

# Code of Real Estate

(540/1995; AMENDMENTS UP TO 964/1998 INCLUDED)

## Part 1 — **ACQUISITION OF REAL ESTATE**

### Chapter 1 — **General Provisions**

#### Section 1 — *Conveyance of Real Estate*

Title to real estate is acquired by sale, trade, gift or other conveyance, as provided in this Code. Separate provisions apply to the acquisition of real estate by inheritance, will, distribution of matrimonial assets, expropriation or otherwise not by conveyance.

#### Section 2 — *Conveyance of Part of Real Estate*

The provisions on the conveyance of real estate apply also to the conveyance of a share and a parcel of real estate, a common, a parcel and a share of a common.

### Chapter 2 — **Sale of Real Estate**

#### Section 1 — *Form of Deed of Sale*

- (1) A sale of real estate shall be concluded in writing. The seller and the buyer or their attorneys shall sign the deed of sale. A notary shall attest the sale in the presence of all the signatories of the deed of sale.
- (2) The deed of sale shall indicate:
  - (1) the intent to convey;
  - (2) the real estate to be conveyed;
  - (3) the seller and the buyer; and
  - (4) the price or other consideration.
- (3) The sale shall not be binding unless it is concluded as provided in this section. If the seller and the buyer have agreed on a price or other consideration in excess of that taken into the deed of sale, the seller shall not have the right to collect the excess amount.

#### Section 2 — *Cancellation and Suspension Clauses*

- (1) A clause may be taken into the deed of sale to the effect that the sale can be cancelled for a reason not mentioned in this Code or that the seller retain title to the real estate until the price has been paid or another condition fulfilled.
- (2) A clause referred to in paragraph (1) above shall not be binding unless it has been taken into the deed of sale, nor in so far as it is intended to remain valid for longer than five years from the conclusion of the sale. If no validity period for the clause has been taken into the deed of sale, the clause shall remain valid for five years. An action for the return of the real estate to the seller shall be brought at the latest in three months from the end of the validity of the clause.

#### Section 3 — *Power of Attorney*

The power of attorney for a sale of real estate shall be in writing. The seller shall sign the power of attorney, which shall indicate the attorney and the real estate to be sold.

#### Section 4 — *Sale in Name of Company to Be Established*

- (1) If a sale of real estate has been concluded in the name of a limited-liability company to be established and the company has not become responsible for the sale within two years of its conclusion, or the establishment of the company has been discontinued before that time, the person concluding the sale in the name of the company shall be deemed the buyer.
- (2) The seller shall forfeit his right to renounce the sale, as provided in chapter 2, section 14(3) of the Limited-Liability Companies Act (734/1978), if no action for the same has been brought within two years of the conclusion of the sale.

#### Section 5 — *Agreement on Cancellation of Sale*

An agreement on the cancellation of a sale of real estate or the return of the real estate to the seller shall be concluded in accordance with the provisions in sections 1 and 3.

#### Section 6 — *Notary*

- (1) Provisions on notaries and their duties are issued by Decree.
- (2) The provisions in chapter 17, section 43 of the Code of Judicial Procedure on the disqualification of witnesses apply to the disqualification of notaries.
- (3) Provisions on the charges for the performances of notaries and the compensation for their travel expenses are issued by Decree. The charges shall be fixed at the average cost incurred to the State by the performance of the pertinent duties. A public official shall forward the payment to the State or the municipality in question. Otherwise, the provisions of the Act on the Charge Criteria of the State (150/1992) apply.

#### Section 7 — *Precontract*

- (1) The parties may conclude a precontract on an intended sale of real estate. The precontract may be binding on one of the parties only.
- (2) The precontract shall be concluded in accordance with the provisions in sections 1 and 3; also the other provisions on the sale of real estate apply to a precontract, where applicable. The precontract shall also indicate the deadline for the conclusion of the sale of real estate and the conditions whose fulfillment triggers the sale. However, the price and other consideration may be left to be agreed later, on the basis referred to in the precontract. If the time of validity of the precontract has not been indicated, it shall be five years from the conclusion of the precontract.
- (3) A party to the precontract shall have the right to bring an action within the time limit provided in section 2(2) and demand that the other party conclude the sale as agreed in the precontract. Furthermore, a party shall have the right to due compensation for breach of precontract. If the real estate has in breach of the precontract been conveyed to a third party, the buyer referred to in the precontract shall have the right to due compensation from the seller.

#### Section 8 — *Compensation for Non-conclusion of Sale*

If the parties have agreed on a sale of real estate, but the agreement has not been concluded in accordance with section 7(2), the party liable for the non-conclusion of the sale shall compensate the other party for the reasonable costs incurred by advertising, visiting the real estate and the other activities necessary for the conclusion of the sale. If a down payment has been made, the part exceeding the costs referred to above shall be returned.

#### Section 9 — *Freedom of Agreement*

- (1) The seller and the buyer shall fulfill their obligations as agreed, unless otherwise provided below.
- (2) The rights and obligations of the seller and buyer provided in this Code may be derogated from by agreement. The rights of the buyer provided in sections 17–34 may be restricted only by an agreement which indicates in detail how the status of the buyer differs from that provided by law.

### Section 10 — *Acquisition of Residential Real Estate from Merchants*

If the buyer has acquired real estate to serve as residence or leisure residence for himself or his family, from a merchant who develops or sells real estate professionally:

- (1) a clause derogating from the provisions in sections 17-34 to the detriment of the buyer shall not be binding;
- (2) the seller cannot invoke the time limit provided for a notice in section 25(2);
- (3) the seller shall be liable to compensate for repair costs, other necessary costs and the costs of measures that have become unnecessary due to a breach of contract, even if the matter concerns a hidden defect referred to in section 17(1), or if the seller can prove that his conduct has been careful;
- (4) the buyer's liability for compensation may be adjusted, if late payment is a result of insolvency arising from illness, unemployment or other special circumstance which is not primarily the fault of the buyer.

### Section 11 — *Invalid Clauses*

- (1) Unless otherwise provided, the following clauses shall not be binding in a sale of real estate:
  - (1) a clause under which the seller or a third party has the right to redeem the real estate at will or under which the seller or a third party has the right of first refusal before the real estate is conveyed to a new titleholder;
  - (2) a clause which restricts the right of the buyer to reconvey the real estate, to raise a lien over it, to agree on a lease on or other special right to it or to otherwise dispose of it in a comparable manner;
  - (3) a clause which restricts the liability of the seller or a previous titleholder in cases of contesting of title; and
  - (4) a clause which restricts the personal freedom of the buyer or is otherwise improper or illegal.
- (2) Without prejudice to paragraph (1)(2) above, a clause under which the buyer cannot without the consent of the seller reconvey undeveloped real estate or sell it below a set price shall be allowed. Such a clause shall not be binding unless it is taken into the deed of sale. The provision in section 2(2) applies to the time of validity of the clause.
- (3) Section 36 of the Contracts Act applies to the adjustment of an unreasonable clause.

### Section 12 — *Seller's Obligation to Convey*

- (1) If the time of conveyance has not been set, the buyer shall have the right to gain possession of the real estate at once after the conclusion of the sale. The real estate shall be conveyed to the buyer in the condition that is to be deemed agreed upon.
- (2) The seller shall hand over to the buyer those title documents in his possession that are necessary for the registration of title. The same applies to mortgage instruments, lease agreements and other comparable documents that are necessary for the buyer as the titleholder of the real estate.

### Section 13 — *Produce of Real Estate During Seller's Possession*

- (1) The produce gained from real estate prior to the agreed time of conveyance shall belong to the seller. However, the seller shall not take timber or extract land resources in excess of the domestic use of the real estate sold, nor attach special rights to it.
- (2) The buyer shall not dispose of the real estate so that the use of the rights due to the seller by virtue of paragraph (1) or by virtue of agreement is precluded.

### Section 14 — *Use of Real Estate Before Transfer of Title*

- (1) The buyer may after the conclusion of the sale use the real estate and dispose of it, as well as reconvey his right, even if the retention or transfer of title has in the deed of sale been made conditional.
- (2) However, prior to the final transfer of title the buyer shall not without the consent of the seller take timber or extract land resources or other things affixed to the real estate so that its value diminishes significantly. Furthermore, the buyer shall not

raise liens over or attach special rights to the real estate without the consent of the seller.

Section 15 — *Liability for Public Debts*

- (1) The seller shall be liable for debts and fees under public law and for other similar debts incurred prior to the conclusion of the sale.
- (2) The buyer shall be liable for the transfer-of-assets tax levied on the sale. (933/1996)

Section 16 — *Risk of Damage to Real Estate*

Damage caused to real estate by fire, storm, criminal damage or other reason not dependent on the seller after the conclusion of the sale shall be at the risk of the buyer, even if the seller retains possession of the real estate or the retention or transfer of title has in the deed of sale been made conditional.

Section 17 — *Defect in Quality*

- (1) Real estate shall have a defect in quality if:
  - (1) the characteristics of the real estate are not as agreed;
  - (2) the seller has prior to the conclusion of the sale provided the buyer with false or misleading information on the area of the real estate, the condition or structure of the buildings, or other characteristic of the real estate pertinent to its quality and there is reason to believe that the information has had an effect on the sale;
  - (3) the seller has prior to the conclusion of the sale failed to provide the buyer with information on a characteristic referred to in subparagraph (2), which typically has an effect on the use or value of similar real estate and of which the seller knew or should have known, and there is reason to believe that the failure has had an effect on the sale;
  - (4) the seller has prior to the conclusion of the sale noticed but failed to rectify the buyer's misconception of a characteristic having an effect on the intended use of the real estate; or
  - (5) due to a hidden defect, the real estate is of significantly lower quality than what can justifiably be expected in view of the price and the other circumstances.
- (2) In case of a defect in quality the buyer shall have the right to a price reduction or, in case of an essential defect, to cancel the sale. Furthermore, in case of a defect referred to in paragraph (1)(1)-(4) the buyer shall have the right to due compensation.

Section 18 — *Defect in Possession*

- (1) Real estate shall have a defect in possession if:
  - (1) the seller has prior to the conclusion of the sale provided the buyer with false or misleading information on a current plan, building prohibition, conveyance restriction or other official decision restricting the use or possession of the real estate and there is reason to believe that the information has had an effect on the sale;
  - (2) the seller has prior to the conclusion of the sale provided false or misleading information on an official permit or decision relating to the use of adjoining real estate and there is reason to believe that the information has had an effect on the sale;
  - (3) the seller has prior to the conclusion of the sale failed to provide the buyer with information on a decision, or a permit or decision in his knowledge, referred to in subparagraph (1) and (2), respectively, which typically has an effect on the use or value of similar real estate, and there is reason to believe that the failure has had an effect on the sale;
  - (4) the seller has prior to the conclusion of the sale noticed but failed to rectify the buyer's misconception of a decision referred to in subparagraphs (1) and (2) or a comparable circumstance, which prevent the buyer from using or possessing the real estate as intended;
  - (5) the necessary permit for a building on the real estate or for the activity carried out on the real estate has not been obtained; or

- (6) a share or a parcel of the real estate cannot due to the restrictions in chapter 4 of the Real Estate Formation Act (554/1995) be formed into a new real estate or, when the share or parcel has been acquired for building purposes, into a new real estate to be used as a building site.
- (2) In case of a defect in possession the buyer shall have the right to a price reduction or, in case of an essential defect, to cancel the sale. Furthermore, the buyer shall have the right to due compensation.

#### Section 19 — *Defect in Title*

- (1) Real estate shall have a defect in title if:
  - (1) the buyer may lose title to the real estate in favour of the rightful titleholder or the sale may be voided upon the request of a third party;
  - (2) the seller has prior to the conclusion of the sale provided the buyer with false or misleading information of the registered titleholder, a lien over, lease on or other special right to the real estate in favour of a third party, or the ownership of a building, facility, or other object customarily affixed to the real estate, and there is reason to believe that the information has had an effect on the sale;
  - (3) the seller has prior to the conclusion of the sale failed to provide the buyer with information referred to in subparagraph (2) and there is reason to believe that the failure has had an effect on the sale; or
  - (4) the buyer cannot have his title registered due to the title documents of the seller being defective or incomplete, or due to another irregularity in the acquisition of the seller.
- (2) The buyer may invoke a defect in title also if a third party claims that he has a right referred to in paragraph (1) and there are likely grounds for the validity of the claim.
- (3) In case of a defect in title the buyer shall have the right to a price reduction or, in case of an essential defect, to cancel the sale. Furthermore, the buyer shall have the right to due compensation.

#### Section 20 — *Information Provided by Third Parties*

- (1) The seller shall be responsible also for the information provided by a real estate agent or other representative acting on his behalf and for the failure of such persons to provide information.
- (2) Separate provisions are enacted on the liability of a real estate agent for compensation and on the information that a real estate agent or a merchant is to provide when advertising real estate for sale.

#### Section 21 — *Timing of Defects*

- (1) Any defects in real estate shall be determined on the basis of the condition of the real estate at the conclusion of the sale. The seller shall be responsible for a defect extant at that time, even if the defect becomes apparent only later.
- (2) The buyer shall not invoke a defect which the seller has rectified prior to the transfer of the possession of the real estate to the buyer.

#### Section 22 — *Buyer's Knowledge of Defects*

- (1) The buyer shall not invoke a defect in quality which could have been noticed in an inspection of the real estate prior to the conclusion of the sale. The buyer need not verify, without a special reason, the correctness of the information on the real estate provided by the seller, nor extend the inspection to such circumstances whose inspection requires technical or other extraordinary measures.
- (2) The buyer shall not invoke a defect of which he must have known at the conclusion of the sale.
- (3) The seller shall not be released from responsibility by virtue of paragraphs (1) and (2) if his own conduct has been in bad faith or grossly negligent.

#### Section 23 — *Criminal Damage and Wrongful Use*

- (1) If the seller has after the conclusion of the sale neglected the appropriate maintenance of the real estate, wrongfully used it or otherwise caused damage to it through negligence, the buyer shall have the right to a price reduction or, if the

damage is essential, to cancel the sale. Furthermore, the buyer shall have the right to due compensation.

- (2) If the seller has after the conclusion of the sale wrongfully raised a lien over or attached a special right to the real estate, the provision in paragraph (1) applies.

#### Section 24 — *Seller's Failure to Perform*

If the seller does not fulfill a building obligation or other performance obligation connected to a sale of real estate, the buyer shall have the right to a price reduction or, if the failure is essential in view of the entire sale, to cancel the sale. Furthermore, the buyer shall have the right to due compensation.

#### Section 25 — *Notice of Defects*

- (1) The buyer shall not invoke a defect if he does not give notice of it and of his claims based on it to the seller in a reasonable time from finding out about the defect or from the time when he should have found out about it. The same applies if the buyer wants to invoke a breach of contract referred to in section 23 or 24.
- (2) If the buyer does not give notice of a defect in quality or a breach of contract referred to in section 23(1) or section 24 within five years from the transfer of the possession of the real estate, he shall forfeit his right to do so.
- (3) The seller shall not be released from responsibility by virtue of paragraphs (1) and (2) if his own conduct has been in bad faith or grossly negligent.

#### Section 26 — *Claims against Merchants*

- (1) If the buyer has acquired real estate to serve as residence or leisure residence for himself or his family, he shall have the right to make a claim based on a defect in quality, instead of the seller, against:
  - (1) a merchant who develops or sells real estate professionally and who has conveyed the real estate to the seller or a previous titleholder for the purpose referred to above; or
  - (2) a building element dealer, developer or other merchant who is responsible for defects to the seller or a previous titleholder by virtue of an agreement or chapter 9 of the Consumer Protection Act.
- (2) A merchant shall be responsible, by virtue of this section, only for defects for which he would have been responsible to his counterpart, and only to the extent of his liability towards that counterpart. The merchant shall be released from responsibility if compensation for the defect has been paid to a previous titleholder of the real estate or if the titleholder has due to a failure to give notice of the defect forfeited his right to invoke it.
- (3) The buyer shall give notice of a defect that he has found out about and his claim based on it to the merchant. The provisions in section 25(1) and (3) apply to the notice of defect.

#### Section 27 — *Seller's Delay*

- (1) If the seller does not transfer the possession of real estate at the time agreed, the buyer shall have the right to demand that the agreement be fulfilled or, if the delay is essential and the buyer will not accept possession of the real estate, that the sale be cancelled. Furthermore, the buyer shall have the right to due compensation.
- (2) If the seller does not hand over the documents referred to in section 12(2) to the buyer at the time agreed, the provision in paragraph (1) applies.

#### Section 28 — *Buyer's Delay*

- (1) If the buyer does not pay the price, a part thereof or other agreed consideration at the time agreed, the seller shall have the right to demand that the agreement be fulfilled and, in addition, the payment of compensation. If the delay is essential and the buyer does not pay the full price, the seller may cancel the sale and demand compensation provided that it has been agreed in the deed of sale that the payment of the price is a condition on the retention or transfer of title to the real estate.
- (2) If the buyer's payment delay is a result of a legal provision, an interruption in communications or other similar *force majeure*, which the buyer cannot reasonably be expected to overcome, the seller shall not have the right to compensation or cancellation of sale.

- (3) The Interest Act (633/1982) applies to the right of the seller to interest for delay.

#### Section 29 — *Buyer's Anticipatory Breach*

- (1) Even if the price or a part thereof has not yet become due and payable, the seller shall have the right to cancel the sale, if it has in the deed of sale been agreed that payment is a condition for the retention or transfer of title and if:
  - (1) the buyer has after the conclusion of the sale been declared bankrupt;
  - (2) the buyer has after the conclusion of the sale been found without means in execution proceedings; or
  - (3) it is otherwise evident that the buyer will not fulfill his obligation to pay.
- (2) However, the seller shall not cancel the sale unless the part of the price remaining unpaid is essential or if an acceptable security for its payment is given in a reasonable time after an exhortation to pay. Furthermore, if the sale is cancelled, the seller shall have the right to due compensation.

#### Section 30 — *Right to Withhold Performance*

- (1) If the buyer has a claim based on the seller's breach of contract, the buyer may withhold payment of the price for the part corresponding to his claim.
- (2) If the seller has a claim based on the buyer's breach of contract, the seller shall have the right to withhold possession of the real estate. If the seller has retained possession of the real estate, he may continue using the real estate as provided in section 13.

#### Section 31 — *Price Reduction*

- (1) A price reduction shall be calculated by subtracting the value of the defective real estate at the conclusion of the sale from the agreed price. If the agreed price is not equal to the market value of the real estate, in the agreed condition, the price reduction shall be calculated taking into account the ratio between the agreed price and the market price.
- (2) The seller shall return the part of the price constituting the price reduction with interest, as provided in section 3(2) of the Interest Act, said interest as from the date when the seller received payment of the price.

#### Section 32 — *Compensation*

- (1) *Due compensation* shall mean full compensation for any damage incurred by a breach of contract.
- (2) If the seller shows that a defect or a breach of contract referred to in section 24 is not due to his negligence, the seller shall not be liable for compensation.
- (3) The compensation may be adjusted, if it is unreasonable in view of the reason of the breach of contract, the opportunity of the party causing the damage to prevent it, the contribution of the other party and the other circumstances.

#### Section 33 — *Cancellation of Sale*

- (1) If the sale is cancelled, the buyer shall return the real estate to the seller and the seller shall return the price already paid to the buyer.
- (2) If the buyer has gained noteworthy profit or benefit from the real estate, he shall compensate the seller for the same. The seller shall pay a reasonable compensation to the buyer for the necessary expenses incurred by the maintenance of the real estate and for those useful expenses that have added to the value of the real estate. The seller shall return the price already paid with interest, as provided in section 3(2) of the Interest Act, said interest as from the date when the seller received payment of the price.
- (3) The buyer shall have the right to remove, within a reasonable time, the buildings and facilities that he has built, where these are not necessary for the regular use of the real estate and where their removal does not cause significant damage to the real estate.
- (4) A party may withhold his own return performance until the other party fulfills his obligations and pays the compensation and interest for which he is liable, or gives an acceptable security for their payment.

#### Section 34 — *Restrictions to Right to Cancel*

- (1) The buyer shall have the right to cancel the sale only if he can return the real estate to the seller.
- (2) A buyer who has attached a special right to the real estate, or whose activity or failure to act has decreased the value of the real estate, may cancel the sale only if he compensates the seller by an amount corresponding to the decrease in value. If the real estate is encumbered by a lien raised by the buyer, the buyer may cancel the sale only after paying to the seller the amount recoverable on the basis the lien.
- (3) The sale shall not be cancelled unless the pertinent action has been brought within ten years from the transfer of possession of the real estate. The provisions in this section are without prejudice to the right of the buyer to claim for his rights if his acquisition has been voided.

### Chapter 3 — **Contesting of Title and Permanence of Special Rights in Sales of Real Estate**

#### Section 1 — *Contesting of Title*

- (1) The rightful titleholder of real estate may demand that the acquisition of the buyer be voided on the basis of a defect encumbering the acquisition of the seller and that the real estate be returned to the rightful titleholder.
- (2) Chapter 13, sections 4, 5, 9, and 10 contain provisions on the grounds precluding the contesting of title.

#### Section 2 — *Liability of Previous Titleholders*

A buyer who has lost real estate through the contesting of title shall have the right to bring his claim pertaining to this, instead of the seller, against the previous titleholder in whose acquisition there has been a defect resulting in the voiding of the acquisition of the buyer. If the buyer has brought his claim against the seller in accordance with chapter 2, section 19, the seller shall have a corresponding right.

#### Section 3 — *Buyer's Rights and Obligations*

- (1) A buyer who has lost real estate through the contesting of title may keep the profit and benefits gained from the real estate if he at the conclusion of the sale did not know nor should have known that the seller was not the rightful titleholder.
- (2) If the value of the real estate has decreased as a result of the buyer's activity or failure to act, he shall compensate the rightful titleholder by an amount corresponding to the decrease in value, unless the payment of compensation is under the circumstances to be deemed unreasonable.

#### Section 4 — *Liability of Rightful Titleholder for Compensation*

- (1) The rightful titleholder shall compensate the buyer by a reasonable amount for the necessary expenses incurred by the maintenance of the real estate and, if the buyer at the conclusion of the sale did not know nor should have known that the seller was not the rightful titleholder, also for those useful expenses that have added to the value of the real estate.
- (2) The buyer shall have the right to remove, within a reasonable time, the buildings and facilities that he has built, where these are not necessary for the regular use of the real estate and where their removal does not cause significant damage to the real estate.
- (3) The buyer may retain possession of the real estate until the compensation referred to in paragraph (1) has been paid or an acceptable security for payment given.

#### Section 5 — *Time Limit for Claims*

An action based on sections 3 and 4 shall be brought within three years from the return of the real estate to the rightful titleholder through the contesting of title in court. The lapsing of this time limit shall not preclude a claim for set-off in proceedings initiated by the opposing party.

#### Section 6 — *Precedence of Acquisitions*

- (1) If the same real estate is sold to two buyers, the former acquisition shall prevail. The same applies to the order of precedence between a sale and another acquisition. However, the latter acquisition shall prevail under the circumstances referred to in chapter 13, section 3.
- (2) The provisions in chapter 2, section 19 apply to the liability of the seller towards the buyer whose acquisition does not prevail. The provisions in sections 3 and 4 apply, where appropriate, to the mutual liability of the buyers.

#### Section 7 — *Permanence of Registrable Special Rights*

- (1) A special right established prior to the conclusion of the sale and registrable under chapter 14, section 1, shall be binding on the buyer. Chapter 13, section 3 contains provisions on the grounds on which such special rights are not binding.
- (2) A registrable special right attached to the real estate by the seller after the conclusion of the sale shall not be binding on the buyer, unless otherwise provided in chapter 13, section 3.

#### Section 8 — *Permanence of Other Special Rights*

Unless otherwise provided, a contractual special right not referred to in chapter 14, section 1 shall be binding on the buyer of real estate only if he knew of the special right at the conclusion of the sale.

#### Section 9 — *Liability of the Seller*

- (1) If the holder of a special right loses the special right through a sale, he shall have the right to due compensation from the seller.
- (2) If the special right is binding on the buyer, he shall have rights with respect to the seller, as provided in chapter 2, sections 19 and 23.

#### Section 10 — *Protection from Enforcement*

A sale of real estate shall be permanent even if the seller has lost his competence to convey because of execution, precautionary measure or bankruptcy, unless the restriction of competence was at the conclusion of the sale entered into the title and mortgage register and the buyer also otherwise did not know nor should have known that the seller no longer was competent to convey the real estate.

### Chapter 4 — **Application of Provisions on Sale of Real Estate to Other Conveyances**

#### Section 1 — *Trades of Real Estate*

The provisions in chapters 2 and 3 on the sale of real estate apply, where appropriate, to trades of real estate.

#### Section 2 — *Gifts of Real Estate*

- (1) The provisions in chapter 2, sections 1–7, section 9(1) and section 11 as well as in chapter 3 on the sale of real estate apply, where appropriate, to gifts of real estate.
- (2) If the donee breaches a condition relating to the use of the gift or another essential condition or prerequisite, the donor shall have the right to revoke the gift, unless the donee has conveyed the real estate to a third party. An action for the revocation of gift shall be brought within one year from the donor's gaining knowledge of the grounds for revocation.

#### Section 3 — *Other Conveyances*

The provisions in chapter 2, sections 1–8, section 9(1) and section 11 as well as chapter 3 on the sale of real estate apply, where appropriate, to the conveyance of real estate to a company in exchange of stock or other shares, to an agreement on the splitting of real estate held in shares and to the transfer of title to real estate by other, comparable contracts.

#### Section 4 — *Transfer of Usufruct*

- (1) The provisions in chapter 2, sections 9–34, chapter 3 and this chapter on the conveyance of real estate apply, where appropriate, to the transfer of a lease or other usufruct on the land and waters of a third party, if the area contains a

building or a permanent facility or construction belonging to the usufructuary or if it is agreed that one may be built.

- (2) An agreement on the transfer of usufruct shall be in writing and it shall contain the information referred to in chapter 2, section 1(1), if the transfer is to be registered. The transfer shall also in other cases be made in writing, if either party so demands.

## Part II — **REGISTRATION**

### Chapter 5 — **General Provisions on Registration**

#### Section 1 — *Registration*

- (1) In this Code, *registration* means the registration of titles and special rights, as well as mortgaging.
- (2) The title and mortgage register shall be kept for registration purposes.
- (3) Entries on other rights to and encumbrances over real estate shall also be made in the title and mortgage register.

#### Section 2 — *Register Authority*

- (1) The District Court in whose jurisdiction the real estate is located shall be the competent register authority.
- (2) Unless otherwise provided, the District Court shall have a quorum, for purposes of registration, with one judge qualified in law. Registration matters shall be considered in the office of the District Court.

### Chapter 6 — **Application for Registration**

#### Section 1 — *Application*

- (1) The application for registration shall indicate:
  - (1) the real estate or other registrable object to which the application pertains;
  - (2) the claim or request of the applicant and, where necessary, a justification for the same;
  - (3) the name and domicile of the applicant, a personal identity number, trade register number or other corresponding identifier; and
  - (4) the telephone number of the applicant, his legal representative or attorney, as well as the address for service.
- (2) The application shall be in writing and signed by the applicant or the person drawing up the application. The necessary documents shall be attached to the application. The applicant may present his application orally, if the matter appears clearly from the documents and if not otherwise provided below.
- (3) The tax payable when presenting an application for registration is governed by the Act on the Transfer-of-Assets Tax (931/1996) and, as regards mortgages, by the Stamp Duty Act (662/1943). (933/1996)

#### Section 2 — *Delivery of Application*

- (1) The application shall be presented to the register authority or delivered by post or courier.
- (2) If the application has been delivered to a register authority which is not competent in the matter, the application shall be forwarded to the competent authority. The applicant shall be notified of the same.

#### Section 3 — *Lis Pendens*

- (1) A registration becomes pending when the application has been presented or delivered to the competent register authority.
- (2) The application shall be accepted, even if unaccompanied by a tax receipt. (933/1996)
- (3) An entry on the pending registration shall be made in the title and mortgage register without delay.

#### Section 4 — *Official Information*

The register authority shall on its own initiative obtain the necessary information on circumstances relevant in the consideration of the matter as is available from the title and mortgage register and the other registers accessible to the register authority.

#### Section 5 — *Supplementing the Application*

- (1) If the application is incomplete, the applicant shall be exhorted to supplement his application. The applicant shall be informed as to how his application is incomplete, the deadline for supplements and the consequences of a failure to heed the exhortation. The exhortation shall not be given if it is evident that no registration can be made on the basis of the application. Where necessary, another exhortation may be given.
- (2) An exhortation to supplement the application shall be given also if it is unaccompanied by a tax receipt or an account on the circumstances affecting the assessment of the tax, or if the tax paid does not correspond to the information contained in the application. (933/1996)
- (3) If the applicant fails to heed the exhortation, the application shall be dismissed.

#### Section 6 — *Hearings*

- (1) In order to clarify the circumstances pertaining to the registrable right, the register authority may reserve the applicant or another person the opportunity to submit a written statement or invite him to be heard, at a set time, before the court in person or represented by an attorney.
- (2) If it is claimed that there is a right of a third party precluding the registration and the claim is reasonably substantiated, or the right of the applicant is otherwise subject to dispute, the register authority shall exhort the person with the burden of proof to have the matter resolved in a trial within a set time limit. The claimant shall be exhorted under threat of having the registration made regardless and the applicant under threat of dismissal of the application.

#### Section 7 — *Consent*

- (1) A consent required for registration shall be given in writing or orally to the register authority.
- (2) A lienholder giving his consent to registration shall present the mortgage instrument. If the consenting party has been entered in the title and mortgage register as the holder of the mortgage instrument, said instrument need not be presented unless the register authority decides otherwise.

#### Section 8 — *Applications in Abeyance*

- (1) If the application is left in abeyance, the applicant shall be exhorted to show, within a set time limit, whether a barrier for registration still exists. The exhortation shall not be given if the applicant has requested a postponement or if this is otherwise unnecessary with regard to the consideration of the matter. The provisions in section 5 apply to the exhortation and the consequences of failure to heed it.
- (2) The register authority may on its own initiative take an application in abeyance under consideration. However, the application shall not be rejected before the applicant has been reserved an opportunity to be heard.

#### Section 9 — *Decision and Instrument*

- (1) A registration decision shall be made without delay and in accordance with the application, unless there is a barrier for the same. A legal circumstance arising after the application has become pending shall not preclude registration.
- (2) The registration decision shall be made by entering it into the title and mortgage register. The content of the decision is indicated by the register. If the matter is not decided in accordance with the application, the applicant shall, in addition, be issued a separate copy of the decision. A copy of the decision shall be issued also if the application is left in abeyance or another corresponding procedural decision is made.
- (3) A certificate on the register entry or a separate decision issued to the applicant shall be the final instrument in the matter.

#### Section 10 — *Notification of Decision*

- (1) If the matter has not been decided in accordance with the application and the applicant is not present at the conclusion of the consideration, or the decision is not delivered to him by post, the date of the decision shall without delay be notified to the applicant. The same applies to other interested parties who have been heard, unless the matter is decided in accordance with their demands.
- (2) The decision shall be available at the register authority office when the date of the decision is to be notified to the parties.

#### Section 11 — *Dossier*

The documents compiled during the consideration of a registration shall be collected into a dossier. If the grounds for the decision are not sufficiently clear in the copy of the instrument or the other materials in the dossier, also the justification of the decision shall be entered into the dossier.

#### Section 12 — *Notifications*

- (1) The provisions on the application for registration apply, where appropriate, to the notifications delivered to the register authority and their consideration.
- (2) Provisions on the delivery of notifications to the title and mortgage register as a computerized file transfer are issued by Decree.

#### Section 13 — *Pending Trials*

A court shall notify the register authority on any pending trial concerning the cancellation or invalidity of an acquisition of real estate or a conflict of rights to the real estate, as well as on its decision and whether the decision has become final. The same applies to an action for the deletion of a register entry or its correction.

#### Section 14 — *Supplementary Provisions*

- (1) Unless otherwise provided in this Code, the provisions of the Code of Judicial Procedure on the consideration of civil cases in a District Court apply, where appropriate, to the consideration of registrations.
- (2) If the register authority has invited someone else than the applicant to be heard, the party heard shall have the right to due compensation from State funds, as provided in the Act on Compensation to Witnesses from State Funds (666/1972). The register authority may obligate the applicant to reimburse the State for the compensation paid, if the hearing has been necessary in order to clarify an issue that should have been clarified by the applicant.

### Chapter 7 — **Title and Mortgage Register**

#### Section 1 — *Information Entered into the Title and Mortgage Register*

- (1) The applications for registration, information on their consideration and the registration decisions shall be entered into the title and mortgage register.
- (2) In addition, information on execution, precautionary measures and the bankruptcy of the titleholder of the real estate, as well as other information on rights to and encumbrances over the real estate, if they by virtue of this Code or another Act or Decree are to be notified to the register authority, shall be entered into the title and mortgage register when notified.

#### Section 2 — *Access to Register*

- (1) The information in the title and mortgage register shall be subject to public access. The register authorities shall issue certificates from the register upon request.
- (2) The Ministry of Justice may provide access to information as a mass delivery referred to in the Personal Data File Act (471/1987), where the party to whom the information is provided has the right to enter it into a personal data file. Provisions are issued by Decree on the delivery of information by computerized file transfer for the purposes of real estate agency, credit extension or other comparable activities.
- (3) Provisions on the format of the certificates issued from the title and mortgage register and on their issuance by others than the register authorities are issued by Decree. Separate provisions are enacted on the charges collected for the certificates.

### Section 3 — *Publicity of Registrations*

An entry in the title and mortgage register shall be deemed public knowledge as from the first weekday after the date of entry. After that time no protection shall be provided by good faith, except in cases referred to in chapter 17, section 10.

### Section 4 — *Compensation for Damage Caused by Technical Errors*

- (1) A person who has suffered damage as a result of an evident misprint or miscalculation, error caused by a technical fault or another comparable error or defect in the title and mortgage register or an instrument or certificate issued from it shall have the right to due compensation from State funds.
- (2) If the damage is caused by an error in the information entered into the title and mortgage register, compensation shall not be covered by this Code. The keeper of the land register shall be liable for compensation for damage caused by errors in the contents of that register. If another authority than the register authority has issued an erroneous or incomplete certificate from the title and mortgage register and the error or incompleteness is not a result of an error in the contents of the register, the compensation shall be paid from the funds of the relevant public authority.
- (3) The provisions in chapter 13, sections 6–8 apply, where appropriate, to the compensation for damage.

### Section 5 — *Acquisition Information*

- (1) Information on the conveyance of real estate and other acquisitions may be entered into the title and mortgage register before an application for the registration of title is made.
- (2) No claims shall be made against the register keeper on the basis of an error in or the incompleteness of the acquisition information.

### Section 6 — *Archiving*

The register authority may send the information on a special right or restriction that apparently has lapsed, on an application that has been rejected or dismissed and on other entries that apparently no longer have an effect, to be archived.

### Section 7 — *Register Keeping*

The Act on the Title and Mortgage Register (353/1987) contains provisions on the establishment, opening and keeping of the title and mortgage register.

## Chapter 8 — **Correction of Errors**

### Section 1 — *Correction of Material Errors*

- (1) If the decision of the register authority is based on evidently erroneous or incomplete information or evidently mistaken application of the law, the register authority may erase its erroneous decision and decide the matter anew.
- (2) A material error may be corrected only if all parties whose right is affected by the correction have been heard and all parties whose right decreases due to the correction have given their consent to it.

### Section 2 — *Correction of Technical Errors*

- (1) If there is an evident misprint or miscalculation, error caused by a technical fault or another comparable error or defect in the title and mortgage register, the register authority shall make the necessary corrections to the entries.
- (2) Before the correction those interested parties who are known to the register authority and who may suffer damage from the correction shall be reserved an opportunity to be heard.

### Section 3 — *Correction Procedure*

- (1) The provisions in chapter 6, section 9 apply, where appropriate, to the correction of errors. If a correction matter is not decided at once, an entry on its pending status shall be made in the register.

- (2) If an appeal has been lodged against a registration decision, the pending status of the correction matter shall be notified to the appellate court and the decision in the matter delivered to it.
- (3) A decision rejecting an application for the correction of an error shall not be subject to appeal.

#### Section 4 — *Correction Markings in Instruments and Certificates*

- (1) The correction of an error shall as soon as possible be marked to an instrument issued prior to it or, alternatively, a new instrument shall be issued. Furthermore, the register authority shall try and mark the corrections in an erroneous certificate issued from the register, or issue a new certificate.
- (2) An erroneous instrument or certificate shall be presented, upon exhortation, to the register authority for correction. The register authority may obligate, under threat of a fine, the possessor of the document to fulfill his duty to present it. If the party concerned fails to fulfill his duty, the register authority may enforce the fine.

### Chapter 9 — **Registration Appeals**

#### Section 1 — *Appeal*

- (1) A final registration decision made by the register authority shall be subject to appeal before a Court of Appeal.
- (2) A decision transferring the application to another register authority shall not be subject to appeal.

#### Section 2 — *Appeal Instructions*

When a registration matter has not been decided in accordance with the application or the demand of another party, written appeal instructions shall be attached to the instrument.

#### Section 3 — *Appeal Deadline*

The deadline for appeal shall be 30 days from the decision of the matter. The appealing party shall deliver his appeal documents to the relevant register authority on the day of the deadline at the latest, under threat of forfeiting his right of action.

#### Section 4 — *Application of Code of Judicial Procedure*

- (1) The provisions in chapter 25 of the Code of Judicial Procedure apply, in addition to the provisions of this Code, to an appeal against the decision of a registration authority. However, the intent to appeal need not be announced.
- (2) The decision of a Court of Appeal in a registration matter shall be subject to appeal before the Supreme Court, as provided in chapter 30 of the Code of Judicial Procedure.

#### Section 5 — *Notification of Appellate Court Decision and Return of Matter*

- (1) The appellate court shall without delay notify the register authority of its decision and whether the decision has become final.
- (2) The register authority shall on its own initiative reconsider a matter returned by the appellate court, make a new decision, if necessary, and make the appropriate entries in the title and mortgage register.

## Part III — **REGISTRATION OF TITLES AND SPECIAL RIGHTS**

### Chapter 10 — **General Provisions on Registration of Titles and Special Rights to Real Estate**

#### Section 1 — *Registration of Title*

- (1) The acquisition of title to real estate shall be registered.
- (2) The provisions on the registration of title apply also to the registration of the acquisition of a share and a parcel of real estate, a common, a parcel and a share of a common.

## Section 2 — *Registration of Special Right*

- (1) A contractual right to use real estate owned by another person shall be registered as a special right.
- (2) Registration may be used also for the determination of whether business property located on the real estate is affixed to the real estate.

## Chapter 11 — **Obligation to Register Title**

### Section 1 — *General Obligation to Register Title*

- (1) Everyone shall apply for the registration of title after having acquired real estate or a share or parcel thereof.
- (2) Registration of title shall be applied for within six months of the drawing up of the deed of conveyance or another document on which the acquisition is based, unless otherwise provided below.

### Section 2 — *Start of Registration Period for Acquisitions under Family and Inheritance Law*

- (1) If title to real estate has been acquired by inheritance, the registration period shall begin when the estate distribution has become final. If no estate distribution is necessary for the acquisition of title, the registration period shall begin at the end of the period reserved for an estate inventory or, if a distribution of matrimonial assets is necessary for the separation of the real estate, when that distribution has become final.
- (2) The registration period for an acquisition based on a will shall begin when the will becomes final or when the estate distribution or distribution of matrimonial assets becomes final, should one or the other be necessary for the separation of the bequeathed real estate.
- (3) The registration period for an acquisition based on the distribution of matrimonial assets shall begin when the distribution has become final.

### Section 3 — *Start of Registration Period for Acquisitions Based on Official Decisions*

- (1) If the acquisition is based on an official real estate formation measure, the registration period shall begin when the measure has been entered into the land register. If the real estate has not previously been entered into the land register, the registration period shall begin at the time of first entry. The registration period for an acquisition based on the decision of an authority not involved with the formation of real estate shall begin when the decision becomes final.
- (2) The period for the registration of title to real estate sold by enforced auction shall begin when the deed of sale is handed over to the buyer.

### Section 4 — *Real Estate Not Subject to Obligation to Register Title*

Title to State forests, expropriated units, lands separated for public use, accretions and relictions, common waters and commons shall not be registered. If such real estate or a share or parcel thereof is conveyed, the acquisition shall be subject to the obligation to register title.

### Section 5 — *Threat of Fine*

If the titleholder of a real estate has not applied for the registration of his title within the period provided in sections 1–3, the register authority may obligate him to do so within a set time limit under threat of a fine. If he fails to do so within the time limit, the register authority may enforce the fine.

### Section 6 — *Pro Forma Registration of Title*

- (1) The shareholders of an undistributed decedent's estate may apply jointly for a pro forma registration of title to real estate belonging to the decedent's estate.
- (2) A titleholder of real estate, whose title has already once been registered, may apply for a pro forma registration of title for the purpose of clarifying his legal status.

### Section 7 — *Registration of Title on Official Initiative*

- (1) The register authority shall on its own initiative amend the registration of title to a share or parcel of real estate to cover the real estate formed from it, after the newly formed real estate has been entered into the land register. The person whose title to

the share or parcel has last been registered shall be deemed titleholder of the newly formed real estate.

- (2) The register authority may on its own initiative amend the registration of title to real estate to cover also real estates formed from it by parcelling, partitioning or surveying of an urban plot.
- (3) The register authority shall on the notification of a court enter as the new titleholder of real estate the person to whom the real estate belongs according to a final judgment.

## Chapter 12 — **Procedure**

### Section 1 — *Proof*

- (1) The applicant for registration of title shall present proof of the legality of his acquisition. The document on which the acquisition is based shall be attached to the application in the original or as a copy authenticated by a notary or a register authority.
- (2) If the title of the previous titleholder has not been registered, the proof that would have been required for the registration of his acquisition shall be presented at the same time. If the acquisition of the previous titleholder was not subject to the obligation to register title, the applicant shall present the other required proof of the title of the previous titleholder. Proof of the title of the previous titleholder shall not be required if the real estate has been sold by enforced auction or acquired through an official real estate formation measure.

### Section 2 — *Leaving Application to Register Title in Abeyance*

- (1) The application shall be left in abeyance, if it otherwise could be granted, but:
  - (1) the acquisition of real estate or its permanence is according to the contract or otherwise conditional;
  - (2) the contract or official measure on which the acquisition is based has not become final or the deadline for the use of the right of municipal pre-emption has not passed;
  - (3) the consent or decision of a third party, competent body of a corporation, court or other authority is required for the acquisition of real estate;
  - (4) the real estate has been acquired in the name of a company to be established;
  - (5) an entry on execution or precautionary measures directed at the real estate has been made in the title and mortgage register prior to the conveyance of the real estate;
  - (6) the register authority has directed a disputed issue to be resolved in a trial or the applicant has been granted a public notice in order to obtain the registration of title; or
  - (7) an action relating to the permanence of the acquisition or a better right to the real estate is pending.
- (2) If the application has been left in abeyance because of a clause in the conveyance contract and no proof on the return of the title to the conveyor has been presented within the time limit provided for the bringing of an action, the application shall be granted. If no proof has been presented of a company to be established having become responsible for the conveyance of real estate within two years of the conclusion of the contract of conveyance, the person concluding the contract in the name of the company shall be registered as the titleholder.

### Section 3 — *Registration of Title by Public Notice*

- (1) The applicant shall be granted a public notice in order to obtain the registration of title, if:
  - (1) the applicant does not present an acquisition document or an authentic copy thereof, as provided in section 1, but he presents likely grounds for the legality of the acquisition; or
  - (2) the applicant shows that he or the previous titleholders have possessed the real estate as titleholders for the preceding ten years and there is no reason to believe that another person has a better right to the real estate.

- (2) The register authority shall issue a public notice, as provided in chapter 11, section 10 of the Code of Judicial Procedure, and exhort those persons who deem themselves to have a better right than the applicant to the real estate, to make their claim before the register authority within six months of the publication of the public notice in the *Official Gazette*. In addition, the public notice shall be notified to those known persons whose right may be affected by the registration of title.
- (3) If no claim has been made or action brought within the set time limit, the application may be granted.

#### Section 4 — *Rejection of Application to Register Title*

The application shall be rejected, if:

- (1) no acquisition document or an authentic copy thereof, as provided in section 1, has been presented;
- (2) the acquisition document has not been drawn up as provided by law;
- (3) no proof of the title of the conveyor or another previous titleholder of the real estate has been presented;
- (4) the required consent or decision of a third party, competent body of a corporation, court or other authority has not been obtained for the applicant's acquisition;
- (5) title to the real estate is returned to the conveyor because of a cancellation or suspension clause in the conveyance contract and a judgment or agreement to this effect is presented;
- (6) the real estate belongs to a bankruptcy estate and this has been entered in the title and mortgage register prior to the acquisition; or
- (7) the applicant's acquisition is otherwise not valid or will evidently not be permanent.

#### Section 5 — *Entry on Restriction of Possession*

If a usufruct based on law or a will or a condition attached to the applicant's acquisition restricts the right of the applicant to convey the real estate, or to attach special rights to or raise liens over it, the restriction of possession shall be entered into the title and mortgage register at the same time as the decision in the registration matter is made or otherwise upon request.

#### Section 6 — *Delivery of Notifications*

The register authority shall notify the registration of title to a parcel of real estate to the surveying office or surveyor in whose jurisdiction the parcel is located.

### Chapter 13 — **Legal Effects of Registration of Title**

#### Section 1 — *Defect of Form*

No claim regarding a defect of form in the deed of acquisition shall be made after a registration of title based on it has been completed or the application for one has been left in abeyance.

#### Section 2 — *Disputed Title*

The registration of title shall not preclude the consideration of a dispute over title to real estate or the validity of an acquisition in a trial or by official real estate formation measure, as separately provided.

#### Section 3 — *Protection in Cases of Double Conveyance*

- (1) If the same real estate has been conveyed to two persons, the later conveyance shall take precedence, if registration of title to it is first applied for and the conveyee, at the time of acquisition, did not know nor should have known of the previous conveyance. If registrations of title to several acquisitions are applied for on the same day, the earliest conveyance shall take precedence.
- (2) If the application is rejected or if a registered acquisition is invalidated or if the conveyee otherwise loses his right based on the acquisition, the precedence shall lapse.

- (3) The provisions in paragraphs (1) and (2) apply, where appropriate, to the effects of registration on the precedence order of a conveyance of real estate and a special right attached to the real estate. The conveyance or special right takes precedence under the conditions laid down above also in relation to a previous acquisition of real estate not based on a conveyance.

#### Section 4 — *Protection against Rightful Titleholder*

- (1) An acquisition of real estate based on a conveyance shall be permanent even if the conveyer was not the rightful titleholder of the real estate due to a defect in his acquisition or that of a previous titleholder, if the title of the conveyer was registered at the time of acquisition and the conveyee, at that time, did not know nor should have known that the conveyer was not the rightful titleholder.
- (2) A special right to or lien over real estate shall be binding even if the person effecting one was not the rightful titleholder of the real estate, if his title was registered at the time of acquisition and the person holding the lien or special right, at that time, did not know nor should have known that he was not the rightful titleholder.
- (3) The provisions in paragraphs (1) and (2) apply, where appropriate, if the acquisition of the conveyer or the other person is invalid regarding third parties. The provisions in this section on the registration of title apply also to a pending application on the basis of which a registration of title later takes place.

#### Section 5 — *Exceptions to Protection of Conveyees*

The conveyee or person holding a title or special right shall not receive the protection referred to in section 4, if:

- (1) the deed of title or other acquisition document of the rightful titleholder or the power of attorney or other competence document of his representative has been forged;
- (2) the conveyance of the rightful titleholder is invalid because he has been coerced into it in a manner referred to in section 28 of the Contracts Act; or
- (3) the conveyer of the real estate or the establisher of a lien over or special right to it has been registered as titleholder by mistake or if the entry in the register is not based on a decision of the register authority.

#### Section 6 — *State's Liability for Compensation*

- (1) A person in relation to whom an acquisition of real estate or a lien or special right remains valid by virtue of section 4 shall have the right to due compensation from State funds.
- (2) A conveyee or a person holding the lien or special right who loses his right to the real estate by virtue of section 5 shall have the right to due compensation from State funds.
- (3) If a person suffering damage has without a valid reason failed to apply for the registration of his right or to invoke his good faith or another circumstance affecting the permanence of his right, or otherwise contributed to the damage, the compensation may be reasonably adjusted.

#### Section 7 — *State's Right of Recourse*

- (1) The right to compensation of a person receiving compensation by virtue of section 6 shall be transferred to the State to the amount of compensation paid.
- (2) The right to compensation referred to in paragraph (1) shall be transferred on the day when the State has assumed the liability or a court judgment to this effect has become final. The State may bring its claim for recourse in the same trial where compensation is sought from it.

#### Section 8 — *Procedural Provisions*

- (1) The Ministry of Justice shall grant and pay the compensation and represent the State in cases relating to compensation or recourse.
- (2) The court shall on its own initiative notify the State when a case relating to title to real estate has become pending and may result in the State being held liable for compensation by virtue of section 6.
- (3) An action for compensation against the State shall be brought within two years from the date when the court decision on the title to real estate has become final.

The action shall be considered in the court in whose jurisdiction the real estate is located.

#### Section 9 — *Protection in Acquisitions Not by Conveyance*

- (1) A person who has acquired real estate by inheritance, will, distribution of matrimonial assets or otherwise not by conveyance shall not enjoy the protection of good faith provided in sections 3 and 4 against an earlier conveyee, holder of a special right or the rightful titleholder.
- (2) Chapter 5, section 50 of the Enforcement Act contains provisions on the permanence of an acquisition by enforced auction.

#### Section 10 — *Protection of Enjoyment*

- (1) A person whose title to real estate has been registered and who thereafter has possessed the real estate for ten years may keep the real estate, if he at the time of acquisition did not know nor should have known that the real estate had been taken from the rightful titleholder. If no action for a better right to the real estate is brought during this time, the rightful titleholder shall forfeit his right to demand the return of the real estate.
- (2) If the real estate has during the time referred in paragraph (1) been conveyed to another person, this person may invoke the registration of the title and the possession of the conveyor and the good faith of himself or one of the previous titleholders at the time of acquisition.

#### Section 11 — *Answerability*

- (1) An action for a better right to real estate may be brought against the person whose title to it has been registered. If he has conveyed the real estate before the action has become pending, also the conveyee shall be summoned to answer in the trial.
- (2) The provision in paragraph (1) applies, where appropriate, to claims for payment off the real estate on the basis of a lien or directly by virtue of law.

### Chapter 14 — **Registration of Special Rights**

#### Section 1 — *Registrable Special Rights*

- (1) The following special rights, based on a contract or another transaction, over the real estate of another may be registered:
  - (1) a lease or other usufruct;
  - (2) a right to a pension off the real estate;
  - (3) a right to take timber; and
  - (4) a right to extract land or mineral resources or another comparable right of extraction.
- (2) A special right shall not be registered if it is permanent, if it is for the benefit of a given real estate or area or if it has been established by an official real estate formation measure or otherwise by a decision of the authorities. A right to take timber shall be registered to remain valid for at most five years and an extraction right for at most 50 years from the attachment of the right; a usufruct shall be registered for at most the statutory maximum period.

#### Section 2 — *Obligation to Register*

- (1) The holder of a lease or another usufruct on the real estate of another shall apply for the registration of his right, if the usufruct is transferable to a third party without hearing the titleholder or if there are buildings or other constructions belonging to the usufructuary on the real estate or it has been agreed that they may be built. The registration shall be applied for when the usufruct has been established or when the usufructuary has received the usufruct by conveyance or other acquisition.
- (2) The provisions in chapter 11, sections 1–6 apply to the application deadline and a threat of a fine.

### Section 3 — *Agreement of Joint Possession*

An agreement between the joint titleholders of a real estate on the possession of the real estate may be registered.

### Section 4 — *Registration of Rights Relating to Buildings or Constructions*

- (1) A right belonging to someone else than the titleholder and relating to a building, construction, machine or facility used in business and contributing to the purpose of the real estate may be registered, if:
  - (1) the object has been built or brought on the real estate subject to a reservation or repossession clause or on the basis of a lease contract or another comparable agreement; or
  - (2) the object has been transferred to the usufructuary of the real estate as a part of the usufruct.
- (2) A right subject to a reservation or repossession clause shall be registered to be in force for at most five years from the conclusion of the agreement.

### Section 5 — *Delimitation of Components and Accessories*

For the purpose of delimiting the components and accessories of real estate, the declaration of the titleholder may be registered to the effect that a building or facility used in business, owned or later obtained by him, and permanently located on the real estate, said object to be identified in the declaration or otherwise defined as to its characteristics,

- (1) does not belong to the real estate, even if it otherwise would be deemed a component or an accessory; or
- (2) belongs to the real estate, even if it otherwise would not be deemed a component or an accessory.

### Section 6 — *Object of Registration*

- (1) The registration may concern:
  - (1) a real estate or a common entered into the land register;
  - (2) a parcel, the title to which has been registered; or
  - (3) a registered usufruct referred to above in section 2.
- (2) The provisions in this chapter on real estate, a titleholder and the registration of title apply, where appropriate, also to other subjects of registration, as well as the attacher of a right and its registration. If a special right is attached to a real estate not subject to registration, other proof than a registration shall be presented of the validity of the title to it.

### Section 7 — *Legal Effects of Registration of Special Rights*

- (1) The registration of a special right shall have the legal effects provided in chapter 13, sections 1-3 for a registration of title.
- (2) If several registrable special rights have been attached to a real estate and they cannot be simultaneously fulfilled, the right first attached shall prevail, unless otherwise follows from chapter 13, section 3.
- (3) The provisions in chapter 4, sections 4-9 and 11 on the legal effects of the registration of title apply also to the legal effects of a registration of a usufruct referred to in section 2.

### Section 8 — *Precedence*

- (1) The legal effects of the registration of a special right begin on the day when the registration application has become pending. A registration earlier applied for shall take precedence in relation to a registration or mortgage later applied for. A special right shall take precedence to a lien, based on a mortgage, applied for on the same day.
- (2) Only the precedent right shall be registered under section 3, section 4(1)(2), or section 5 above; the precedence shall not be altered subsequently so that another registration referred to in this paragraph is made to prevail over it.
- (3) The provisions in chapter 18, section 1 apply to the alteration of precedence.

Section 9 — *Registration Procedure*

- (1) Registration may be applied for by the holder of the registrable right and by the titleholder of the real estate.
- (2) The applicant shall present the contract or other document relating to the attachment or transfer of the registrable right.

Section 10 — *Consent*

- (1) The consent of the titleholder shall be a prerequisite for the registration referred to above in section 4.
- (2) The consent of all lienholders over the real estate to the registration and the alteration of precedence shall be a prerequisite to a registration referred to in section 3, section 4(1)(2), or section 5 above. However, no consent shall be required for a registration referred to in section 3, if the alteration has only a minor effect.
- (3) If the property of the titleholder is under a business mortgage, the registration referred to in section 5(2) may be made only if all the holders of the business mortgage consent to the same.

Section 11 — *Leaving Application to Register in Abeyance*

The application shall be left in abeyance, if it otherwise could be granted, but:

- (1) the title of the attacher of the right to the real estate has not been registered;
- (2) the attachment of the right is according to a contract or otherwise conditional, or it has not yet become final;
- (3) the consent or decision of a third party, competent body of a corporation, court or other authority is required for the attachment of the right;
- (4) an entry on execution or precautionary measures directed at the real estate has been made in the title and mortgage register prior to the establishment of the right; or
- (5) the register authority has directed a disputed issue to be resolved in a trial or an action relating to the permanence of the right or a better right to the real estate is pending.

Section 12 — *Rejection of an Application to Register*

The application shall be rejected, if:

- (1) the right is not registrable;
- (2) the attachment or transfer document has not been presented or it has not been drawn up as provided by law;
- (3) no proof of the title of the attacher has been presented;
- (4) the required consent or decision of a third party, competent body of a corporation, court or other authority has not been obtained for the attachment of the right;
- (5) the real estate belongs to a bankruptcy estate and this has been entered in the title and mortgage register prior to the attachment of the right;
- (6) an entry on execution or precautionary measures directed at the real estate has been made in the title and mortgage register before the application referred to in section 4 or 5 has become pending;
- (7) someone else than the attacher has applied for the registration of his title to the real estate on the basis of an acquisition before the registration of the special right has been applied for, and he does not consent to the registration; or
- (8) the registrable right is otherwise not valid or will evidently not be permanent.

Section 13 — *Registration of Alteration, Transfer and Lapse of Rights*

- (1) If a special right has been registered, its alteration, transfer and lapse may be registered applying, where appropriate, the provisions on the registration of special rights.
- (2) The legal effects of registration apply to an alteration of a special right by agreement or other transaction only if it has been registered.

Section 14 — *Prerequisites for Alteration of Registration*

- (1) If it has been agreed that a registered special right is to be altered and if a mortgage or the registration of another special right has been applied for the real estate after

the registration, the alteration may be registered if those rightholders whose right decreases as a result of the alteration consent to the same. However, no consent shall be required if the alteration has only a minor effect.

- (2) The provisions in paragraph (1) apply also to the alteration of a registered right that is subject to a mortgage or to another special right.

#### Section 15 — *Deletion of Registration of Special Rights*

- (1) The registration of a special right may be deleted on the request of the titleholder or, if the agreed time of validity of the registered right has expired, on the initiative of the register authority. However, the registration shall not be deleted, if the time of validity of the right has been extended or it has been immediately given back to the same rightholder, and proof of the same is presented during the time of validity of the right.
- (2) The registration of a right to a pension off the real estate may be deleted on the initiative of the register authority after six months from the death of the rightholder, unless his successors have during this time declared that they wish to retain the registration.
- (3) The registration referred to in section 5 above may be deleted on the notification of the titleholder, if those mortgage or business mortgage holders, whose status is diminished, consent to the same.

#### Section 16 — *Effect of Liens on Deletion of Registration*

- (1) The registration of a special right shall not be deleted, even if it has lapsed before the full term due to termination, agreement or another reason, before the mortgages and registrations of special rights to it have been cancelled.
- (2) If the special right is subject to mortgages, the application for the deletion of the registration shall be left in abeyance and notified to the lienholder. In the decision the lienholder shall be exhorted to bring an action for the collection of the debt within three months of the notification. If the creditor fails to seek payment from the real estate in the set time limit and notify the same to the register authority, the mortgage shall be cancelled and the registration of the special right may be deleted.
- (3) A lienholder who has sought payment shall be liable to the lessor for the lease payments becoming due after the notification of the decision referred to in paragraph (2) until the transfer of the lease.

## Part IV — **REAL ESTATE LIENS**

### Chapter 15 — **General Provisions on Real Estate Liens**

#### Section 1 — *Applicability*

- (1) A real estate lien may be raised over real estate, a share or parcel of real estate, a lease and another usufruct on the real estate of another, as provided in this Code.
- (2) The provisions on real estate mortgages and liens apply also to the mortgages and liens over shares and parcels of real estate.

#### Section 2 — *Raising Liens*

- (1) A real estate lien shall be raised by creating a mortgage over the real estate or the other property and handing the mortgage instrument over to the creditor as security for a debt.
- (2) A real estate lien as security for the payment of a debt or fee under public law shall be raised by entering it into the title and mortgage register.

### Chapter 16 — **Mortgage**

#### Section 1 — *Applicability*

- (1) A mortgage may be created over real estate, a share in jointly held real estate and a parcel not belonging to the titleholder of the real estate. The possibility of the registration of title to the property shall be a prerequisite for a mortgage.

- (2) An urban plot subject to a registered lease shall not be mortgaged.

#### Section 2 — *Joint Mortgage*

- (1) A joint mortgage over two or more real estates may be created only if:
  - (1) they belong to the same titleholder or the same titleholders in equal shares;
  - (2) they are located in the jurisdiction of the same register authority; and
  - (3) they are not subject to mortgages or they are subject only to mortgages of the same amount and seniority.
- (2) No separate mortgages shall be created over real estates subject to a joint mortgage as long as they belong to the same titleholder.
- (3) The joint mortgage may be created over the entire real estate even if it is held by shares, unless the agreement on joint possession has been registered and unless a separate mortgage has already been created over a share of the real estate.

#### Section 3 — *Applicant*

- (1) The titleholder who has last applied for the registration of his title may apply for a mortgage over the real estate.
- (2) If the title of the applicant has not been registered, the mortgage shall be created only if his registration application has been left in abeyance because of a cancellation or suspension clause or because the real estate has been acquired in the name of a company to be established, and the conveyer of the real estate consents to the mortgage.

#### Section 4 — *Application*

- (1) The application for a mortgage shall be in writing. The application, signed by the applicant, shall indicate the property to be mortgaged and the amount of the mortgage in [FIM]. If the application is for the creation of several mortgages over the same real estate, their order of seniority may be determined in the application.
- (2) The application may contain instructions for the register authority as to whom, instead of the applicant, the mortgage instrument is to be handed over. If the recipient of the mortgage instrument has been indicated in the application, the application shall not be altered or withdrawn without his consent.
- (3) The titleholder of real estate may appoint an attorney to apply for a mortgage. The titleholder shall sign the power of attorney, which shall indicate also the name of the attorney, the property to be mortgaged and the amount of the mortgage.

#### Section 5 — *Mortgage Instrument*

When the mortgage has been created, the applicant is issued a mortgage instrument as a certificate of the mortgage.

#### Section 6 — *Leaving Application in Abeyance*

The application shall be left in abeyance, if it otherwise could be granted, but:

- (1) the consideration of the applicant's registration application is pending and, in a case referred to in section 3(2), the conveyer of the real estate has not consented to the mortgage;
- (2) a dispute on title to the real estate is pending in a court; or
- (3) an entry on execution or precautionary measures directed at the real estate has been made into the title and mortgage register before the application has become pending.

#### Section 7 — *Rejection of Application*

The application shall be rejected, if:

- (1) the applicant is not the titleholder, or his title to the real estate has not been registered and he has not applied for the same;
- (2) the application has not been drawn up as required by law;
- (3) no mortgage can be created over the property to which the application relates;
- (4) the real estate belongs to a bankruptcy estate and this has been entered in the title and mortgage register before the application;
- (5) the real estate cannot, due to a restriction of possession which has been entered into the title and mortgage register, be subject to a mortgage; or
- (6) the applied mortgage cannot be created for another reason.

### Section 8 — *Seniority and Validity of Mortgages*

- (1) The legal effects of a mortgage that has been created begin on the day when the application has become pending.
- (2) A mortgage earlier applied for shall be senior to one later applied for. Mortgages applied for on the same day shall have equal seniority, unless otherwise declared, on the basis of the application, when the mortgages are created.
- (3) A mortgage shall remain valid until it is cancelled. A mortgage decision may be repealed or the mortgage annulled only if the acquisition of the applicant is not permanent by virtue of chapter 13, section 5 or if the mortgage is based on a forged document or it has otherwise been obtained under circumstances referred to in the said section.

### Section 9 — *Entry on Holder of Mortgage Instrument*

- (1) Upon notification, an entry shall be made into the title and mortgage register on the person holding the mortgage instrument. Where necessary, the register authority may require the holder to present the mortgage instrument.
- (2) The register authority shall notify the person who was previously entered as the holder of the mortgage instrument of an entry on a new holder, unless the instrument is presented to the authority at the notification of the new holder.
- (3) The register authority shall delete an entry on the holder of the mortgage instrument upon the notification of the person so entered.

### Section 10 — *Effects of Real Estate Formation on Mortgages*

- (1) A mortgage created over a share or parcel of real estate shall after real estate formation be over the real estate that is formed from the share or parcel. If a mortgaged share is included in a formed real estate, the mortgage shall be over the part of the real estate belonging to the shareholder.
- (2) A mortgage over real estate shall completely cover the real estates formed from it by parcelling, partitioning or surveying of an urban plot. However, the mortgage shall not cover a parcel or a real estate formed from a parcel, where the registration of title to it has been applied for before the mortgage application.
- (3) Separate provisions are enacted on the effects on mortgages of a partitioning where a real estate is formed from parts of a number of real estates or where a parcel is moved from one real estate to another, as well as expropriation and other real estate formation measures.

## Chapter 17 — **Real Estate Liens**

### Section 1 — *Right to Raise Liens*

- (1) The titleholder shall have the right to raise liens over the real estate.
- (2) The titleholder may appoint an attorney to raise a lien. The titleholder shall sign the power of attorney, which shall indicate the name of the attorney and the mortgage instrument concerned.

### Section 2 — *Raising Liens*

- (1) A lien over real estate shall be raised by handing the mortgage document over to the creditor as security for a debt.
- (2) If the mortgage instrument has been handed over as security of an eventual debt, the lien shall be raised when the debt becomes active.
- (3) If the mortgage instrument has been handed over to a third party, the lien or second lien shall be raised by the titleholder notifying the same to the third party, or by the lienholder presenting the titleholder's written certificate of the same to the third party. If instructions have been given in the mortgage application to the effect that the mortgage instrument is to be handed over to a named creditor as security for a debt, the lien shall be raised by creating the mortgage.

### Section 3 — *Lien Commitment*

- (1) The provisions in chapter 10, sections 14 and 15 of the Commercial Code apply to lien commitments.

- (2) If a lien commitment has been made, the creditor shall have the right to demand the titleholder to hand over the mortgage instrument. If the real estate no longer belongs to the person who made the lien commitment, if the mortgage instrument has been handed over to another creditor or if the person who made the commitment otherwise no longer has the right of decision over it, the creditor shall have the right to due compensation.

#### Section 4 — *Preclusion of Right to Raise Liens*

- (1) If a real estate subject to a joint mortgage or a parcel of a mortgaged real estate is conveyed to another person, the mortgage instrument based on the earlier mortgage may be handed over as security of a new debt only if the mortgage has been lifted from the properties owned by other persons than the one raising the lien.
- (2) Without prejudice to paragraph (1), the titleholder may hand over a mortgage instrument based on the mortgage of the entire real estate before the application is made for the registration of title on the acquisition of a parcel from that real estate, but in such cases the lien is backed only by the part owned by the titleholder.

#### Section 5 — *Significance of Liens*

- (1) The creditor shall have the right to receive payment of a debt backed by a lien when the assets from the real estate are being distributed because of execution or redemption, or otherwise by the authorities. The lien gives the debt precedence in accordance with the seniority of the mortgage, at most to the amount indicated in the mortgage instrument.
- (2) The creditor shall have the right to seek payment of the debt from the mortgaged real estate regardless of a transfer of title. The creditor may convey the mortgage instrument only if he at the same time transfers the debt which is backed by the lien.
- (3) A mortgage instrument shall not be taken in execution.

#### Section 6 — *Effects on Liens of Cancellation of Mortgages and Extinguishment of Debts*

- (1) The mortgage instrument shall be void and the lien lapse, if the mortgage is cancelled or lifted. If the mortgage is altered as to its amount or the property subject to it or otherwise, the lien shall correspond to the altered mortgage.
- (2) The creditor shall have the right to payment from the mortgaged real estate even if the debt has been extinguished due to the statute of limitations, non-declaration in bankruptcy proceedings or non-declaration in proceedings for the identification of unknown creditors.

#### Section 7 — *Decrease in Value of Security*

- (1) If the security for the payment of a debt from a mortgaged real estate is put in jeopardy because the value of the real estate decreases to an essential degree due to a fire, natural disaster, activity of the titleholder or another comparable reason, the creditor may seek payment of the debt from the real estate even if the debt has not yet become due and payable.
- (2) If the creditor does not bring an action for the payment of the debt within six months of gaining knowledge of a circumstance referred to in paragraph (1), he shall not have the right to payment before the debt becomes due and payable.

#### Section 8 — *Right to Compensation for Insurance and Redemption*

- (1) The creditor shall have the right to receive payment from an insurance compensation before the debt has become due and payable, unless the compensation is by virtue of paragraph (2) to be paid to the titleholder. If the debt backed by the lien is subject to a dispute or it is otherwise unclear as to whom the compensation should be paid, the insurer shall withhold payment.
- (2) The titleholder shall have the right to collect the insurance compensation, if he has repaired the damage in a reasonable time or given security for the use of the insurance compensation for the restoration or repair of the damaged real estate. The titleholder shall have the right to collect the compensation also if the amount of the compensation is minor in proportion to the value of the real estate or if it is otherwise evident that the collection of the compensation does not decrease the security of the debt.

- (3) Separate provisions are enacted on the right of a lienholder to compensation for redemption and compensation set in real estate formation.

Section 9 — *Order of Liability of Real Estates Subject to Joint Mortgage*

- (1) A lien shall be backed in full by all real estates subject to a joint mortgage and all real estates formed from a mortgaged real estate by parcelling, partitioning or surveying of an urban plot.
- (2) If the mortgaged real estates belong to different titleholders, the lien shall be primarily backed by the real estate belonging to the debtor and secondarily by the other real estates, to the amount not recoverable from the primarily liable real estate.
- (3) If several real estates belonging to different titleholders have been formed from a mortgaged real estate and the debt cannot be fully recovered from the real estate belonging to the debtor, or none of the titleholders is the debtor, the source real estate shall be primarily liable for the lien. The order of liability of partitioned real estates and urban plots shall be determined so that a real estate with a later application for the registration of title shall be liable before one with an earlier application. If no application for the registration of title has been made or if they have been made on the same day, the real estate later conveyed shall be primarily liable. The provisions in this section on a partitioned real estate apply also to a parcel conveyed from a mortgaged real estate.
- (4) The Enforcement Act contains provisions on the effect of the order of liability to the order in which the real estates are to be sold and on the right of the titleholder of a real estate secondarily liable to a lien for the security of his claim of recourse.

Section 10 — *Protection in Cases of Conveyance*

- (1) A lien over a real estate shall remain valid even if the person raising the lien had before that time conveyed the real estate, if the creditor did not know nor should have known of the conveyance. The same provision applies if title to the real estate has otherwise been transferred to another or if the right of the person raising the lien to hand over a mortgage instrument based on an earlier mortgage has been precluded in accordance with section 4.
- (2) The creditor shall not invoke his good faith if the information on the transfer of the title to the real estate has been available in the title and mortgage register for at least one month before the raising of the lien.
- (3) If the mortgage instrument has been handed over to the creditor as security for an eventual debt and the person handing it over had at that time the right to raise liens over the real estate, the lien shall remain valid, if the creditor did not know nor should have known of the transfer of title prior to the activation of the debt. The same provision shall apply if the creditor was in good faith when receiving the mortgage instrument, as referred to in paragraphs (1) and (2).

Section 11 — *Protection against Rightful Titleholder and State's Liability for Compensation*

- (1) The provisions in chapter 13, sections 4, 5 and 9 apply to the validity of a lien in cases where the person raising it was not the rightful titleholder of the real estate.
- (2) The provisions in chapter 16, sections 6–8 apply to the State's liability for compensation. The right of the creditor to compensation for the loss of the lien shall not be precluded by the fact that the mortgage decision has been repealed or annulled.

Section 12 — *Protection against Enforcement*

- (1) A lien over real estate shall remain valid even if the titleholder has prior to the raising of the lien lost his right of decision over it because of execution, precautionary measures or bankruptcy, unless the loss of that right was entered into the title and mortgage register at the time of the raising of the lien and the creditor also otherwise did not know nor should have known that the titleholder no longer had the right to raise a lien over the real estate.
- (2) If the mortgage instrument has been handed over to the creditor as security for an eventual debt and the person handing it over had at that time the right to raise liens over the real estate, the lien shall remain valid, unless the loss of that right

was entered into the title and mortgage register prior to the activation of the debt and the creditor also otherwise did not know nor should have known that the titleholder no longer had the right to raise a lien over the real estate.

#### Section 13 — *Cancellation of Conveyance of Real Estate and Its Effect on Liens*

- (1) A lien over real estate shall remain valid even if the real estate is returned to the conveyor by virtue of a clause in the deed of conveyance or if the conveyance on the basis of which the person raising the lien acquired title to the real estate is revoked, by an agreement or a court judgment, for breach of contract.
- (2) A registration of title based on the conveyance of a share or parcel of real estate shall not be deleted even if the conveyance is cancelled or if the title to the share or parcel is otherwise returned to the titleholder of the real estate before the mortgages and the registrations of special rights have been cancelled. A pro forma registration of title to the entire real estate may be granted in order to clarify the legal status of the titleholder.

### Chapter 18 — **Mortgage Alteration**

#### Section 1 — *Alteration of Seniority*

- (1) The seniority of mortgages may be altered upon the application of the titleholder, if the lienholders and holders of special rights whose right decreases due to the alteration consent to the same. An alteration of seniority may be effected also upon the application of a lienholder, with the consent of the titleholder and the other rightholders.
- (2) The seniority of a joint mortgage may be altered only so that the alteration affects all the real estates equally. The seniority shall not be altered so that a mortgage over some of the real estates only becomes more senior than the joint mortgage.

#### Section 2 — *Mortgage Extension*

A mortgage may, upon the application of the titleholder and with the consent of the lienholder, be extended to cover also other real estate belonging to the titleholder, subject to the provisions in chapter 16, section 2.

#### Section 3 — *Mortgage Merger*

- (1) Mortgages of equal seniority, or one immediately after or separated only by the registration of a special right from the other in the order of seniority, may upon the application of the titleholder and with the consent of the lienholder be merged into one mortgage. The merged mortgage shall have the same seniority as the least senior of the original mortgages.
- (2) The amount of a merged mortgage may upon the application of the titleholder and with the consent of the lienholder be lowered so that it is less than the sum of the amounts of the original mortgages.

#### Section 4 — *Mortgage Split*

- (1) A mortgage may upon the application of the titleholder and with the consent of the lienholder be split into two or more mortgages so that the sum of the amounts of the split mortgages is at most equal to the amount of the original mortgage.
- (2) The split mortgages shall have equal seniority, unless it is otherwise determined upon the request of the applicant.

#### Section 5 — *Mortgage Cancellation*

A mortgage may upon the application of the titleholder and with the consent of the lienholder be cancelled entirely or to a given amount. The cancellation of a joint mortgage may be applied for by any of the titleholders of the real estates subject to the joint mortgage, even without the consent of the other titleholders.

#### Section 5a — *Conversion of Mortgage into Euros (964/1998)*

- (1) On the application of the lienholder, the nominal value of a mortgage may be converted from Finnish marks (FIM) into euros (EUR) as provided in Articles 4 and 5 of the Council Regulation (EC) No 1103/97 on certain provisions relating to the introduction of the euro.

- (2) With the conversion, the nominal value of the mortgage may at the request of the lienholder be decreased at most to the closest EUR 100; the consent of the titleholder shall not be needed for such a decrease.
- (3) As from 1 January 2002, the register authority shall convert the nominal values of mortgages from FIM into EUR as provided above when the mortgages are otherwise to be altered or when a new instrument is to be issued for an existing mortgage.

#### Section 6 — *Dissolution of Joint Mortgage*

- (1) If real estates belonging to the same titleholder are subject to a joint mortgage, the mortgage may upon his application and with the consent of the lienholder be lifted from a given real estate. The joint mortgage shall not be dissolved, if the real estates remain subject to another joint mortgage.
- (2) A joint mortgage over real estates belonging to different titleholders may upon the application of a titleholder and with the consent of the lienholder be lifted from the real estate belonging to that titleholder. It shall also be a prerequisite for such lifting that the titleholders of the remaining real estates and the holders of liens and special rights, of equal or less seniority, over these real estates consent to the same.
- (3) However, the consent of the titleholder or the titleholder of a primarily liable real estate shall not be required for the lifting of a mortgage from a parcelled real estate or another real estate that is liable only secondarily or not liable at all, in accordance with chapter 17, section 9(2) or (3). Neither shall the consent of the holder of a right to a primarily liable real estate be required. The lienholder shall not consent to the lifting, if the intention is to lift the joint mortgage from a real estate belonging to the debtor. The dissolution of a joint mortgage may, in cases referred to in this paragraph, be applied for by a titleholder whose real estate is subject to the joint mortgage or by a lienholder. The provisions in this section on a parcelled real estate apply also to parcels conveyed from a mortgaged real estate.

#### Section 7 — *Alteration Procedure*

- (1) The provisions on the creation of mortgages apply, where appropriate, to an application for the alteration of a mortgage and to the consideration of the matter.
- (2) The original mortgage instruments based on the mortgages to be altered shall be attached to the application. When the mortgage alteration has been completed, the register authority shall, where necessary, issue a new mortgage instrument as a certificate of the altered mortgage or make the relevant correction to the original mortgage instrument.
- (3) If the mortgage is to be cancelled or otherwise altered by virtue of another Act, the register authority shall make an entry on the same to the title and mortgage register when the notification of a final decision on the matter has arrived to it. A mortgage instrument based on the altered mortgage shall be issued only if the original mortgage instrument has been delivered to the register authority.

#### Section 8 — *Replacement and Cancellation of Mortgage Instrument*

- (1) The holder of a mortgage instrument shall have the right to receive a new mortgage instrument from the register authority to replace a spoiled one. The mortgage instrument may be replaced, upon request, also when the registration number of the object of the mortgage has changed.
- (2) The provisions in the Act on the Cancellation of Documents apply to the cancellation of a mortgage instrument. The register authority shall issue, upon request, a new, corresponding mortgage instrument to the person upon whose application the mortgage instrument was cancelled.
- (3) The issue of a new mortgage instrument shall be entered into the title and mortgage register.

#### Section 9 — *Right to Altered Mortgage Instrument*

The lienholder shall have the same right to the mortgage instrument referred to in section 7(3) and section 8 as he had to the replaced mortgage instrument.

## Chapter 19 — **Mortgages and Liens over Usufruct and Buildings**

### Section 1 — *Object of Mortgage over Usufruct*

- (1) A lease and another fixed-term usufruct on the land of another person may be mortgaged, if the right can be transferred to a third party without hearing the titleholder and if the area contains a building or facility belonging to the usufructuary or if it is agreed that one may be built. It shall be a prerequisite for the mortgage that the usufruct is entered into the title and mortgage register. Also a share of the usufruct may be mortgaged.
- (2) The same mortgage shall not cover two or more usufructs or a real estate and a usufruct.

### Section 2 — *Applicant for Mortgage over Usufruct*

The mortgage shall be created upon the application of the usufructuary whose right has last been registered.

### Section 3 — *Application of Provisions on Real Estate Mortgages and Liens*

- (1) The provisions in chapter 16, sections 4–9 and chapter 18, section 1, sections 3–5 and sections 7–9 on real estate mortgages apply, where appropriate, to mortgages over usufruct.
- (2) The provisions in chapter 17, sections 1–8 and sections 10–13 on real estate liens apply, where appropriate, to liens over usufruct and the buildings and facilities concerned.
- (3) The provisions in the sections referred to above in paragraphs (1) and (2) on real estates apply to usufruct and the respective provisions on the registration of title, to the registration of the right.

### Section 4 — *Alteration of Usufruct*

An agreement on the alteration of usufruct shall not be binding on the lienholder before the registration of the alteration. Chapter 14, section 14 contains provisions on the prerequisites for the registration of alterations.

### Section 5 — *Cessation of Usufruct*

- (1) A lien over a usufruct shall lapse when the term fixed for the usufruct expires. However, the lien shall remain valid, if the usufruct is extended or it is immediately given back to the same usufructuary and an entry to this effect is made into the title and mortgage register during the term of the usufruct.
- (2) If the usufruct expires prematurely because of termination, agreement or another reason, the lien over the usufruct, as registered, shall remain valid until the mortgage has been cancelled. The same applies, if the same person becomes the titleholder and the usufructuary. Chapter 14, section 16 contains provisions on the prerequisites for the deletion of the registration and the cancellation of the mortgage.
- (3) If the titleholder has become the usufructuary or the usufruct has otherwise lapsed, it shall not be mortgaged nor the mortgage instrument based on such mortgage handed over as security for a debt. However, the lien shall remain valid if the creditor did not know nor should have known of the lapsing of the usufruct at the time of the raising of the lien.

### Section 6 — *Transfer of Mortgage to Cover Real Estate*

- (1) If the titleholder has become the usufructuary or the usufruct has otherwise lapsed, the mortgages over the usufruct may upon the application of the titleholder and with the consent of the lienholder be transferred to cover the entire real estate, so that they have the same seniority as the registration of the usufruct and are among themselves in the same order of seniority as previously. It shall be a prerequisite for this that all mortgages over the usufruct are transferred at the same time. If the real estate is subject to mortgages or registrations of special rights, the consent of those rightholders whose registration is equally or less senior than the registration of the lapsed usufruct shall be required.
- (2) The lapsing of the usufruct shall not affect the object of the mortgages over the real estate until the registration of the usufruct has been deleted. Thereafter, the

mortgages over the real estate shall cover also the property previously subject to the usufruct.

#### Section 7 — *Conveyance of Buildings to Usufructuary*

The conveyance of a building on the real estate or the conveyance of other property affixed to the real estate shall not affect the object of the mortgages over the real estate, unless the conveyed property has been registered as a part of the usufruct in accordance with chapter 14, section 4(1)(2). The mortgages over the usufruct cover after such registration also the property referred to therein.

### Chapter 20 — **Statutory Liens**

#### Section 1 — *Scope of Application of This Chapter*

- (1) A real estate that by virtue of another Act is liable for the payment of a debt or fee under public law or another similar debt shall be security for the debt, as provided in this Code.
- (2) The provisions on statutory liens over real estate shall apply also when the statutory lien covers a share or parcel of real estate, a lease or another usufruct on the land of another person.

#### Section 2 — *Registration of Statutory Liens*

- (1) A statutory lien shall be notified to be entered into the title and mortgage register. If the notification has not been presented to the register authority within one year from the activation of the debt, the lien shall lapse.
- (2) The notification may be made when the decision granting a loan or imposing an obligation to pay has been made, even if it is not yet final. A recurring payment from real estate, not based on a court judgment, may be notified for registration only if the payment of an installment has been neglected.
- (3) Provisions on the notification and the minimum amount registrable as a statutory lien are issued by Decree.

#### Section 3 — *Effect of Conveyance and Enforcement*

- (1) A statutory lien shall not be binding on the conveyee, if it has not been entered into the title and mortgage register before the application of the registration of the title of the conveyee and the conveyee did not know nor should have known of the debt or the basis for one.
- (2) If the conveyor has failed to inform the conveyee of a debt payable from the real estate and the statutory lien does not remain valid, the creditor shall have a right to due compensation from the conveyor.
- (3) A statutory lien shall have no effect in respect to the creditors of the titleholder, unless it has been entered into the title and mortgage register before the register authority has been notified of execution, precautionary measures or bankruptcy.

#### Section 4 — *Effects of Registration*

- (1) The registration of a statutory lien shall be valid from the date when the pertinent notification is made to the register authority.
- (2) On the basis of a registered statutory lien, the creditor shall have the right to payment of the debt from the real estate before the payment of debts backed by mortgages. The same shall apply to interest, as registered, and other additional expense for at most three years from the date of execution to the date when the interest is paid.
- (3) Registration shall not preclude the investigation of the existence of the statutory lien and the amount of the debt.

#### Section 5 — *Barriers to Registration*

- (1) A statutory lien shall not be registered, if:
  - (1) the notification has not been made in the prescribed time;
  - (2) someone else than the debtor has applied, before the notification, for the registration of his title on the basis of a conveyance and he does not consent to the registration;

- (3) an entry on execution or precautionary measures on the real estate or the bankruptcy of the titleholder has been made into the title and mortgage register prior to the notification; or
  - (4) the real estate is by law not liable for the debt or the registration is otherwise not possible.
- (2) The notification may be left in abeyance until the basis or the permanence of a statutory lien has been clarified.

Section 6 — *Deletion of Registration*

The lienholder shall notify the registration of a statutory lien to be deleted, when the debt has lapsed or when the lien is no longer valid. In such cases, the registration may be deleted also upon the request of the titleholder.

Section 7 — *Application of Provisions on Real Estate Liens*

The provisions on real estate liens and mortgages apply, where appropriate, to statutory liens and the registration thereof.

## Part V — **MISCELLANEOUS PROVISIONS**

### Chapter 21 — **Detailed Provisions and Entry into Force**

Section 1 — *Detailed Provisions*

Detailed provisions on registration, the maintenance of the title and mortgage register and the other implementation of this Code are issued by Decree.

Section 2 — *Entry into Force*

This Code shall enter into force as provided by Decree.