessory pledge, the pledgee is required to return the pledged thing to the pledgor.

291 - Transfer of claim to pledgor

If a debt is paid by the pledgor who is not the debtor, the claim transfers to the pledgor to the extent that the claim is satisfied. In this case, the provisions concerning surety apply.

292 - Creation of right of sale for pledgee

- (1) Satisfaction of a claim of a pledgee is effected by sale of the pledged thing.
- (2) The right to sell a pledged thing is created for the pledgee if a claim secured by the pledge is not satisfied according to the claim.
- (3) Any agreement entered into before the creation of the right of sale whereby the pledgee acquires the pledged thing for satisfaction of a claim secured by the pledge is void.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

293 - Notification of sale

- (1) A pledgee is required to notify the pledgor of the sale of the pledged thing one month in advance. Advance notice may be given after creation of the right of sale.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) Notification specified in subsection (1) of this section may be waived if notification is impossible. In such case, the pledged thing shall not be sold before one month has passed since creation of the right of sale.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) The term specified in subsections (1) and (2) of this section may be disregarded if the pledged object is in danger of perishing and any delay in selling would obviously result in a decrease in the value of the thing or destruction of the thing.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

294 - Sale of pledged thing

- (1) A pledged thing is sold by public auction.
- (2) The time and place of the public auction shall be made known to the pledgor and third persons who have rights in the pledged thing.
- (3) The pledgee and the pledgor may also participate in the public auction. If the thing is sold to the pledgee, the monetary value of the pledgee's claim shall be set off against the selling price.
- (4) The pledgee and the pledgor may agree to sell the pledged thing in a manner different from that specified in subsection (1) of this section. If a third person has a right in the pledged thing which extinguishes upon sale of the thing, the consent of the third person is required to change the manner of sale.
- (5) A pledgee who violates an agreement regarding the manner of sale of the pledged thing is liable for damage arising therefrom.

295 - Money received from sale of pledged thing

- (1) The obligation of a pledgor shall be deemed performed to the extent of the money received from a sale of the pledged thing from which the necessary sale expenses have been deducted.
- (2) The money remaining after payment of the sale expenses and satisfaction of the claim of the pledgee shall be returned to the pledgor.

296 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Division 2 - Registered Security over Movables

Subdivision 1 - General provisions

297 - Definition of registered security over movables

- (1) A patent, trade mark, industrial design, utility model, variety, layout-design of an integrated circuit, motor vehicle or aircraft which is entered in a register the data of which are public and maintenance of which is regulated pursuant to procedure provided by law may be encumbered with a registered security over movables in such a way that the person in whose benefit the registered security over movables is established has the right to satisfaction of the claim secured by the pledge out of the pledged object.

(23.03 2004 entered into force 01.05.2004 - RTI, 02.04.2004, 20, 141)

- (2) A legal share in a pledged object specified in subsection (1) of this section can only be encumbered with a registered security over movables if it is the share of a co-owner.
- (3) A registered security over movables does not presume the existence of a claim to be secured.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

298 - Application of mortgage provisions

The provisions concerning mortgages apply to registered securities over movables unless otherwise provided by law.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

299 - Creation of registered security over movables

- (1) For creation of a registered security over movables, an agreement between the holder of the pledged object and the pledgee concerning encumbrance of the object with a registered security over movables and the making of an entry concerning the pledging in the corresponding register is required.
- (2) Upon registration, the pledgee and the monetary value of the registered security over movables shall be entered in the register.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

300 - Ranking of registered security over movables

- (1) The ranking of a registered security over movables is determined by the time of entry in a register.
- (2) If the applications for registration of pledges established on one and the same object are submitted concurrently, they shall be granted the same ranking and it shall be entered in the corresponding register.

- (3) The provisions of subsections (1) and (2) of this section do not apply if the persons concerned have agreed on a different relationship between the ranking of rights and an entry has been made in the register concerning such agreement.
- (4) The provisions of § 60 of this Act apply correspondingly to changes in the ranking of registered securities over movables.
- (5) An agreement entered into between the holder of a pledged object and the pledgee upon the establishment of a registered security over movables whereby the holder has the right to establish a right on the pledged object the extent of which is determined and the ranking of which is higher than the ranking of the registered security over movables is valid only if an entry concerning the agreement has been made in a register.
- (6) For amendment or deletion of an entry concerning a registered security over movables at the request of the holder of the pledged object, the consent of the persons whose right, entered in the register, is prejudiced by the amendment or deletion of the entry is required.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

301 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

302 - Satisfaction of claims of pledgees

- (1) If a claim secured by a registered security over movables is not performed, the pledgee has the right to demand compulsory execution by compulsory auction.
- (2) Any agreement entered into before a claim secured by a registered security over movables falls due whereby the pledgee acquires the object encumbered with the registered security over movables for satisfaction of the claim secured by the registered security over movables is void.
- (3) An object encumbered with a registered security over movables is sold by public auction pursuant to the procedure provided by law on the basis of an execution document, unless otherwise provided by law.
- (4) Claims are satisfied according to the ranking of pledges unless otherwise provided by law.
- (5) Claims secured by pledges with one and the same ranking are satisfied in proportion to the amount of the claims.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

303 - Access to registered security over movables

Everyone has the right to examine information entered in the register concerning registered security over movables.

304 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

305 - Transfer of pledged object

Consent of the pledgee is required for the transfer of an object encumbered with a registered security over movables.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

306 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Subdivision 2 - Pledge of means of transport

307 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

308 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Subdivision 3 - Commercial pledge

309 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

310 - (Repealed - 05.06.96 entered into force 01.01.97 - RT I 1996, 45, 848)

311 - (Repealed - 05.06.96 entered into force 01.01.97 - RT I 1996, 45, 848)

312 - (Repealed - 05.06.96 entered into force 01.01.97 - RT I 1996, 45, 848)

Subdivision 4 - Pledge of intellectual property

313 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Division 3 - Pledge of Rights

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

314 - Rights as object of pledge

- (1) A proprietary right may be the object of a pledge if it is transferable.
- (2) The provisions of possessory pledge apply to the pledge of rights unless otherwise provided by law. The provisions of subsection 282 (3) of this Act do not apply to the pledge of rights.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

314¹ - Financial Collateral

- (1) Financial collateral shall mean encumbering a security or a financial claim with a right of security or transfer with the purpose of providing a collateral if both the provider of a collateral and the holder of a collateral is:

1) a person or organization specified in clauses 1-7 of subsection 2 of § 6 of the Securities Market Act (RT I 2001, 89, 532; 2002, 23, 131; 63, 387; 102, 600; 105, 612; 2003, 81, 544; 88, 591);

2) person or organization, specified in clause b, subsection 2 of Article 1 of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.06.2002, pp. 43–50);

3) an operator of securities settlement system, specified in subsection 2 of § 214 of the Securities Market Act;

4) any other foreign legal person, resembling the person specified in clauses 1-3 of this subsection, granted the right to be the provider or a holder of financial collateral pursuant to a legal act given by a contracting country of the European Economic Area or the European Union.

- (2) Financial collateral shall also mean encumbering a security or a financial claim with a right of security or transfer with the purpose of providing a collateral if the provider or holder of collateral is a legal person and the other party to the transaction is the person specified in clauses 1-4 of this subsection.
- (3) If the pledgee has exercised his or her right to use the pledged thing, acquired upon the establishment of a pledge, the pledgee is required to replace the pledged things with things of the same type and the same value at the time when the obligation falls due, as latest, if the parties have not agreed otherwise.

(22.04.2004 entered into force 01.05.2004 - RTI, 30.04.2004, 37, 255)

315 - Establishment of pledge

(1) An agreement between the pledgor and the pledgee concerning the establishment of a pledge is necessary for the pledge of a right, unless otherwise provided by law.

(2) An agreement specified in subsection (1) of this section shall be in writing unless otherwise provided by law.

(2¹) Agreement concerning a financial collateral must be concluded in a format which can be reproduced in writing.

(22.04.2004 entered into force 01.05.2004 - RTI, 30.04.2004, 37, 255)

(3) If a pledgee obtains a right to demand fulfilment of a claim and to accept fulfilment in connection with a pledge, the pledgor shall deliver to the pledgee documents certifying the claim and accessory obligations and provide information necessary to file a claim against the debtor.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

316 - Termination and alteration of pledged right

- (1) A pledged right may be terminated by a transaction only with the consent of the pledgee. Consent shall be given to the person in whose benefit the right is terminated. A consent cannot be withdrawn.
- (2) The consent of the pledgee is necessary for the alteration of a pledged right if the alteration results in a decrease of the value of the pledged right or damages the security of the pledgee in some other way. Consent shall be given to the person in whose benefit the right is altered.
- (3) The provisions of subsections (1) and (2) of this section do not extend to the termination or alteration of a share or a share of an investment fund pledged as a right or of other similar rights.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

317 - Notification of pledge of claim

- (1) The pledgor shall notify the debtor of a pledged claim of the pledge of the claim unless otherwise agreed in the pledge contract.
- (2) Notification of a pledge by the pledgor and submission by the pledgee to the debtor of a document concerning the pledge issued by the pledgor have the same consequences as notification of assignment of a claim.
- (3) At the request of the pledgor or pledgee, the debtor shall provide written confirmation of being notified of the pledge.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

318 - Consequences of pledge for debtor upon pledge of claim

If a claim is pledged, the provisions concerning the relationship between the acquirer of the claim and the debtor upon assignment of a claim apply to the legal relationship between the pledgee and the debtor of the pledged claim, unless otherwise provided by law.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

319 - Performance of obligation upon pledge of claim

- (1) If a claim is pledged, a pledgor and a pledgee may, prior to the creation of right of sale, only demand performance of an obligation from a debtor jointly and the debtor may only perform to the pledgor and the pledgee jointly.
- (2) After creation of right of sale, only the pledgee may demand fulfilment of a pledged claim and the debtor may only perform to the pledgee. Performance of an obligation to the pledgee has the same effect as performance to the creditor.

- (3) If a part of a claim is the pledged object, the pledgor shall retain the privilege of satisfaction of the part of the claim which is not encumbered by the pledge in the absence of an agreement stating otherwise and privileged ranking for accessory rights and securities.
- (4) A right of security established on a claim also extends to interest of the pledged claim payable by the debtor and to other accessory claims unless otherwise agreed by the pledgor and the pledgee.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

319¹- Right of advance notice

- (1) If collectability of a pledged claim is contingent upon advance notice, a creditor may give advance notice prior to the creation of right of sale.
- (2) Advance notification by a debtor is valid if advance notice is given to both the pledgee and the creditor.
- (3) After the creation of right of sale (§ 292), advance notice may be given by both a creditor and a pledgee. In the case of a debtor, advance notification of the pledgee is sufficient.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

319²- Permissibility of Different Agreement

- (1) A pledgor and a pledgee may agree on a manner of selling the pledged object which differs from that provided by law. If a third person has a right in the pledged object which extinguishes upon sale of the object, the consent of the third person is required to change the manner of sale.
- (2) An agreement cannot derogate from the provisions of subsection 292 (3) of this Act, except in case of financial collateral specified in § 314¹ of this Act and where the agreement of the parties shall provide for the determination of the value of the pledged thing.
- (3) If an agreement specified in subsection 2 of this Article was concluded upon the establishment of a financial collateral, a claim secured by a pledge is deemed to be satisfied within the scope of the agreed value of the pledged thing upon creation of right of sale.

(22.04.2004 entered into force 01.05.2004 - RTI, 30.04.2004, 37, 255)

319³- Promotion of performance

- (1) If performance is due to the pledgee and the creditor jointly and the claim is collectable, the pledgee and the creditor shall be required to accept performance jointly.

- (2) If a pledgee has the right to collect a claim independently, the pledgee shall act in a reasonable manner and with due diligence. A pledgee shall promptly notify a creditor of collection.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

319⁴- Effect of performance

If a debtor performs an obligation pursuant to subsection 319 (1) or (2) of this Act, the creditor acquires the object received as a result of the performance and the pledgee acquires the right of security on the object. If performance involves the transfer of ownership of an immovable, the pledgee has the right to the mortgage; if performance involves the transfer of ownership of a registered ship or a ship under construction, the pledgee has the right to the maritime mortgage.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

319⁵- Deposit of sums collected

- (1) If a financial claim is collected pursuant to subsection 319 (1) of this Act, the sum received shall be deposited for the benefit of the pledgee so that the pledgee acquires a right to the deposited amount on the date of the creation of the right of sale pursuant to § 292 of this Act.
- (2) If a financial claim is collected pursuant to subsection 319 (2) of this Act, the pledgee shall keep the amount collected in the extent necessary for the satisfaction of the claim of the pledgee. The pledgee shall deliver the remaining amount to the pledgor.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

319⁶- Sale of other rights

Other pledged rights are sold pursuant to the provisions concerning possessory pledges.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

319⁷- (Repealed 22.04.2004 entered into force 01.05.2004 - RTI, 30.04.2004, 37, 255)

Division 4 - Right of Retention

320-324 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Chapter 3 - Real Security

Division 1 - Mortgage

Subdivision 1 - Definition, creation and extinguishment

325 - Definition of mortgage

- (1) An immovable may be encumbered with a mortgage such that the person for whose benefit the mortgage is established (mortgagee) has the right to satisfaction of a claim secured by the mortgage out of the pledged immovable.
- (2) A legal share of an immovable may be encumbered with a mortgage only if it is the share of a co-owner.
- (3) A mortgage shall not be established only on a physical share of an immovable or a part of the legal share of a co-owner.
- (4) A mortgage does not presume the existence of a claim to be secured.
- (5) If a claim secured by a mortgage terminates due to termination of the legal person who was a debtor, the claim is deemed to remain in force with regard to the owner of the immovable encumbered with the pledge.

(22.01.2003 entered into force 01.01.2004 - RT I 2003, 17, 95)

326 - Form of agreement to establish mortgage

A real right contract entered into for the establishment of a mortgage shall be notarised.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

327 - Entry of mortgage

A land register entry concerning establishment of a mortgage shall set out the mortgagee and the monetary amount of the mortgage (sum of mortgage).

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

328 - Original owner mortgage

- (1) The owner of an immovable may establish a mortgage for the owner's benefit.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

- (2) The establishment of an owner mortgage is effected by making an entry in the land register on the basis of a notarised application of the owner.

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

329 - Discharge of mortgage by mortgagee

- (1) If a mortgagee discharges the mortgage, the owner of the encumbered immovable acquires the mortgage. For discharge, an entry shall be made in the land register on the basis of a notarised application of the mortgagee.

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

- (2) If a mortgagee partly discharges the mortgage, the provisions of subsection 349 (2) apply.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

330 - Termination of mortgage

Notarised consent of the owner of the immovable is required for termination of a mortgage. Consent shall be granted to a land registry department or the mortgagee. Consent cannot be withdrawn.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

331 - Termination of mortgage on demand of owner

- (1) If the residence or location of a mortgagee is not known, the owner of the encumbered immovable may demand that the mortgage be deleted or changed to an owner mortgage if the owner has the right to satisfaction of the claim and the owner deposits the entire sum of the mortgage.
- (2) Interest shall be deposited if the interest rate is entered in the land register but not more than three years interest from the date the owner of an immovable submits an application to the court for deletion of the mortgage or changing of the mortgage to an owner mortgage.
- (3) If a claim specified in subsection (1) of this section is filed, the court shall determine the term for submission of objections and shall publish a corresponding announcement. If no objections are filed within the set term or objections are rejected, the court shall issue an order to delete the mortgage which shall be the basis for the making of the entry in the land register.
- (4) The mortgagee has the right to receive the deposited money within ten years after the date of deletion of the mortgage or changing of the mortgage to an owner mortgage. If the mortgagee does not withdraw the money within this period, the owner of the immovable has the right to get it back.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

332 - Deletion of owner mortgage on demand of mortgagee

- (1) If one and the same person becomes the owner of a mortgage and the encumbered immovable, the same or a lower ranking mortgagee may demand deletion of such mortgage.
- (2) The provisions of subsection (1) of this section are not valid concerning a mortgage created pursuant to section 328.
- (3) The demand provided for in subsection (1) of this section is not valid with respect to the mortgage if the entry shows its invalidity with respect to the given mortgage.
- (4) A preliminary notation may be entered in the land register after the creation of an owner mortgage in order to secure a claim specified in subsection (1) of this section.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Subdivision 2 - Content

Sub-subdivision 1 - General provisions

333 - Rights of owner of encumbered immovable

The owner of an immovable encumbered with a mortgage has the right to possess, use and dispose of the encumbered immovable if thereby the owner does not decrease the value of the encumbered immovable or damage the rights of the mortgagee in any other manner except if this occurs as a result of regular management.

334 - Rights of mortgagee to prevent decrease in value of immovable

- (1) If the value of an encumbered immovable decreases as a result of the activities of the owner, the mortgagee has the right to demand that the owner of the immovable terminate further harmful activity.
- (2) A mortgagee may perform acts necessary for prevention of a decrease in value of an encumbered immovable pursuant to a court judgment. The mortgagee may also perform such acts without a court judgment if a delay would significantly reduce the value of the encumbered immovable.
- (3) The mortgagee has the right to demand reimbursement of expenses relating to the acts specified in subsection (2) of this section. In order to secure reimbursement of the expenses relating to the specified acts, a mortgage which is not entered in the land register and which has the same ranking as the mortgage of the mortgagee belongs to the mortgagee.

335 - Rights of mortgagee upon decrease in value of immovable

- (1) If a decrease in value of an encumbered immovable can be presumed or if it has already occurred, the mortgagee may demand restoration of the former state or additional security from the owner of the immovable.
- (2) If the owner of an immovable does not restore the former state or give additional security on the demand of the mortgagee, the mortgagee may demand satisfaction of a claim secured by the mortgage to the extent by which the value of the encumbered immovable has decreased. Notice of the demand for satisfaction shall be given one month in advance.
- (3) If the value of an encumbered immovable decreases by no fault of the owner, the mortgagee may demand additional security or partial payment of the debt to the extent the owner of the immovable is compensated for the decrease in value.

336 - Reduction in value of accessories

Reduction in value or severance from the immovable in breach of the demands of regular management of accessories of an encumbered immovable grants a mortgagee the same rights as upon decrease in value of the immovable.

337 - Disposal of encumbered immovable

- (1) Waiver by an owner of the right to transfer or additionally encumber an immovable encumbered with a mortgage is invalid.
- (2) If after establishment of a mortgage a servitude or real encumbrance is established on the same immovable without the consent of the mortgagee, the mortgage is preferred to the servitude or real encumbrance established later. Such servitude or real encumbrance shall be deleted to the extent it damages exercise of the mortgage.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

338 - Disposal of mortgage

- (1) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (2) A notarised agreement between the mortgagee and the acquirer of the mortgage and the making of an entry in the land register are required for transfer of a mortgage.

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565; 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) A mortgage is pledged as a whole. A notation concerning the pledgee is made in the land register with regard to pledging..

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

338¹ - Pledge of mortgage

- (1) Provisions concerning the pledge of claims apply correspondingly to the pledge of a mortgage.
- (2) Upon the pledge of a claim secured by a mortgage, the pledgee also has the right to demand the pledge of the mortgage securing the claim unless otherwise agreed by the parties.
- (3) Upon creation of the right of sale, a pledgee is entitled to exercise the rights of a mortgagee.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

339 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Sub-subdivision 2 - Ranking

340 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

341 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Sub-subdivision 3 - Extent of Mortgage

342 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

343 - Extent of mortgage to immovables

- (1) A mortgage extends to the parts, accessories and fruits of an immovable. A mortgage does not extend to the accessories of an immovable which are not in the ownership of the owner of the immovable.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) A mortgage does not extend to accessories, parts and natural fruits which before seizure of the immovable are transferred according to regular management or permanently severed from the immovable.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

344 - Extension of mortgage to commercial and residential lease claims

If an immovable encumbered with a mortgage is leased commercially or residentially, the mortgage also extends to a claim under the commercial or residential lease which is created within the period between seizure of the immovable or declaration of insolvency of the debtor and sale of the immovable, or which is created within one year before seizure of the immovable or declaration of insolvency of the debtor and is uncollected.

345 - Extent of mortgage to insurance proceeds

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (1) If an immovable encumbered with a mortgage is insured, the mortgage also extends to a claim for insurance proceeds.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (3) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)
- (4) (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

Sub-subdivision 4 - Satisfaction of claims

346 - Extent of claims

- (1) A mortgage secures a claim, the unpaid interest on the claim within three years before sale of the immovable by compulsory auction or declaration of bankruptcy, the fine for delay and expenses for the collection of the debt, the insurance premiums paid by the mortgagee on behalf of the owner of the immovable, and other collateral claims.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) An agreement determining which claim is secured by a mortgage shall be notarised.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

347 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

348 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

349 - Transfer of mortgage to owner

- (1) If a claim secured by a mortgage is satisfied or a claim is not created, the actual owner of the encumbered immovable may demand entry of the mortgage in the name of the owner or its deletion, unless otherwise agreed.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (2) If a claim secured by a mortgage is partially satisfied, the actual owner of the encumbered immovable may demand entry of a partial mortgage in the land register for the owner's benefit to the extent the claim was satisfied, or deletion of the mortgage.

- (3) If a debt is paid by the owner of an immovable encumbered with a mortgage and the owner is not the debtor, the claim transfers to the owner to the extent that it was satisfied. In this case, the provisions concerning surety apply.

350 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

351 - Objections of owner of immovable

- (1) The owner of an immovable may only present objections against a mortgagee which are based on a land register entry or which the owner has on the basis of the law of obligations against the creditor who presented a claim for payment.
- (2) The owner of an immovable may also present objections specified in subsection (1) of this section to a legal successor of the creditor or a person to whom the mortgagee transferred the mortgage (section 338).
- (3) The owner of an immovable encumbered with a mortgage who is not the debtor may present the same objections against a claim secured by the mortgage which may be presented by the debtor or a surety. The owner may also present objections if the debtor does not contest the claim.

352 - Compulsory execution

- (1) If a claim secured by a mortgage is not performed, the mortgagee has the right to demand compulsory execution either by compulsory auction or compulsory administration.
- (2) Any agreement entered into before a claim secured by a mortgage falls due whereby the mortgagee acquires the immovable encumbered with the mortgage for satisfaction of the claim secured by the mortgage is void.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) An immovable encumbered with a mortgage is sold by public auction on the basis of a court judgment.
- (4) The procedures for compulsory auction and compulsory administration shall be provided by law.

353 - Order of satisfaction of claims of mortgagees

- (1) The claims of mortgagees secured by a mortgage for the satisfaction of which a compulsory execution is carried out are satisfied from the money received from the compulsory execution of the immovable according to the ranking of the mortgages.
- (2) A claim of a subsequent ranking secured by a mortgage is satisfied after satisfaction of the claim of the preceding ranking secured by a mortgage.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

- (3) Claims which have one and the same ranking and are secured by mortgages are satisfied concurrently and in proportion to the amount of the claims.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

- (4) (Repealed - 17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

354 - Particulars of owner mortgage upon compulsory execution

- (1) In the case of an owner mortgage, the owner of an encumbered immovable shall not demand compulsory execution for satisfaction of the claim of the owner.
- (2) An owner has the right to receive interest on a claim secured by a mortgage only if the immovable is in compulsory administration and only during the compulsory administration period.

Sub-subdivision 5 - Division and merger of mortgage

355 - Partial mortgage

- (1) A mortgage may be divided into parts.
- (2) The consent of the owner is not required for division of a mortgage into parts or for an exchange of ranking among partial mortgages.
- (3) Partial mortgages assume the ranking of the current mortgage.

356 - Division of immovable encumbered with mortgage

- (1) A notarised agreement between the mortgagee and the owner of the immovable is required for division of an immovable encumbered with a mortgage.
- (2) A mortgage shall remain valid with respect to the immovables created as a result of a division according to the agreement specified in subsection (1) of this section.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

357 - (Repealed - 15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

358 - Transfer of mortgage

- (1) In the case of land readjustment or replanning by the state or a local government, mortgages which encumber immovables to be surrendered are transferred in their current rankings to the immovables to be granted in replacement.

- (2) If upon expropriation of an immovable encumbered with a mortgage the immovable is replaced by another, the mortgages which encumbered the expropriated immovable are established on the replaced immovable according to their current rankings.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

- (3) If several immovables which are encumbered with several mortgages or of which some are not encumbered with mortgages are merged into one immovable, the mortgages are transferred to the merged immovable and their current rankings are preserved as much as possible.

Sub-subdivision 6 - Combined mortgage

359 - Definition of combined mortgage

- (1) One mortgage may encumber several immovables. In this case, each immovable is liable for the entire claim secured by the mortgage.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

(1¹) With regard to a combined mortgage, the legal share of a co-owner in an immovable is deemed to be an immovable

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

- (2) Upon establishment of a combined mortgage, the land register shall indicate with respect to each immovable being encumbered the other immovables encumbered with the combined mortgage.

360 - Satisfaction of claim secured by combined mortgage

- (1) A mortgagee has the right to complete or partial satisfaction of a claim out of any immovable encumbered with a combined mortgage.
- (2) A mortgagee may divide the sum of the mortgage between the encumbered immovables and shall determine the extent to which each immovable is liable for the mortgage. In this case, the provisions concerning division of an immovable encumbered with a mortgage apply (section 356).

361 - Satisfaction of claim by owner of one immovable

- (1) If the owner of an immovable encumbered with a combined mortgage satisfies the claim of the mortgagee, the owner may demand entry of the combined mortgage which encumbers the owner's immovable in the name of the owner. Combined mortgages on the other immovables shall be deleted.
- (2) If the owner of an immovable who satisfied the claim of the mortgagee may demand compensation from the owners of the other immovables encumbered with the combined mortgage, the owner may also demand entry of the

combined mortgages which encumber the other immovables in the name of the owner to the extent of the compensation.

(15.01.2003 entered into force 01.07.2003 - RT I 2003, 13, 64)

362 - Combined mortgage of owner

- (1) If a claim for the securing of which a combined mortgage is established is not created or terminates or if the mortgagee discharges the combined mortgage, the owners of the immovables encumbered with the combined mortgage may demand entry of the combined mortgage in the land register in their names jointly.
- (2) In the case specified in subsection (1) of this section, each owner of an immovable encumbered with the combined mortgage may demand that the immovable of the owner be encumbered with an owner mortgage in proportion to the value of the immovable of the owner, unless otherwise agreed (section 356).

Division 2 - Judicial Mortgage

363 - Definition of judicial mortgage

- (1) To secure an action, a court may establish a mortgage to the extent of the claim of the action which shall be entered in the land register as a judicial mortgage.
- (2) A claim allowed on the basis of a court judgment is secured by a judicial mortgage.

363¹ - Judicial mortgage with regard to several immovables

If a judicial mortgage is established with regard to several immovables of an owner, the secured claim shall be divided between the immovables in shares as determined by the creditor.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

364 - Application of mortgage provisions

The provisions concerning mortgage apply to other aspects of a judicial mortgage.

(17.02.99 entered into force 01.04.99 - RT I 1999, 27, 380)

Part 9 - Implementation of Act

365 - Entry into force of Act

This Act enters into force pursuant to the procedure and under the conditions prescribed in the implementation Act of this Act.

¹ RT = *Riigi Teataja* = *State Gazette*

² *Ametlikud Teadaanded* = *Official Notices*