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## Swiss Civil Code

of 10 December 1907 (Status as of 1 January 2019)

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*The Federal Assembly of the Swiss Confederation,*  
 based on Article 64 of the Federal Constitution<sup>1,2</sup>  
 and having considered the Dispatch of the Federal Council dated 28 May 1904<sup>3</sup>,  
*decrees:*

### Introduction

#### Art. 1

A. Application  
of the law

<sup>1</sup> The law applies according to its wording or interpretation to all legal questions for which it contains a provision.

<sup>2</sup> In the absence of a provision, the court<sup>4</sup> shall decide in accordance with customary law and, in the absence of customary law, in accordance with the rule that it would make as legislator.

<sup>3</sup> In doing so, the court shall follow established doctrine and case law.

#### Art. 2

B. Scope and  
limits of legal  
relationships

<sup>1</sup> Every person must act in good faith in the exercise of his or her rights and in the performance of his or her obligations.

I. Acting in good  
faith

<sup>2</sup> The manifest abuse of a right is not protected by law.

#### Art. 3

II. Good faith

<sup>1</sup> Where the law makes a legal effect conditional on the good faith of a person, there shall be a presumption of good faith.

AS 24 233, 27 207 and BS 2 3

<sup>1</sup> [BS 1 3]. This provision corresponds to Art. 122 of the Federal Constitution of 18 April 1999 (SR 101).

<sup>2</sup> Amended by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, in force since 1 Jan. 2001 (AS 2000 2355; BBl 1999 2829).

<sup>3</sup> BBl 1904 IV 1, 1907 VI 367

<sup>4</sup> Term in accordance with No I 1 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS 1999 1118; BBl 1996 I 1). This amendment is taken into consideration throughout the Code.

<sup>2</sup> No person may invoke the presumption of good faith if he or she has failed exercise the diligence required by the circumstances.

#### **Art. 4**

III. Judicial<sup>5</sup>  
discretion

Where the law confers discretion on the court or makes reference to an assessment of the circumstances or to good cause, the court must reach its decision in accordance with the principles of justice and equity.

#### **Art. 5**

C. Federal law  
and cantonal law  
I. Cantonal civil  
law and local  
custom

<sup>1</sup> Insofar as federal law reserves the application of cantonal law, the cantons may enact or repeal civil law provisions.

<sup>2</sup> Where the law makes reference to practice or local custom, the existing cantonal law is deemed a valid expression thereof, provided no divergent practice is shown to exist.

#### **Art. 6**

II. Cantonal  
public law

<sup>1</sup> Federal civil law does not restrict the right of the cantons to enact public law.

<sup>2</sup> The cantons are entitled within the limits of their sovereignty to restrict or prohibit the trade in certain goods or to declare transactions involving such goods legally invalid.

#### **Art. 7**

D. General  
provisions of the  
Code of  
Obligations

The general provisions of the Code of Obligations<sup>6</sup> concerning the formation, performance and termination of contracts also apply to other civil law matters.

#### **Art. 8**

E. Rules of  
evidence  
I. Burden of  
proof

Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.

#### **Art. 9**

II. Proof by  
public document

<sup>1</sup> Public registers and public deeds constitute full proof of the facts evidenced by them, unless their content is shown to be incorrect.

<sup>5</sup> Term in accordance with No I 1 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS 1999 1118; BBl 1996 I 1). This amendment is taken into consideration throughout the Code.

<sup>6</sup> SR 220

<sup>2</sup> Such proof of incorrectness does not require to be in any particular form.

**Art. 10<sup>7</sup>**

**Part One: Law of Persons**

**Title One: Natural Persons**

**Chapter One: Legal Personality**

**Art. 11**

A. Personality in general

I. Legal capacity

<sup>1</sup> Every person has legal capacity.

<sup>2</sup> Accordingly, within the limits of the law, every person has the same capacity to have rights and obligations.

**Art. 12**

II. Capacity to act

1. Nature

A person who has capacity to act has the capacity to create rights and obligations through his actions.

**Art. 13<sup>8</sup>**

2. Requirements

a. In general

A person who is of age and is capable of judgement has the capacity to act.

**Art. 14<sup>9</sup>**

b. Majority

A person is of age if he or she has reached the age of 18.

**Art. 15<sup>10</sup>**

c. ...

<sup>7</sup> Repealed by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).

<sup>8</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>9</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), with effect from 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>10</sup> Repealed by No I of the FA of 7 Oct. 1994, with effect from 1 Jan. 1996 (AS **1995** 1126; BBl **1993** I 1169).

d. Capacity of judgement

**Art. 16<sup>11</sup>**

A person is capable of judgement within the meaning of the law if he or she does not lack the capacity to act rationally by virtue of being under age or because of a mental disability, mental disorder, intoxication or similar circumstances.

III. Incapacity  
1. In general

**Art. 17<sup>12</sup>**

A person does not have the capacity to act if he or she is incapable of judgement or is under age or is subject to a general deputyship.

2. Lack of capacity of judgement

**Art. 18**

A person who is incapable of judgement cannot create legal effect by his or her actions, unless the law provides otherwise.

3. Persons capable of judgement but lacking the capacity to act.  
a. Principle<sup>13</sup>

**Art. 19**

<sup>1</sup> Persons who are capable of judgement but lack the capacity to act may only enter into obligations or give up rights with the consent of their legal representative.<sup>14</sup>

<sup>2</sup> Without such consent, they may only accept advantages that are free of charge or carry out minor everyday transactions.<sup>15</sup>

<sup>3</sup> They are liable in damages for unpermitted acts.

b. Consent of the legal representative

**Art. 19a<sup>16</sup>**

<sup>1</sup> Unless the law provides otherwise, the legal representative may consent expressly or tacitly in advance or approve the transaction retrospectively.

<sup>2</sup> The other party is relieved of any obligation if approval is not given within a reasonable period that he or she fixes or has fixed by a court.

<sup>11</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>12</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>13</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>14</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>15</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>16</sup> Inserted by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

**Art. 19b<sup>17</sup>**

c. Absence of consent

<sup>1</sup> If the legal representative does not grant approval, either party may demand restitution of any performance already made. A person lacking capacity to act is however only liable to the extent that he or she has already benefited from the performance or to which he or she has been enriched at the time of the demand or has alienated the benefits in bad faith.

<sup>2</sup> If the person lacking capacity to act has induced the other party to erroneously assume that he or she has the capacity to act, he or she is liable for the loss or damage incurred.

**Art. 19c<sup>18</sup>**

4. Strictly personal rights

<sup>1</sup> Persons capable of judgement but lacking capacity to act exercise their strictly personal rights independently; cases where the law requires the consent of the legal representative are reserved.

<sup>2</sup> The legal representative acts for a person lacking capacity of judgement unless a right is so strictly personal that any form of representation is excluded.

**Art. 19d<sup>19</sup>**III<sup>bis</sup>. Restriction of the capacity to act

The capacity to act may be restricted by an adult protection measure.

**Art. 20**IV.<sup>20</sup> Kinship by blood and by marriage

<sup>1</sup> The degree of kinship<sup>21</sup> is determined by the number of intermediary generations.

1. Blood kinship

<sup>2</sup> Lineal kinship exists between two persons where one is descended from the other and collateral kinship exists between two persons where both are descended from a third person and are not related lineally.

<sup>17</sup> Inserted by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>18</sup> Inserted by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>19</sup> Inserted by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>20</sup> Amended of margin title in accordance with No I 3 of the FA of 30 June 1972, in force since 1 April 1973 (AS 1972 2819, 1973 92; BBl 1971 I 1200).

<sup>21</sup> Term amended by No I 3 of the FA of 30 June 1972, in force since 1 April 1973 (AS 1972 2819; BBl 1971 I 1200).

**Art. 21<sup>22</sup>**

2. Kinship by marriage

<sup>1</sup> Where one person is related to another, he or she is related as an in-law to the latter's spouse or registered partner in the same line and to the same degree.

<sup>2</sup> Kinship by marriage is not ended by dissolution of the marriage or of the registered partnership which created it.

**Art. 22**

V. Place of origin and domicile

1. Origin

<sup>1</sup> The place of origin of a person is determined by his or her citizenship.

<sup>2</sup> Citizenship is governed by public law.

<sup>3</sup> If a person is a citizen of more than one place, his or her place of origin is the one in which he or she is or was most recently resident or, in the absence of any such residence, the one in which he or she or his or her ancestors last acquired citizenship.

**Art. 23**

2. Domicile  
a. Definition

<sup>1</sup> A person's domicile is the place in which he or she resides with the intention of settling; residence for the purpose of education or the accommodation of a person in an educative institution or care home, a hospital or a penal institution does not by itself establish domicile.<sup>23</sup>

<sup>2</sup> No person may have more than one domicile at a time.

<sup>3</sup> This provision does not apply to places of business.

**Art. 24**

b. Change of domicile, temporary residence

<sup>1</sup> A person retains his or her domicile until such time as a new one is acquired.

<sup>2</sup> A person's domicile is deemed to be the place in which he or she is temporarily resident if no previously established domicile may be proven or if he or she was formerly resident abroad and has not yet established a domicile in Switzerland.

<sup>22</sup> Amended by Annex No. 8 of the Registered Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS **2005** 5685; BBl **2003** 1288).

<sup>23</sup> Amended by No 12 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

**Art. 25<sup>24</sup>**

c. Domicile of minors<sup>25</sup>

1 The domicile of a child subject to parental responsibility<sup>26</sup> is deemed to be that of the parents or, if the parents have different domiciles, that of the parent with whom the child is resident; in all other cases it is deemed to be the child's temporary domicile.

2 Children under guardianship are domiciled at the seat of the child protection authority.<sup>27</sup>

**Art. 26<sup>28</sup>**

d. Persons in institutions

Adults subject to a general deputyship are domiciled at the location of the adult protection authority.

**Art. 27**

B. Protection of legal personality  
I. Against excessive restriction<sup>29</sup>

1 No person may, wholly or in part, renounce his or her legal capacity or his or her capacity to act.

2 No person may surrender his or her freedom or restrict the use of it to a degree which violates the law or public morals.

**Art. 28<sup>30</sup>**

II. Against infringements  
1. Principle

1 Any person whose personality rights are unlawfully infringed may petition the court for protection against all those causing the infringement.

2 An infringement is unlawful unless it is justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law.

<sup>24</sup> Amended by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

<sup>25</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>26</sup> Term in accordance with No I 1 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1). This amendment is taken into consideration throughout the Code.

<sup>27</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>28</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>29</sup> Amended by No I of the FA of 16 Dec. 1983, in force since 1 July 1985 (AS **1984** 778; BBl **1982** II 636).

<sup>30</sup> Amended by No I of the FA of 16 Dec. 1983, in force since 1 July 1985 (AS **1984** 778; BBl **1982** II 636).

**Art. 28a**<sup>31</sup>

2. Actions  
a. In general<sup>32</sup>

<sup>1</sup> The applicant may ask the court:

1. to prohibit a threatened infringement;
2. to order that an existing infringement cease;
3. to make a declaration that an infringement is unlawful if it continues to have an offensive effect.

<sup>2</sup> In particular the applicant may request that the rectification or the judgment be notified to third parties or published.

<sup>3</sup> Claims for damages and satisfaction and for handing over profits in accordance with the provisions governing agency without authority are reserved.

**Art. 28b**<sup>33</sup>

b. Violence,  
threats or  
harassment

<sup>1</sup> To obtain protection from violence, threats or harassment the applicant may request the court in particular to order the offending party to refrain from:

1. approaching the applicant or from entering a defined area around the applicant's dwelling;
2. frequenting specified locations, notably particular streets, squares or districts;
3. from making contact with the applicant, especially by telephone, in writing or electronically, or from harassing the applicant in any other way.

<sup>2</sup> If the applicant lives in the same dwelling as the offending party, the applicant may ask the court to order the offending party to leave the dwelling for a specified period. This period may be extended on one occasion for good cause.

<sup>3</sup> Where justified by the circumstances, the court may:

1. require the applicant to pay reasonable compensation for his or her exclusive use of the dwelling; or
2. with the landlord's consent, transfer the rights and obligations under the lease to the applicant alone.

<sup>31</sup> Inserted by No I of the FA of 16 Dec. 1983, in force since 1 July 1985 (AS **1984** 778; BBl **1982** II 636).

<sup>32</sup> Amended by No I of the FA of 23 June 2006 (Protection of the Personality against Violence, Threats and Harassment), in force since 1 July 2007 (AS **2007** 137; BBl **2005** 6871 6897).

<sup>33</sup> Inserted by No I of the FA of 16 Dec. 1983 (AS **1984** 778; BBl **1982** II 636). Amended by No I of the FA of 23 June 2006 (Protection of the Personality against Violence, Threats and Harassment), in force since 1 July 2007 (AS **2007** 137; BBl **2005** 6871 6897).



<sup>4</sup> The cantons shall designate an authority which in urgent cases may order the immediate expulsion of the offending party from the joint dwelling and shall enact rules governing the procedure.

**Art. 28c–28f**<sup>34</sup>

3. ...

**Art. 28g**<sup>35</sup>

4. Right of reply  
a. Principle<sup>36</sup> <sup>1</sup> Any person whose personality rights are directly affected by a representation of events in periodically appearing media, especially the press, radio or television, shall have a right of reply.

<sup>2</sup> There is no right of reply in respect of accurate reports of the public dealings of an authority in which the affected person took part.

**Art. 28h**<sup>37</sup>

b. Form and content <sup>1</sup> The text of the reply must be succinct and confine itself to the subject matter of the contentious representation.

<sup>2</sup> The reply may be refused if it is plainly incorrect or violates the law or public morals.

**Art. 28i**<sup>38</sup>

c. Procedure <sup>1</sup> The author of the reply must send the text to the media company within 20 days of learning of the contentious representation, but at the latest within three months of publication.

<sup>2</sup> The media company must immediately inform the author of the reply when it will be published or why it is rejected.

<sup>34</sup> Inserted by No I of the FA of 16 Dec. 1983 (AS **1984** 778; BBl **1982** II 636). Repealed by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).

<sup>35</sup> Inserted by No I of the FA of 16 Dec. 1983, in force since 1 July 1985 (AS **1984** 778; BBl **1982** II 636).

<sup>36</sup> Amended by No I of the FA of 23 June 2006 (Protection of the Personality against Violence, Threats and Harassment), in force since 1 July 2007 (AS **2007** 137; BBl **2005** 6871 6897).

<sup>37</sup> Inserted by No I of the FA of 16 Dec. 1983, in force since 1 July 1985 (AS **1984** 778; BBl **1982** II 636).

<sup>38</sup> Inserted by No I of the FA of 16 Dec. 1983, in force since 1 July 1985 (AS **1984** 778; BBl **1982** II 636).

**Art. 28**<sup>39</sup>

- d. Publication
- <sup>1</sup> The reply must be published as soon as possible and in such a manner as to ensure that it reaches the same audience or readership as the contentious representation.
- <sup>2</sup> The reply must be identified as such; the media company is not permitted to make any addition except to state whether it stands by its representation or to indicate its sources.
- <sup>3</sup> The reply must be published free of charge.

**Art. 28**<sup>40</sup>

- e. Recourse to the courts
- <sup>1</sup> If the media company obstructs the right of reply, rejects the reply or fails to publish it correctly, the party in question may petition the court.
- <sup>2</sup> ...<sup>41</sup>
- <sup>3</sup> and <sup>4</sup> ...<sup>42</sup>

**Art. 29**

- III. Right to use one's name
1. Protection of one's name
- <sup>1</sup> If a person's use of his or her name is disputed, he or she may apply for a court declaration confirming his rights.
- <sup>2</sup> If a person is adversely affected because another person is using his or her name, he or she may seek an order prohibiting such use and, if the user is at fault, may bring a claim for damages and, where justified by the nature of the infringement, for satisfaction.

**Art. 30**

2. Change of name
- a. General<sup>43</sup>
- <sup>1</sup> The government of the canton of residence may permit a person to change his or her name for good cause.<sup>44</sup>
- <sup>2</sup> ...<sup>45</sup>

<sup>39</sup> Inserted by No I of the FA of 16 Dec. 1983, in force since 1 July 1985 (AS **1984** 778; BBl **1982** II 636).

<sup>40</sup> Inserted by No I of the FA of 16 Dec. 1983, in force since 1 July 1985 (AS **1984** 778; BBl **1982** II 636).

<sup>41</sup> Repealed by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan. 2001 (AS **2000** 2355; BBl **1999** 2829).

<sup>42</sup> Repealed by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).

<sup>43</sup> Amended by No I of the FA of 30 Sept. 2011 (Name and Citizenship), in force since 1 Jan. 2013 (AS **2012** 2569; BBl **2009** 7573 7581).

<sup>44</sup> Amended by No I of the FA of 30 Sept. 2011 (Name and Citizenship), in force since 1 Jan. 2013 (AS **2012** 2569; BBl **2009** 7573 7581).

<sup>45</sup> Repealed by No I of the FA of 30 Sept. 2011 (Name and Citizenship), with effect from 1 Jan. 2013 (AS **2012** 2569; BBl **2009** 7573 7581).

<sup>3</sup> A person adversely affected by a change of name may contest the same in court within one year of learning thereof.

#### **Art. 30<sup>a46</sup>**

b. On the death of a spouse

A person whose spouse dies may, if that person changed his or her surname on marriage, at any time declare before the civil registrar the wish to revert to the name by which he or she was known prior to the marriage.

#### **Art. 31**

C. Beginning and end of personality rights

<sup>1</sup> Personality rights begin on the birth of the living child and end on death.

I. Birth and death

<sup>2</sup> An unborn child has legal capacity provided that it survives birth.

#### **Art. 32**

II. Proof

1. Burden of proof

<sup>1</sup> Any person who, in exercising a right, relies on the fact that another person is living or has died or was alive at a particular time or survived another person must produce evidence thereof.

<sup>2</sup> If it cannot be proved that, of a group of several deceased persons, one survived another, all are deemed to have died at the same time.

#### **Art. 33**

2. Evidence  
a. In general

<sup>1</sup> Proof of the birth or death of a person is established by the records kept by the civil register.

<sup>2</sup> If records are missing or shown to be incorrect, proof may be aduced in another form.

#### **Art. 34**

b. Presumption of death

The death of a person is deemed proven, even if no-one has seen the corpse, if that person has disappeared in circumstances in which his death may be considered certain.

#### **Art. 35**

III. Declaration of presumed death

1. In general

<sup>1</sup> If it is highly probable that a person is dead because he or she has disappeared in extremely life-threatening circumstances or has been missing for a lengthy period without any sign of life, the court may declare that person presumed dead on application by any person deriving rights from his or her death.

<sup>46</sup> Inserted by No I of the FA of 30 Sept. 2011 (Name and Citizenship), in force since 1 Jan. 2013 (AS 2012 2569; BBl 2009 7573 7581).

2 ...<sup>47</sup>

**Art. 36**

2. Procedure

<sup>1</sup> The application may be made when at least one year has elapsed since the life-threatening event or five years have elapsed since the last sign of life.

<sup>2</sup> The court must, by suitable public means, call on any person who may provide information about the missing person to come forward within a specified period.

<sup>3</sup> The period shall run for at least one year following the first public notice.

**Art. 37**

3. Failure of application

If the missing person comes forward within the set period or if news of the missing person is received or if the date of his or her death is proved, the application fails.

**Art. 38**

4. Effect

<sup>1</sup> If no news is received during the set period, the missing person is declared presumed dead and rights derived from the fact of his or her death may be enforced as if death were proven.

<sup>2</sup> The declaration of presumed death has retroactive effect from the time of the life-threatening event or the last sign of life.

<sup>3</sup> A declaration of presumed death dissolves a marriage.<sup>48</sup>

**Chapter Two:<sup>49</sup> Registration of Civil Status**

**Art. 39<sup>50</sup>**

A. Registers

1. In general

<sup>1</sup> Civil status is recorded in an electronic register (civil register).

<sup>2</sup> Civil status includes in particular:

1. a person's particulars, such as those relating to birth, marriage, registered civil partnership and death;

<sup>47</sup> Repealed by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan. 2001 (AS **2000** 2355; BBl **1999** 2829).

<sup>48</sup> Inserted by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>49</sup> Amended by No I 1 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>50</sup> Amended by No I 1 of the FA of 15 Dec. 2017 (Registration of Civil Status and Land Register), in force since 1 Jan. 2019 (AS **2018** 4017; BBl **2014** 3551).

2. a person's status under the law of persons and family law, such as majority, parentage, marriage or registered civil partnership;
3. names;
4. cantonal and communal citizenship;
5. nationality.

#### Art. 40

II. Duty to notify<sup>51</sup>

<sup>1</sup> The Federal Council determines which persons and authorities have a duty to furnish the information necessary to record civil status.

<sup>2</sup> It may provide that breaches of said duty be punishable by fines.

<sup>3</sup> ...<sup>52</sup>

#### Art. 41

III. Proof of undisputed information

<sup>1</sup> Where documentary proof of information concerning civil status is required but is impossible or unreasonably difficult to obtain despite making reasonable efforts, the cantonal supervisory authority may accept a declaration made in the presence of the registrar as proof provided such information is not disputed.

<sup>2</sup> The registrar shall remind any person making such a declaration of his or her duty to tell the truth and that a false declaration may lead to prosecution.

#### Art. 42

IV. Rectification  
1. By court order

<sup>1</sup> Any person who satisfies the court that he or she has a personal interest warranting protection may seek an order for the registration of disputed information concerning personal status or the rectification or removal of an entry. The court shall hear the relevant cantonal supervisory authority, to which it shall notify its judgment.

<sup>2</sup> The cantonal supervisory authorities are likewise entitled to make such applications.

#### Art. 43

2. By the register authorities

The register authorities must of their own accord rectify mistakes resulting from an obvious oversight or error.

<sup>51</sup> Amended by No I of the FA of 5 Oct. 2001 (Electronic civil register), in force since 1 July 2004 (AS **2004** 2911; BB1 **2001** 1639).

<sup>52</sup> Repealed by No I of the FA of 5 Oct. 2001 (Electronic civil register), with effect from 1 July 2004 (AS **2004** 2911; BB1 **2001** 1639).

**Art. 43a**<sup>53</sup>

<sup>1</sup> In relation to the registration of civil status, the Federal Council is responsible for safeguarding the personality and constitutional rights of persons in respect of whom data is processed.

<sup>2</sup> It regulates the disclosure of data to private persons who may show a direct interest warranting protection.

<sup>3</sup> It stipulates those authorities, in addition to the register authorities, to whom the data necessary for the performance of their legal duties may be disclosed periodically or on request. The disclosure provisions under cantonal law are reserved.

<sup>3bis</sup> The register authorities are required to report to the competent authority any criminal offences that come to their attention while carrying out their official duties.<sup>54</sup>

<sup>4</sup> The following bodies have online access to data required for proving the identity of a person:

1. the issuing authorities under the Federal Act of 22 June 2001<sup>55</sup> on Identification Documents for Swiss Nationals;
- 2.<sup>56</sup> the federal agency responsible for operating the computerised police search system under Article 15 of the Federal Act of 13 June 2008<sup>57</sup> on the Federal Police Information Systems and the filtering agencies of the cantonal and communal police forces linked into the search system;
3. the federal agency responsible for keeping the computerised register of convictions under Art. 359 of the Criminal Code<sup>58</sup>;
4. the federal agency responsible for investigations regarding missing persons<sup>59</sup>;
- 5.<sup>60</sup> the Federal Intelligence Service for the early detection and prevention of threats to internal or external security in accordance with Article 6 paragraph 1 letter a of the Intelligence Service Act of 25 September 2015<sup>61</sup>;

<sup>53</sup> Introduced by No I of the FA of 5 Oct. 2001 (Electronic civil register), in force since 1 July 2004 (AS **2004** 2911; BBl **2001** 1639).

<sup>54</sup> Inserted by No. 13 of the FA of 15 June 2012 on Measures against Forced Marriages, in force since 1 July 2013 (AS **2013** 1035; BBl **2011** 2185).

<sup>55</sup> SR **143.1**

<sup>56</sup> Amended by Annex 1 No. 4 of the FA of 13 June 2008 on the Federal Police Information Systems, in force since 5 Dec. 2008 (AS **2008** 4989; BBl **2006** 5061).

<sup>57</sup> SR **361**

<sup>58</sup> Now: Art. 365.

<sup>59</sup> Currently the Federal Office of Police.

<sup>60</sup> Inserted by Annex No II 4 of the Intelligence Service Act of 25 Sept. 2015, in force since 1 Sept. 2017 (AS **2017** 4095; BBl **2014** 2105).

<sup>61</sup> SR **121**

- 6.<sup>62</sup> the authorities responsible for keeping the cantonal and communal registers of residents in accordance with the Register Harmonisation Act of 23 June 2006<sup>63</sup>;
- 7.<sup>64</sup> the federal agencies responsible for keeping the central registers of insured persons in accordance with Article 71 paragraph 4 letter a of the Federal Act of 20 December 1946<sup>65</sup> on Old-Age and Survivors Insurance;
- 8.<sup>66</sup> the federal agencies at the Federal Department of Foreign Affairs responsible for keeping the register of Swiss living abroad in accordance with Article 4 paragraph 1 of the Federal Act of 24 March 2000<sup>67</sup> on the Processing of Personal Data.

#### Art. 44

B. Organisation  
I. Civil register  
authorities  
1. Civil registrars

<sup>1</sup> In particular, the registrars shall perform the following tasks:

1. they maintain the civil register;
2. they make notifications and provide extracts;
3. they carry out the preparatory procedure for weddings and conduct the wedding ceremony;
4. they record declarations as to civil status.

<sup>2</sup> Exceptionally, the Federal Council may entrust a representative of Switzerland abroad with these tasks.

#### Art. 45

2. Supervisory  
authorities

<sup>1</sup> Each canton shall appoint a supervisory authority.

<sup>2</sup> In particular, the supervisory authority shall perform the following tasks:

1. it supervises the register offices;
2. it supports and advises the register offices;
3. it assists in maintaining the civil register and in carrying out the preparatory procedure for weddings;

<sup>62</sup> Inserted by No I 1 of the FA of 15 Dec. 2017 (Registration of Civil Status and Land Register), in force since 1 Jan. 2019 (AS **2018** 4017; BBl **2014** 3551).

<sup>63</sup> SR **431.02**

<sup>64</sup> Inserted by No I 1 of the FA of 15 Dec. 2017 (Registration of Civil Status and Land Register), in force since 1 Jan. 2019 (AS **2018** 4017; BBl **2014** 3551).

<sup>65</sup> SR **831.10**

<sup>66</sup> Inserted by No I 1 of the FA of 15 Dec. 2017 (Registration of Civil Status and Land Register), in force since 1 Jan. 2019 (AS **2018** 4017; BBl **2014** 3551).

<sup>67</sup> SR **235.2**

4. it issues directives on recognition and recording of matters relating to civil status that occur abroad and of foreign judicial and administrative decisions concerning civil status;
5. it provides for the basic and continuing education and training of persons working in the civil register service.

<sup>3</sup> The Confederation is responsible for oversight. It may have recourse to cantonal appeal procedures against the decisions of the registrars and the supervisory authorities.<sup>68</sup>

**Art. 45a<sup>69</sup>**

Ia. Central civil information system

<sup>1</sup> The Confederation shall operate and develop a central civil information system for running a centralised civil register.

<sup>2</sup> The Confederation bears the operating and development costs.

<sup>3</sup> The cantons shall pay the Confederation an annual fee for the use of the system for the purposes of managing the register of civil status.

<sup>4</sup> The Confederation shall involve the cantons in the development of the system and provide technical support in its use.

<sup>5</sup> In cooperation with the cantons, the Federal Council regulates:

1. the details of the cantons' involvement in developing the system;
2. the amount to be paid by the cantons for its use;
3. the rights of access of the civil register authorities and other agencies with access rights;
4. how the Confederation and cantons cooperate over running the system;
5. the organisational and technical measures necessary to safeguard data protection and data security;
6. data archiving.

<sup>6</sup> It may provide for the costs of services for third parties for purposes unrelated to civil status matters to be charged to these third parties.

**Art. 46**

II. Liability

<sup>1</sup> Any person suffering loss caused unlawfully by persons employed in the civil register service in the exercise of their official duties is enti-

<sup>68</sup> Amended by No I of the FA of 5 Oct. 2001 (Electronic civil register), in force since 1 July 2004 (AS **2004** 2911; BBl **2001** 1639).

<sup>69</sup> Inserted by No I of the FA of 5 Oct. 2001 (Electronic civil register) (AS **2004** 2911; BBl **2001** 1639). Inserted by No I 1 of the FA of 15 Dec. 2017 (Registration of Civil Status and Land Register), in force since 1 Jan. 2019 (AS **2018** 4017; BBl **2014** 3551).



pled to damages and, where justified by the gravity of the loss, to satisfaction.

<sup>2</sup> The canton is liable; it may have recourse against persons who have caused loss wilfully or through gross negligence.

<sup>3</sup> The Government Liability Act of 14 March 1958<sup>70</sup> applies in relation to persons employed by the Confederation.

#### **Art. 47**

III. Disciplinary measures

<sup>1</sup> Wilful or negligent breaches of official duty by persons working in civil register offices are subject to disciplinary measures taken by the cantonal supervisory authority.

<sup>2</sup> Disciplinary measures shall consist of reprimands, fines of up to CHF 1000 or, in serious cases, removal from office.

<sup>3</sup> The right to prosecute is reserved.

#### **Art. 48**

C. Implementing provisions

I. Federal law

<sup>1</sup> The Federal Council issues the provisions on implementation.

<sup>2</sup> In particular it regulates:

1. the registers to be maintained and the information to be recorded;
2. the use of the OASI number in accordance with Article 50c of the Federal Act of 20 December 1946<sup>71</sup> on the Old-Age and Survivors' Insurance for the purpose of electronic data exchange between official registers of persons;
3. the maintenance of the register;
4. supervision.<sup>72</sup>

<sup>3</sup> To ensure technically reliable implementation the Federal Council may set minimum requirements for the basic and continuing education and training of personnel in the civil register service and for the function of registrar.

<sup>4</sup> It determines the fees charged by the civil register service.

<sup>5</sup> It determines the conditions on which it is permissible by electronic means:

1. to provide civil status information;
2. to make declarations concerning civil status;

<sup>70</sup> SR 170.32

<sup>71</sup> SR 831.10

<sup>72</sup> Amended by Annex No. 2 of the Register Harmonisation Act of 23 June 2006, in force since 1 Jan. 2008 (AS 2006 4165; BBl 2006 427).

3. to make notifications and provide extracts from the civil register.<sup>73</sup>

### **Art. 49**

- II. Cantonal law
- 1 The cantons define the civil register districts.
- 2 They enact the provisions necessary for implementation within the framework of federal law.
- 3 Such cantonal provisions, with the exception of those concerning remuneration of personnel, are subject to approval by the Confederation.

### **Art. 50 and 51**

*Repealed*

## **Title Two: Legal Entities**

### **Chapter One: General Provisions**

### **Art. 52**

- A. Legal personality
- 1 Associations of persons organised as corporate bodies and independent bodies with a specific purpose acquire legal personality on being entered in the commercial register.
- 2 Public law corporations and bodies, and associations that do not have a commercial purpose do not require registration.<sup>74</sup>
- 3 Associations of persons and bodies which pursue an immoral or unlawful purpose may not acquire legal personality.

### **Art. 53**

- B. Legal capacity
- Legal entities have all the rights and duties other than those which presuppose intrinsically human attributes, such as gender, age or kinship.

### **Art. 54**

- C. Capacity to act
- I. Requirements
- Legal entities have capacity to act once the governing bodies required by law and their articles of association have been appointed.

<sup>73</sup> Inserted by No I of the FA of 5 Oct. 2001 (Electronic Civil Register), in force since 1 July 2004 (AS **2004** 2911; BBl **2001** 1639).

<sup>74</sup> Amended by No I 1 of the FA of 12 Dec. 2014 on the Implementation of the 2012 Revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS **2015** 1389; BBl **2014** 605).

- Art. 55**
- II. Action on behalf of the legal entity
- 1 The governing bodies express the will of the legal entity.
  - 2 They bind the legal entity by concluding transactions and by their other actions.
  - 3 The governing officers are also personally liable for their wrongful acts.
- Art. 56**<sup>75</sup>
- D. Seat
- The seat of the legal entity is located where its administration is carried out, unless its articles of association provide otherwise.
- Art. 57**
- E. Dissolution  
I. Application of assets
- 1 On dissolution of a legal entity, and unless provided otherwise by law, the articles of association, the founding charter or the governing bodies, its assets pass to the state authority (Confederation, canton, commune) to which the entity had been assigned according to its objects.
  - 2 Such assets must be used as far as possible for the original purpose.
  - 3 Where a legal entity is dissolved due to its pursuit of immoral or unlawful objects, the assets pass to the state authority even where contrary provision has been made.<sup>76</sup>
- Art. 58**
- II. Liquidation
- The procedure for liquidating the assets of the legal entity is governed by the regulations for cooperatives.
- Art. 59**
- F. Reservation of public law and company law
- 1 Public and ecclesiastical corporations and institutions are governed by federal and cantonal public law.
  - 2 Associations of persons which pursue a commercial purpose are subject to the provisions on companies and cooperatives.
  - 3 Common land cooperatives and similar bodies remain subject to the provisions of cantonal law.

<sup>75</sup> Amended by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS **2007** 4791; BBl **2002** 3148, **2004** 3969).

<sup>76</sup> Amended by No I of the FA of 8 Oct. 2004 (Law on Foundations), in force since 1 Jan. 2006 (AS **2005** 4545; BBl **2003** 8153 8191).

## Chapter Two: Associations

### Art. 60

A. Formation  
I. Corporate  
group of persons

<sup>1</sup> Associations with a political, religious, scientific, cultural, charitable, social or other non-commercial purpose acquire legal personality as soon as their intention to exist as a corporate body is apparent from their articles of association.

<sup>2</sup> The articles of association must be done in writing and indicate the objects of the association, its resources and its organisation.

### Art. 61

II. Entry in the  
commercial  
register<sup>77</sup>

<sup>1</sup> Once the articles of association have been ratified and the committee appointed, the association is eligible for entry in the commercial register.

<sup>2</sup> The association must be registered if it:

1. conducts a commercial operation in pursuit of its objects;
2. is subject to an audit requirement.<sup>78</sup>

<sup>3</sup> The articles of association and a list of committee members must be enclosed with the application for registration.

### Art. 62

III. Associations  
lacking legal  
personality

Associations which cannot acquire or have not yet acquired legal personality are treated as simple partnerships.

### Art. 63

IV. Relationship  
between articles  
of association  
and the law

<sup>1</sup> Where the articles of association do not provide rules for the association's organisation or its relationship with its members, the following provisions apply.

<sup>2</sup> Mandatory provisions of law cannot be altered by the articles of association.

<sup>77</sup> Amended by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>78</sup> Amended by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 64**

B. Organisation  
I. General meeting  
1. Function, convening of meetings

1 The general meeting of members is the supreme governing body of the association.

2 The general meeting is called by the committee.

3 General meetings must be convened in accordance with the rules set out in the articles of association and also, as required by law, if one-fifth of the members so request.

**Art. 65**

2. Powers

1 The general meeting of members decides on admission and exclusion of members, appoints the committee and decides all matters which are not reserved to other governing bodies of the association.

2 It supervises the activities of the governing bodies and may at any time dismiss the latter without prejudice to any contractual rights of those dismissed.

3 The right of dismissal exists by law whenever justified by good cause.

**Art. 66**

3. Resolutions  
a. Form

1 Resolutions are passed by the general meeting.

2 The written consent of all members to a proposal is equivalent to a resolution of the general meeting.

**Art. 67**

b. Voting rights and majority

1 All members have equal voting rights at the general meeting.

2 Resolutions require a majority of the votes of the members present.

3 Resolutions may be taken on matters for which proper notice has not been given only where this is expressly permitted by the articles of association.

**Art. 68**

c. Exclusion from voting

Each member is by law excluded from voting on any resolution concerning a transaction or dispute between him or her, his or her spouse or a lineal relative on the one hand and the association on the other.

**Art. 69**

II. Committee  
1. Rights and  
duties in  
general<sup>79</sup>

The committee is entitled and obliged as defined under the articles of association to manage and represent the association.

**Art. 69a**<sup>80</sup>

2. Accounting

The committee shall maintain the association's business ledgers. The provisions of the Code of Obligations<sup>81</sup> on commercial bookkeeping and accounting apply *mutatis mutandis*.

**Art. 69b**<sup>82</sup>

III. Auditors

<sup>1</sup> The association must submit its accounts to a full audit by external auditors if two of the following figures are exceeded in two successive business years:

1. total assets of CHF 10 million;
2. turnover of CHF 20 million;
3. average annual total of 50 full-time staff.

<sup>2</sup> The association must submit its accounts to a limited audit by external auditors if a member with personal liability or an obligation to provide further capital so requests.

<sup>3</sup> The provisions of the Code of Obligations<sup>83</sup> on external auditors for companies apply *mutatis mutandis*.

<sup>4</sup> In all other cases the articles of association and the general meeting<sup>84</sup> are free to make such auditing arrangements as they deem fit.

<sup>79</sup> Amended by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS **2007** 4791; BBl **2002** 3148, **2004** 3969).

<sup>80</sup> Inserted by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names) (AS **2007** 4791; BBl **2002** 3148, **2004** 3969). Amended by Annex No. 1 of the FA of 23 Dec. 2011 (Accounting Law), in force since 1 Jan. 2013 (AS **2012** 6679; BBl **2008** 1589).

<sup>81</sup> SR **220**

<sup>82</sup> Inserted by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS **2007** 4791; BBl **2002** 3148, **2004** 3969).

<sup>83</sup> SR **220**

<sup>84</sup> Corrected by the Federal Assembly Drafting Committee (Art. 58 para. 1 ParlA; SR **171.10**).

- Art. 69c**<sup>85</sup>
- IV. Organisational defects
- <sup>1</sup> If the association lacks one of the prescribed governing bodies, a member or a creditor may apply to the court for an order that the necessary measures be taken.
  - <sup>2</sup> In particular, the court may set the association a time limit in which to restore the situation required by law and may, if necessary, appoint an administrator.
  - <sup>3</sup> The association bears the cost of such measures. The court may order the association to make an advance payment to the persons appointed.
  - <sup>4</sup> For good cause, the association may apply to the court for the removal of the persons it appointed.

- Art. 70**
- C. Membership  
I. Admission, resignation
- <sup>1</sup> Members may be admitted at any time.
  - <sup>2</sup> All members have a legal right to resign subject to six months' notice expiring at the end of the calendar year or, if an administrative period is provided for, at the end of such period.
  - <sup>3</sup> Membership is neither transferable nor heritable.

- Art. 71**<sup>86</sup>
- II. Duty to pay subscriptions
- Members have a duty to pay subscriptions if the articles of association so provide.

- Art. 72**
- III. Exclusion
- <sup>1</sup> The articles of association may specify the grounds on which a member may be excluded, but exclusion may also occur without reasons being given.
  - <sup>2</sup> In such cases, the exclusion may not be challenged based on the reasons.
  - <sup>3</sup> Unless the articles of association provide otherwise, exclusion requires a resolution by the members and good cause.

<sup>85</sup> Inserted by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS **2007** 4791; BBl **2002** 3148, **2004** 3969).

<sup>86</sup> Amended by No I of the FA of 17 Dec. 2004 (Determination of Subscription Duties for Association Members), in force since 1 June 2005 (AS **2005** 2117; BBl **2004** 4835 4843).

**Art. 73**

IV. Status of former members

<sup>1</sup> Members who resign or are excluded have no claim on the assets of the association.

<sup>2</sup> They are liable for the subscriptions due during the period of their membership.

**Art. 74**

V. Protection of the objects of the association

No member may be forced against his or her will to accept a change in the objects of the association.

**Art. 75**

VI. Protection of members

Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof.

**Art. 75a<sup>87</sup>**

C<sup>bis</sup>. Liability

The association is liable for its obligations with its assets. Such liability is limited to the assets unless the articles of association provide otherwise.

**Art. 76**

D. Dissolution  
I. Manner of dissolution

The association may be dissolved at any time by resolution of the members.

1. By resolution

**Art. 77**

2. By operation of law

The association is dissolved by operation of law if it is insolvent or if the committee may no longer be appointed in accordance with the articles of association.

**Art. 78**

3. By court order

Where the objects of the association are unlawful or immoral, the competent authority or an interested party may apply for a court order of dissolution.

<sup>87</sup> Inserted by No I of the FA of 17 Dec. 2004 (Determination of Subscription Duties for Association Members), in force since 1 June 2005 (AS **2005** 2117; BBl **2004** 4835 4843).



**Art. 79**

II. Deletion from  
the commercial  
register

Where the association is registered, the committee or the court shall inform the commercial registrar of the dissolution so that the entry may be deleted.

**Chapter Three: Foundations****Art. 80**

A. Formation  
I. In general

A foundation is established by the endowment of assets for a particular purpose.

**Art. 81**

II. Form of  
establishment

<sup>1</sup> A foundation may be created by public deed or by testamentary disposition.<sup>88</sup>

<sup>2</sup> The foundation is entered in the commercial register based on its charter and, as the case may be, in accordance with any directions issued by the supervisory authority, and the entry must indicate the members of the board of trustees.

<sup>3</sup> The probate authority shall inform the commercial registrar of the creation of the foundation by testamentary disposition.<sup>89</sup>

**Art. 82**

III. Challenge

A foundation may be challenged by the founder's heirs or creditors in the same manner as a gift.

**Art. 83<sup>90</sup>**

B. Organisation  
I. In general

The foundation charter shall stipulate the foundation's governing bodies and the manner in which it is to be administered.

<sup>88</sup> Amended by No I of the FA of 8 Oct. 2004 (Law on Foundations), in force since 1 Jan. 2006 (AS **2005** 4545; BBl **2003** 8153 8191).

<sup>89</sup> Inserted by No I of the FA of 8 Oct. 2004 (Law on Foundations), in force since 1 Jan. 2006 (AS **2005** 4545; BBl **2003** 8153 8191).

<sup>90</sup> Amended by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS **2007** 4791; BBl **2002** 3148, **2004** 3969).

**Art. 83a**<sup>91</sup>

II. Bookkeeping <sup>1</sup> The supreme governing body of the foundation shall maintain its business ledgers. The provisions of the Code of Obligations<sup>92</sup> on commercial bookkeeping and accounting apply *mutatis mutandis*.

**Art. 83b**<sup>93</sup>

III. Auditors  
1. Duty of audit and applicable law

<sup>1</sup> The board of trustees shall appoint external auditors.

<sup>2</sup> The supervisory authority may exempt a foundation from the duty to appoint external auditors. The Federal Council determines the conditions for such exemption.

<sup>3</sup> Where there are no special provisions for foundations, the provisions of the Code of Obligations<sup>94</sup> on external auditors for public limited companies apply *mutatis mutandis*.

<sup>4</sup> If the foundation has a duty to carry out a limited audit, the supervisory authority may require a full audit where necessary for a reliable assessment of the foundation's financial situation.

**Art. 83c**<sup>95</sup>

2. Supervisory authority

The external auditors must provide the supervisory authority with a copy of the audit report and all important communications with the foundation.

**Art. 83d**<sup>96</sup>

IV. Organisational defects

<sup>1</sup> If the planned system of organisation proves inadequate or if the foundation lacks one of the prescribed governing bodies or one such body is not lawfully constituted, the supervisory authority must take the necessary measures. In particular it may:

<sup>91</sup> Inserted by No I of the FA of 8 Oct. 2004 (Law on Foundations) (AS **2005** 4545; BBl **2003** 8153 8191). Amended by Annex No. 1 of the FA of 23 Dec. 2011 (Accounting Law), in force since 1 Jan. 2013 (AS **2012** 6679; BBl **2008** 1589).

<sup>92</sup> SR **220**

<sup>93</sup> Inserted by No I of the FA of 8 Oct. 2004 (Law on Foundations) (AS **2005** 4545; BBl **2003** 8153 8191). Amended by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS **2007** 4791; BBl **2002** 3148, **2004** 3969).

<sup>94</sup> SR **220**

<sup>95</sup> Inserted by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS **2007** 4791; BBl **2002** 3148, **2004** 3969).

<sup>96</sup> Inserted by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS **2007** 4791; BBl **2002** 3148, **2004** 3969).

1. set a time limit within which the foundation must restore the legally required situation; or
  2. appoint the body which is lacking or an administrator.
- <sup>2</sup> In the event that the foundation is unable to organise itself effectively, the supervisory authority shall transfer its assets to another foundation with as similar objects as possible.
- <sup>3</sup> The foundation bears the cost of such measures. The supervisory authority may require the foundation to make an advance payment to the persons appointed.
- <sup>4</sup> For good cause, the foundation may request the supervisory authority to remove persons whom it has appointed.

#### Art. 84

- C. Supervision
- 1 Foundations are supervised by the state authority (Confederation, canton, commune) to which they are assigned.
- <sup>1bis</sup> The cantons may subject foundations at communal level to supervision at cantonal level.<sup>97</sup>
- 2 The supervisory authority must ensure that the foundation's assets are used for their declared purpose.

#### Art. 84a<sup>98</sup>

- <sup>Cbis</sup> Measures in the event of overindebtedness and insolvency
- 1 Where there are grounds for concern that the foundation is overindebted or will no longer be able to meet its obligations in the longer term, its board of trustees must draw up an interim balance sheet at liquidation values and submit it to the external auditors. If the foundation has no external auditors, the board of trustees must submit the interim balance sheet to the supervisory authority.
- 2 If the external auditors establish that the foundation is overindebted or will no longer be able to meet its obligations in the longer term, it must submit the interim balance sheet to the supervisory authority.
- 3 The supervisory authority shall direct the board of trustees to take the necessary measures. If it fails to do so, the supervisory authority takes such measures itself.
- 4 If necessary, the supervisory authority shall take legal enforcement measures; the provisions of company law on commencement or deferral of compulsory dissolution apply *mutatis mutandis*.

<sup>97</sup> Inserted by No I of the FA of 8 Oct. 2004 (Law on Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

<sup>98</sup> Inserted by No I of the FA of 8 Oct. 2004 (Law on Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

**Art. 84b**<sup>99</sup>**Art. 85**<sup>100</sup>

D. Modification  
of the foundation  
I. Reorganisation

At the request of the supervisory authority and having heard the board of trustees, the competent federal or cantonal authority may modify the foundation's organisation where such a step is urgently required in order to preserve the foundation's assets or safeguard the pursuit of its objects.

**Art. 86**

II. Amendment  
of objects  
1. Request by the  
supervisory  
authority or the  
board of  
trustees<sup>101</sup>

<sup>1</sup> At the request of the supervisory authority or the board of trustees, the competent federal or cantonal authority may amend the objects of the foundation where the original objects have altered in significance or effect to such an extent that the foundation has plainly become estranged from the founder's intentions.<sup>102</sup>

<sup>2</sup> Subject to the same requirements, conditions that are detrimental to the objects of the foundation may be revoked or amended.

**Art. 86a**<sup>103</sup>

2. At the  
founder's request  
or in accordance  
with his  
testamentary  
disposition

<sup>1</sup> The competent federal or cantonal authority shall amend the objects of the foundation at the founder's request or in accordance with his or her testamentary disposition, provided that the charter reserves the right to amend the objects and that at least ten years have elapsed since the foundation was established or since the last amendment requested by the founder.

<sup>2</sup> Where the foundation pursues public or charitable objects within the meaning of Art. 56 lit. g of the Federal Act of 14 December 1990 on Direct Federal Taxation<sup>104</sup>, such new objects must likewise be public or charitable.

<sup>99</sup> Inserted by No I of the FA of 8 Oct. 2004 (Law on Foundations) (AS 2005 4545; BBl 2003 8153 8191). Repealed by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), with effect from 1 Jan. 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>100</sup> Amended by No I of the FA of 8 Oct. 2004 (Law on Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

<sup>101</sup> Amended by No I of the FA of 8 Oct. 2004 (Law of Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

<sup>102</sup> Amended by No I of the FA of 8 Oct. 2004 (Law of Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

<sup>103</sup> Inserted by No I of the FA of 8 Oct. 2004 (Law of Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

<sup>104</sup> SR 642.11

<sup>3</sup> The right to amend a foundation's objects is neither transferable nor heritable. If the founder is a legal entity, the right extinguishes at the latest 20 years after the establishment of the foundation.

<sup>4</sup> Joint founders may only jointly request an amendment of the foundation's objects.

<sup>5</sup> The probate authority shall inform the competent authority of any testamentary disposition concerning the amendment of the foundation's objects.

#### **Art. 86b**<sup>105</sup>

III. Minor amendments to the charter

Having heard the board of trustees, the supervisory authority may make minor amendments to the foundation charter provided these are objectively justified and do not impair the rights of any third party.

#### **Art. 87**

E. Family and ecclesiastical foundations

<sup>1</sup> Family and ecclesiastical foundations are not subject to supervision, unless otherwise provided by public law.

<sup>1bis</sup> They are exempt from the duty to appoint external auditors.<sup>106</sup>

<sup>2</sup> Private law disputes are decided by the courts.

#### **Art. 88**<sup>107</sup>

F. Dissolution and deletion from the register

<sup>1</sup> The competent federal or cantonal authority shall dissolve the foundation on application or of its own accord if:

I. Dissolution by the competent authority

1. its objects have become unattainable and the foundation cannot be maintained by modifying its charter; or
2. its objects have become unlawful or immoral.

<sup>2</sup> Family and ecclesiastical foundations shall be dissolved by court order.

#### **Art. 89**<sup>108</sup>

II. Right to apply for dissolution, deletion from the register

<sup>1</sup> Any interested party may file an application or bring an action for the dissolution of a foundation.

<sup>105</sup> Inserted by No I of the FA of 8 Oct. 2004 (Law of Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

<sup>106</sup> Inserted by No I of the FA of 8 Oct. 2004 (Law of Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

<sup>107</sup> Amended by No I of the FA of 8 Oct. 2004 (Law of Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

<sup>108</sup> Amended by No I of the FA of 8 Oct. 2004 (Law of Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

<sup>2</sup> Dissolution must be reported to the commercial registrar so that the entry may be deleted.

**Art. 89a**<sup>109</sup>

G. Employee benefits schemes<sup>110</sup>

<sup>1</sup> The following additional provisions apply to employee benefits schemes established in accordance with Art. 331 of the Code of Obligations<sup>111</sup> in the form of a foundation.<sup>112</sup>

<sup>2</sup> The foundation's governing bodies must furnish the beneficiaries with the necessary information concerning the foundation's organisation, activities and assets.

<sup>3</sup> If employees pay contributions into the benefits scheme, they are entitled to participate in its administration at least in proportion to their contributions; wherever possible, the employees must elect their representative from among their employer's personnel.<sup>113</sup>

<sup>4</sup> ...<sup>114</sup>

<sup>5</sup> The beneficiaries may sue the foundation for the distribution of benefits if they have paid contributions into it or if according to the foundation's regulations they have a legal entitlement to such benefits.

<sup>6</sup> For employee benefits schemes providing old age, survivors' and invalidity pensions which are subject to the Vested Benefits Act of 17 December 1993<sup>115</sup> (VBA), the provisions of the Federal Act of 25 June 1982 on Occupational Old Age, Survivors' and Invalidity Pension Provision (OPA)<sup>116</sup> on the following matters apply:<sup>117</sup>

1.<sup>118</sup> the definition and principles of occupational pension arrangements and the insurable salary or income (Art. 1, 33a and 33b);

<sup>109</sup> Inserted by No II of the FA of 21 March 1958, in force since 1 July 1958 (AS 1958 379; BBl 1956 II 825). Originally Art. 89<sup>bis</sup>, until the entry into force of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>110</sup> Amended by No II Art. 2 No 1 of the FA of 25 June 1971, in force since 1 Jan. 1972 (AS 1971 1465; BBl 1967 II 241).

<sup>111</sup> SR 220

<sup>112</sup> Amended by No II Art. 2 No 1 of the FA of 25 June 1971, in force since 1 Jan. 1972 (AS 1971 1465; BBl 1967 II 241).

<sup>113</sup> Amended by No II Art. 2 No 1 of the FA of 25 June 1971, in force since 1 Jan. 1972 (AS 1971 1465; BBl 1967 II 241).

<sup>114</sup> Repealed by No III of the FA of 21 June 1996, with effect from 1 Jan. 1997 (AS 1996 3067; BBl 1996 I 564 580).

<sup>115</sup> SR 831.42

<sup>116</sup> SR 831.40

<sup>117</sup> Amended by No I of the FA of 25 Sept. 2015 (Employee Benefits Schemes), in force since 1 April 2016 (AS 2016 935; BBl 2014 6143 6649).

<sup>118</sup> Amended by No II 1 of the FA of 11 Dec. 2009 (Measures to Facilitate the Employment of Older Persons), in force since 1 Jan. 2011 (AS 2010 4427; BBl 2007 5669).

- 2.<sup>119</sup> the requirement of being subject to OASI (Art. 5 para. 1);
3. the beneficiaries in the case of survivors' benefits (Art. 20a);
- 3a.<sup>120</sup> the adjustment of the invalidity pension following the equitable division of occupational pensions (Art. 24 para. 5);
- 3b.<sup>121</sup> the provisional continuation of insurance and of the entitlement to benefits on the reduction or termination of the invalidity pension (Art. 26a);
- 4.<sup>122</sup> the adjustment of plan benefits to inflation (Art. 36 para. 2–4);
- 4a.<sup>123</sup> the agreement on a lump sum payment (Art. 37a);
5. the limitation period for entitlements and the safekeeping of insurance documents (Art. 41);
- 5a.<sup>124</sup> the use, processing and disclosure of the OASI number for the Old Age and Survivors' Insurance (Art. 48 para. 4, Art. 85a lit. f and Art. 86a para. 2 lit. b<sup>bis</sup>);
6. liability (Art. 52);
- 7.<sup>125</sup> the licensing and duties of the supervisory bodies (Art. 52a–52e);
- 8.<sup>126</sup> the integrity and loyalty of the persons responsible, transactions with close associates and conflicts of interest (Art. 51b, 51c and 53a);
9. partial or total liquidation (Art. 53b–53d);
- 10.<sup>127</sup> termination of contracts (Art. 53e);
11. the guarantee fund (Art. 56 para. 1 lit. c and para. 2–5, Art. 56a, 57 and 59);

<sup>119</sup> Amended by No I of the FA of 25 Sept. 2015 (Employee Benefits Schemes), in force since 1 April 2016 (AS **2016** 935; BBl **2014** 6143 6649).

<sup>120</sup> Inserted by Annex No 2 of the FA of 18 March 2011 (6th InvI Revision, first set of measures) (AS **2011** 5659; BBl **2010** 1817). Amended by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>121</sup> Inserted by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>122</sup> Amended by Annex No 1 of the FA of 18 June 2004, in force since 1 Jan. 2005 (AS **2004** 4635; BBl **2003** 6399).

<sup>123</sup> Inserted by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>124</sup> Inserted by Annex No 1 of the FA of 23 June 2006 (New OASI Insurance Number), in force since 1 Dec. 2007 (AS **2007** 5259; BBl **2006** 501).

<sup>125</sup> Amended by No II 1 of the FA of 19 March 2010 (OPA Structural Reform), in force since 1 Jan. 2012 (AS **2011** 3393; BBl **2007** 5669).

<sup>126</sup> Amended by No II 1 of the FA of 19 March 2010 (OPA Structural Reform), in force since 1 Jan. 2012 (AS **2011** 3393; BBl **2007** 5669).

<sup>127</sup> Amended by No II of the FA of 20 Dec. 2006 (Change of Employee Benefits Scheme), in force since 1 May 2007 (AS **2007** 1803 1805; BBl **2005** 5941 5953).

12. <sup>128</sup> supervision and oversight (Art. 61–62a and 64–64c);
13. <sup>129</sup> ...
14. <sup>130</sup> financial security (Art. 65 para. 1, 3 and 4, Art. 66 para. 4, Art. 67 and Art. 72a–72g);
15. transparency (Art. 65a);
16. reserves (Art. 65b);
17. insurance contracts between occupational benefits schemes and insurance institutions (Art. 68 para. 3 and 4);
18. asset management (Art. 71);
19. legal recourse (Art. 73 and 74);
20. criminal provisions (Art. 75–79);
21. buy-in (Art. 79b);
22. insurable salary and income (Art. 79c);
23. provision of information to insured persons (Art. 86b).<sup>131</sup>

<sup>7</sup> For employee benefits schemes providing old age, survivors' and invalidity pensions but which are not subject to the VBA, such as employer-sponsored welfare funds with discretionary benefits and financing foundations, only the following provisions of the OPA apply:

1. the requirement of being subject to OASI (Art. 5 para. 1);
2. the use, processing and disclosure of the OASI number (Art. 48 para. 4, 85a let. f and 86a para. 2 let. b<sup>bis</sup>);
3. liability (Art. 52);
4. the licensing and duties of the auditors (Art. 52a, 52b and 52c para. 1 let. a–d and g, 2 and 3);
5. the integrity and loyalty of the persons responsible, transactions with close associates and conflicts of interest (Art. 51b, 51c and 53a);
6. total liquidation (Art. 53c);

<sup>128</sup> Amended by No II 1 of the FA of 19 March 2010 (OPA Structural Reform), in force since 1 Jan. 2012 (AS **2011** 3393; BBl **2007** 5669).

<sup>129</sup> Repealed by No. II 1 of the FA of 19 March 2010 (OPA Structural Reform), with effect from 1 Jan. 2012 (AS **2011** 3393; BBl **2007** 5669).

<sup>130</sup> Amended by No II 1 of the FA of 17 Dec. 2010 (Funding of benefits schemes for public corporations), in force since 1 Jan. 2012 (AS **2011** 3385; BBl **2008** 8411).

<sup>131</sup> Inserted by Annex No 1 of the FA of 25 June 1982 on Old Age, Survivors' and Disability Insurance (AS **1983** 797; BBl **1976** I 149). Amended by Annex No 1 of the FA of 3 Oct. 2003 (1<sup>st</sup> revision of OPA), No. 6, 7, 10–12, 14 (with the exception of Art. 66 para. 4), 15, 17–20 and 23 in force since 1 April 2004, No. 3–5, 8, 9, 13, 14 (Art. 66 para. 4) and 16 in force since 1 Jan. 2005, No. 1, 21 and 22 in force since 1 Jan. 2006 (AS **2004** 1677; BBl **2000** 2637).



7. supervision and oversight (Art. 61–62a and 64–64b);
8. legal recourse (Art. 73 and 74);
9. criminal provisions (Art. 75–79);
10. tax treatment (Art. 80, 81 para. 1 and 83).<sup>132</sup>

<sup>8</sup> For employee benefits schemes under paragraph 7, the following provisions also apply:

1. they manage their assets so that security, an adequate yield on investments and the required liquidity for their tasks are guaranteed.
2. the supervisory authority shall rule on partial liquidation matters related to employer-sponsored welfare funds with discretionary benefits at the request of the foundation board.
3. they shall respect the principles of equal treatment and fairness *mutatis mutandis*.<sup>133</sup>

## **Title Two**<sup>bis</sup>;<sup>134</sup> <sup>135</sup> **Collective Assets**

### **Art. 89b**

A. No management

<sup>1</sup> In the case of a public collection for charitable purposes, if no arrangements have been made for the management or use of the collective assets, the competent authority shall take the required measures.

<sup>2</sup> It may appoint an administrator for the collective assets or allocate the assets to an association or a foundation with objects that are as similar as possible.

<sup>3</sup> The administrator is subject, *mutatis mutandis*, to the regulations on deputyships in context of adult protection.

### **Art. 89c**

B. Jurisdiction

<sup>1</sup> The canton in which the main part of the collective is managed has jurisdiction.

<sup>2</sup> Unless the canton provides otherwise, the authority that supervises the foundations has jurisdiction.

<sup>132</sup> Inserted by No I of the FA of 25 Sept. 2015 (Employee Benefits Schemes), in force since 1 April 2016 (AS 2016 935; BBl 2014 6143 6649).

<sup>133</sup> Inserted by No I of the FA of 25 Sept. 2015 (Employee Benefits Schemes), in force since 1 April 2016 (AS 2016 935; BBl 2014 6143 6649).

<sup>134</sup> Corrected by the Federal Assembly Drafting Committee (Art. 58 Abs. 1 ParIA; SR 171.10).

<sup>135</sup> Inserted by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

**Part Two: Family Law**  
**Division One: Marital Law**  
**Title Three:<sup>136</sup> Marriage**  
**Chapter One: Engagement**

**Art. 90**

A. Betrothal

- <sup>1</sup> Engagement is constituted by mutual promises to marry.  
<sup>2</sup> Minors incur no obligation through betrothal without the consent of their legal representative.<sup>137</sup>  
<sup>3</sup> Engagement does not give rise to any actionable obligation to marry.

**Art. 91**

B. Ending the engagement  
 I. Gifts

- <sup>1</sup> If the engagement is ended, the engaged parties may demand the return of gifts made to each other, with the exception of the usual occasional gifts, unless the engagement has ended as a result of death.  
<sup>2</sup> Where such gifts are no longer at hand, restitution is subject to the provisions governing unjust enrichment.

**Art. 92**

II. Duty to contribute

If one of the engaged couple has in good faith incurred expense in anticipation of the marriage ceremony and the engagement is then ended, that party may claim a reasonable contribution from the other where this is not inequitable in the overall circumstances.

**Art. 93**

III. Limitation

Claims arising from the engagement are subject to a time limit of one year from the ending of the engagement.

**Chapter Two: Requirements for Marriage**

**Art. 94**

A. Capacity to marry

- <sup>1</sup> To be able to marry, the prospective spouses must have reached 18 years of age and have the capacity of judgement.  
<sup>2</sup> ...<sup>138</sup>

<sup>136</sup> Amended by No I 2 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>137</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>138</sup> Repealed by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), with effect from 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

**Art. 95**

B. Impediments  
I. Kinship<sup>139</sup>

1 Marriage between lineal relatives and between siblings or half-siblings, whether related to each other by parentage or adoption, is prohibited.<sup>140</sup>

2 Adoption does not remove the impediment to marriage constituted by kinship between the adopted child and his issue on the one hand and his adoptive family on the other.

**Art. 96**

II. Previous marriage

A person wishing to remarry must prove that any previous marriage has been annulled or dissolved.

**Chapter Three: Preparation and Wedding Ceremony****Art. 97**

A. General principles

1 The wedding ceremony takes place in the presence of the civil registrar after the preparatory procedure has been taken.

2 The engaged couple may marry in the civil register district of their choice.

3 No religious wedding ceremony is permitted prior to the civil ceremony.

**Art. 97a<sup>141</sup>**

A<sup>bis</sup>. Circumvention of the legislation on foreign nationals

1 The civil registrar shall not consider a request for marriage if the bride or groom clearly has no intention of living together but wishes to circumvent the provisions on the admission and residence of foreign nationals.

2 The civil registrar shall grant a hearing to the prospective spouses and may obtain information from other authorities or third parties.

**Art. 98**

B. Preparatory procedure  
I. Request

1 The preparatory procedure is carried out at the civil register office at the domicile of the bride or groom at their request.

<sup>139</sup> Amended by Annex No. 8 of the Civil Partnerships Act of 18 June 2004, in force since 1 Jan. 2006 (AS **2005** 5685; BBl **2003** 1288).

<sup>140</sup> Amended by Annex No. 8 of the Civil Partnerships Act of 18 June 2004, in force since 1 Jan. 2006 (AS **2005** 5685; BBl **2003** 1288).

<sup>141</sup> Inserted by Annex No II 4 of the FA of 16 Dec. 2005 on Foreign Nationals, in force since 1 Jan. 2008 (AS **2007** 5437; BBl **2002** 3709).

<sup>2</sup> They must appear in person. If they may show that they clearly cannot be required to do so, the preparatory procedure may be carried out in writing.

<sup>3</sup> They must furnish documentary proof of identity and personally declare at the civil register office that they satisfy the legal requirements for marriage; they must also produce any necessary consent.

<sup>4</sup> Engaged couples who are not Swiss citizens must prove during the preparatory procedure that they are lawfully resident in Switzerland.<sup>142</sup>

### Art. 99

II. Conduct and completion of the preparatory procedure

<sup>1</sup> The civil register office verifies that:

1. the request has been duly submitted;
2. the identity of the engaged couple has been established; and
- 3.<sup>143</sup> the requirements for marriage are satisfied, and in particular whether there are any circumstances that suggest that the request clearly does not reflect the free will of the engaged couple.

<sup>2</sup> Provided these requirements are fulfilled, the civil register office informs the betrothed parties that the preparatory procedure has been completed and of the legally prescribed time limits for marriage.

<sup>3</sup> After consulting the engaged couple and in conformity with cantonal regulations, the civil register office sets the date of the wedding ceremony or, upon request, authorises that it may be conducted in another civil register district.

<sup>4</sup> The civil register office must inform the competent authority of the identity of any engaged couple who have not proven that they are lawfully resident in Switzerland.<sup>144</sup>

### Art. 100

III. Time limits

<sup>1</sup> The wedding ceremony may take place no earlier than ten days and no later than three months following notification of completion of the preparatory procedure.

<sup>2</sup> If one of the engaged couple is close to death and there is reason to fear that observing the ten-day minimum period might render the wedding ceremony impossible, the civil registrar may, subject to

<sup>142</sup> Inserted by No I of the FA of 12 June 2009 (Prevention of Marriages in the event of Unlawful Residence), in force since 1 Jan. 2011 (AS **2010** 3057; BBl **2008** 2467 2481).

<sup>143</sup> Amended by No I 3 of the FA of 15 June 2012 on Measures against Forced Marriages, in force since 1 July 2013 (AS **2013** 1035; BBl **2011** 2185).

<sup>144</sup> Inserted by No I of the FA of 12 June 2009 (Prevention of Marriages in the event of Unlawful Residence), in force since 1 Jan. 2011 (AS **2010** 3057; BBl **2008** 2467 2481).

medical confirmation, reduce the period or conduct the wedding ceremony immediately.

### Art. 101

C. Wedding ceremony  
I. Venue

1 The wedding ceremony takes place at the wedding venue of the civil register district chosen by the engaged couple.

2 Where the preparatory procedure was conducted in a different civil register district, the engaged couple must produce a marriage licence.

3 If the engaged couple show that they cannot reasonably be required to appear at the official venue, the wedding may take place at another location.

### Art. 102

II. Form

1 A wedding is a public ceremony that takes place in the presence of two adult witnesses who are capable of judgement.<sup>145</sup>

2 The civil registrar asks the bride and groom individually whether each wishes to marry the other.

3 If both answer in the affirmative, they are pronounced married by mutual consent.

### Art. 103

D. Implementing provisions

The Federal Council and, within the scope of their powers, the cantons shall enact the necessary implementing provisions.

## Chapter Four: Annulment of Marriage

### Art. 104

A. General principle

A marriage contracted before a civil registrar may be annulled only on one of the grounds provided in this chapter.

### Art. 105

B. Annulment not subject to a time limit  
I. Grounds

Grounds for annulment are:

1. that one of the spouses<sup>146</sup> was already married at the time of the wedding and the previous marriage had not been dissolved by divorce or by the death of the previous spouse;

<sup>145</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>146</sup> Footnote relevant to German text only.

2. that one of the spouses lacked capacity of judgement at the time of the wedding and has not regained such capacity since;
- 3.<sup>147</sup> that the marriage was prohibited due to kinship;
- 4.<sup>148</sup> one of the spouses has no intention of living with the other, but wishes to circumvent the provisions on the admission and residence of foreign nationals;
- 5.<sup>149</sup> a spouse has not married of his or her own free will;
- 6.<sup>150</sup> one of the spouses is a minor, unless the continuation of the marriage is in the overriding interest of this spouse.

### Art. 106

#### II. Action for annulment

<sup>1</sup> An action for annulment is brought *ex officio* by the competent cantonal authority at the domicile of the spouses; in addition, any interested party is entitled to bring such action. Provided this is compatible with their duties, the federal and cantonal authorities shall contact the authority competent for the action if they have reason to believe that there are grounds for annulment.<sup>151</sup>

<sup>2</sup> If the marriage has been otherwise dissolved, the authority may no longer seek an annulment *ex officio*; however, any interested party may seek a declaration of annulment.

<sup>3</sup> An action for annulment may be brought at any time.

### Art. 107

#### C. Annulment subject to a time limit I. Grounds

A spouse may seek a declaration of annulment if he or she:

1. temporarily lacked capacity of judgement at the time of the wedding;
2. married in error, whether because he or she did not wish to marry at all or did not wish to marry the other person;

<sup>147</sup> Amended by No. 8 of the Civil Partnerships Act of 18 June 2004, in force since 1 Jan. 2006 (AS 2005 5685; BBl 2003 1288).

<sup>148</sup> Inserted by Annex No II 4 of the FA of 16 Dec. 2005 on Foreign Nationals, in force since 1 Jan. 2008 (AS 2007 5437; BBl 2002 3709).

<sup>149</sup> Inserted by No. I 3 of the FA of 15 June 2012 on Measures against Forced Marriages, in force since 1 July 2013 (AS 2013 1035; BBl 2011 2185).

<sup>150</sup> Inserted by No. I 3 of the FA of 15 June 2012 on Measures against Forced Marriages, in force since 1 July 2013 (AS 2013 1035; BBl 2011 2185).

<sup>151</sup> Last sentence inserted by No I 3 of the FA of 15 June 2012 on Measures against Forced Marriages, in force since 1 July 2013 (AS 2013 1035; BBl 2011 2185).

3. contracted the marriage because he or she was intentionally deceived with regard to essential personal attributes of the other spouse;
- 4.<sup>152</sup> ...

### Art. 108

II. Action for annulment

<sup>1</sup> An action for annulment must be brought within six months of learning of the grounds for annulment or of the date on which the threat ceased, but in any event within five years of the wedding.

<sup>2</sup> The right to bring an action for annulment does not pass to heirs; however, an heir may continue an action already brought.

### Art. 109

D. Effects of judgment

<sup>1</sup> A marriage does not become invalid until a court has declared it annulled; prior to such judgment it has all the effects of a valid marriage with the exception of claims under inheritance law, which in any event the surviving spouse loses.

<sup>2</sup> The provisions governing divorce apply *mutatis mutandis* to the effects of a court declaration of annulment on the spouses and their children.

<sup>3</sup> The presumption of paternity in favour of the husband does not apply if the marriage is annulled because it served to circumvent the provisions on the admission and residence of foreign nationals.<sup>153</sup>

### Art. 110<sup>154</sup>

## Title Four:<sup>155</sup> Divorce and Separation

### Chapter One: Requirements for Divorce

### Art. 111<sup>156</sup>

A. Divorce by joint request  
I. Comprehensive agreement

<sup>1</sup> Where the spouses jointly request divorce and submit a comprehensive agreement on the consequences of the divorce along with any

<sup>152</sup> Repealed by No I 3 of the FA of 15 June 2012 on Measures against Forced- Marriages, with effect from 1 July 2013 (AS **2013** 1035; BBl **2011** 2185).

<sup>153</sup> Inserted by Annex No II 4 of the FA of 16 Dec. 2005 on Foreign Nationals, in force since 1 Jan. 2008 (AS **2007** 5437; BBl **2002** 3709).

<sup>154</sup> Repealed by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).

<sup>155</sup> Amended by No I 3 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>156</sup> Amended by No I of the FA of 25 Sept. 2009 (Reflection Period in Divorce Proceedings by joint Application), in force since 1 Feb. 2010 (AS **2010** 281; BBl **2008** 1959 1975).

necessary documents and with joint applications in respect of the children, the court shall hear the spouses both separately and together. The hearing may comprise two or more sessions.

<sup>2</sup> If the court is persuaded that desire for divorce and the agreement are the product of free will and careful reflection and that the agreement with the applications in respect of the children may be approved, the court shall issue the divorce decree.

### Art. 112

II. Partial agreement

<sup>1</sup> The spouses may jointly request divorce and ask the court to decide matters on which they cannot reach agreement.

<sup>2</sup> As in the case of comprehensive agreement, the court shall hear the parties on those consequences of the divorce on which they have reached agreement and on their request that the remaining consequences be decided by the court.

<sup>3</sup> ...<sup>157</sup>

### Art. 113<sup>158</sup>

### Art. 114<sup>159</sup>

B. Divorce at the petition of one spouse  
I. After living apart

A spouse may petition for divorce if, at the time the petition is filed or at the time the divorce request is replaced by a divorce petition, the spouses have lived apart for at least two years.

### Art. 115<sup>160</sup>

II. Irretrievable breakdown

Prior to the expiry of the two-year period, a spouse may petition for divorce if the marriage has irretrievably broken down for compelling reasons for which he or she is not responsible.

### Art. 116<sup>161</sup>

<sup>157</sup> Repealed by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).

<sup>158</sup> Repealed by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).

<sup>159</sup> Amended by No I of the FA of 19 Dec. 2003 (Separation Period in Divorce Law), in force since 1 June 2004 (AS **2004** 2161; BBl **2003** 3927 5825).

<sup>160</sup> Amended by No I of the FA of 19 Dec. 2003 (Separation Period in Divorce Law), in force since 1 June 2004 (AS **2004** 2161; BBl **2003** 3927 5825).

<sup>161</sup> Repealed by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).



## Chapter Two: Separation

### Art. 117

A. Requirements and procedure <sup>1</sup> Spouses may petition for a separation decree subject to the same requirements as apply to divorce.

2 ...<sup>162</sup>

<sup>3</sup> The right to petition for divorce is unaffected by the separation decree.

### Art. 118

B. Effects of separation <sup>1</sup> By operation of the law, the separation decree implements the marital property separation of property regime.

<sup>2</sup> Otherwise, the provisions governing measures for the protection of the marital union apply *mutatis mutandis*.

## Chapter Three: Consequences of Divorce

### Art. 119<sup>163</sup>

A. Civil status of divorced spouses <sup>1</sup> A spouse who has changed his or her surname on marriage retains that surname following divorce; he or she may at any time declare before the civil registrar the wish to revert to the name by which he or she was known prior to the marriage.

### Art. 120

B. Marital property law and inheritance law <sup>1</sup> The provisions of marital property law apply to the division of marital property.

<sup>2</sup> Divorced spouses have no rights of inheritance in relation to each other and may not make claims based on testamentary dispositions made before their divorce proceedings were made pending.

### Art. 121

C. Family home <sup>1</sup> If a spouse must remain in the family home because of the children or for other compelling reasons, the court may transfer the rights and obligations under the tenancy agreement to that spouse provided this is not inequitable for the other.

<sup>162</sup> Repealed by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS 2010 1739; BBl 2006 7221).

<sup>163</sup> Amended by No I of the FA of 30 Sept. 2011 (Name and Citizenship), in force since 1 Jan. 2013 (AS 2012 2569; BBl 2009 7573 7581).

<sup>2</sup> The previous tenant is jointly and severally liable for payment of the rent up to the date on which the tenancy ends or may be terminated pursuant to the tenancy agreement or by law, but for a maximum period of two years; if an action is brought to recover rent due, he or she is entitled to set off the amount paid in instalments equal to the amount of the monthly rent against any maintenance payments owed to the other spouse.

<sup>3</sup> If the home belongs to the family of one of the spouses, the court may, on the same conditions, grant the other spouse a right of residence for a fixed term in return for reasonable compensation or set-off against maintenance payments. Where new and compelling reasons so require, such right of residence may be restricted or revoked.

**Art. 122**<sup>164</sup>

D. Occupational pensions  
I. Principle

In the event of divorce, any occupational pension assets accrued during the marriage up to the point at which divorce proceedings commence are divided equitably.

**Art. 123**<sup>165</sup>

II. Equitable division of termination benefits

<sup>1</sup> Termination benefits including vested benefits and early withdrawals for purchasing owner-occupied property are divided equally.

<sup>2</sup> Paragraph 1 does not apply to one-off contributions from individual property in accordance with the law.

<sup>3</sup> The termination benefits to be divided are calculated on the basis of Articles 15–17 and 22a or 22b of the Vested Benefits Act of 17 December 1993<sup>166</sup>.

**Art. 124**<sup>167</sup>

III. Equitable division of invalidity pension prior to statutory retirement age

<sup>1</sup> If, at the point at which divorce proceedings commence, a spouse is drawing an invalidity pension prior to the statutory retirement age, the amount to which he or she would be entitled under Article 2 paragraph 1<sup>ter</sup> of the Vested Benefits Act of 17 December 1993<sup>168</sup> following cancellation of the invalidity pension counts as the termination benefits.

<sup>164</sup> Amended by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>165</sup> Amended by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>166</sup> SR **831.42**

<sup>167</sup> Amended by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>168</sup> SR **831.42**

<sup>2</sup> The provisions on the equitable division of termination benefits apply *mutatis mutandis*.

<sup>3</sup> The Federal Council determines in which cases the amount under paragraph 1 may not be applied in the division because there has been a reduction due to over-compensation.

**Art. 124a**<sup>169</sup>

IV. Equitable division in the case of invalidity pensions after statutory retirement age and in the case of retirement pensions

<sup>1</sup> If, at the point at which divorce proceedings commence, a spouse is drawing an invalidity pension after the statutory retirement age or drawing a retirement pension, the court decides at its own discretion how the pension is to be divided. In doing so it primarily takes into account the duration of the marriage and the pension requirements of each spouse.

<sup>2</sup> The share of the pension awarded to the spouse entitled thereto is converted into a life-long pension. This is paid to the entitled spouse by the liable spouse's occupational pension fund or is transferred to the entitled spouse's own occupational pension fund.

<sup>3</sup> The Federal Council regulates:

1. the actuarial conversion of the share of the pension into a life-long pension;
2. the procedure in cases in which the retirement benefits are postponed or the invalidity pension is reduced due to over-compensation.

**Art. 124b**<sup>170</sup>

V. Exceptions

<sup>1</sup> The spouses may, in an agreement on the consequences of the divorce, agree not to divide the assets equally or not to divide them at all if there are sufficient retirement pension and invalidity pension funds otherwise.

<sup>2</sup> The court may award the entitled spouse less than half of the termination benefits or rule that they should not be divided if good cause exists. Good cause exists above all when equal division would be unreasonable:

1. in view of the division of marital property or the economic circumstances following divorce;
2. in view of the pension requirements, in particular with regard to the difference in age between the spouses.

<sup>169</sup> Inserted by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>170</sup> Inserted by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>3</sup> The court may award the entitled spouse more than half of the termination benefits if he or she cares for joint children following the divorce and the liable spouse continues to have sufficient retirement and invalidity pension assets.

**Art. 124c**<sup>171</sup>

VI. Offset of mutual entitlements

<sup>1</sup> The spouses' mutual entitlements to termination benefits or a share of a pension are offset. The pension entitlement is offset before the share of the pension awarded to the entitled spouse is converted into a life-long pension.

<sup>2</sup> Termination benefits may only be offset against a share of a pension if the spouses and the occupational pension institutions agree.

**Art. 124d**<sup>172</sup>

VII. Unreasonableness

If, having considered the pension requirements of both spouses, an equitable division of occupational pension assets is unreasonable, the liable spouse shall owe the entitled spouse a lump sum payment.

**Art. 124e**<sup>173</sup>

VIII. Impossibility

<sup>1</sup> If the equitable division of pension fund assets is not possible, the liable spouse shall owe the entitled spouse adequate compensation in the form of a lump sum payment or as a pension.

<sup>2</sup> A Swiss judgment may be amended at the request of the liable spouse if pension entitlements existing abroad have been offset by adequate compensation pursuant to paragraph 1 and such pension entitlements are then divided up in a foreign decision that is binding on the foreign party liable to pay pension contributions.

**Art. 125**

E. Post-marital maintenance  
I. Requirements

<sup>1</sup> If a spouse cannot reasonably be expected to provide for his or her own maintenance, including an appropriate level of retirement provision, the other spouse must pay a suitable contribution.

<sup>2</sup> In deciding whether such a contribution is to be made and, if so, in what amount and for how long, the following factors in particular must be considered:

1. the division of duties during the marriage;

<sup>171</sup> Inserted by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>172</sup> Inserted by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>173</sup> Inserted by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

2. the duration of the marriage;
3. the standard of living during the marriage;
4. the age and health of the spouses;
5. the income and assets of the spouses;
6. the extent and duration of child care still required of the spouses;
7. the vocational training and career prospects of the spouses and the likely cost of reintegration into working life;
8. expectancy of federal old age and survivor's insurance benefits and of occupational or other private or state pensions, including the expected proceeds of any division of withdrawal benefits.

<sup>3</sup> Exceptionally, a maintenance contribution may be denied or reduced if it would clearly be inequitable, particularly because the spouse otherwise entitled to receive such contribution:

1. has grossly neglected his or her duty to contribute to the maintenance of the family;
2. has wilfully brought about his or her own indigence;
3. has committed a serious criminal offence against the other spouse or a person close to him or her.

### Art. 126

II. Modalities of maintenance contributions

<sup>1</sup> The court shall fix an amount to be paid periodically by way of maintenance contribution and set the date on which the duty of maintenance commences.

<sup>2</sup> Where justified in specific circumstances, a lump sum settlement may be ordered instead of regular payments.

<sup>3</sup> The court may attach conditions to the maintenance contribution.

### Art. 127

III. Regular payments  
1. Special terms

The spouses may wholly or in part exclude any alteration of the regular maintenance payments stipulated in the agreement.

### Art. 128

2. Adjustment for inflation

The court may direct that the maintenance contribution will automatically increase or decrease depending on specified changes in the cost of living.

**Art. 129**

3. Adjustment by court order

<sup>1</sup> In the event of a substantial and enduring change in circumstances, the periodic maintenance payments may be reduced, cancelled or suspended for a certain time; an improvement in the circumstances of the party entitled to maintenance may be taken into account only if the payments stipulated in the divorce decree provided sufficient maintenance.

<sup>2</sup> The party entitled to maintenance may request that the payments be adjusted in line with future inflation if the income of the other party has increased unexpectedly since the divorce.

<sup>3</sup> Within five years of the divorce, the party entitled to maintenance may request that payments be ordered or increased provided the divorce decree states that it was not possible at that time to order sufficient maintenance payments and provided the economic circumstances of the party obliged to pay maintenance have since improved.

**Art. 130**

4. Expiry by law

<sup>1</sup> The duty to pay maintenance expires on the death of either the receiving party or the paying party.

<sup>2</sup> Unless otherwise agreed, it likewise expires on the remarriage of the party entitled to receive maintenance.

**Art. 131**<sup>174</sup>

IV. Enforcement  
1. Enforcement assistance

<sup>1</sup> Where the liable party fails to pay maintenance, an official agency designated by cantonal law shall on request, in an appropriate way and usually without charge, assist the party entitled to maintenance to enforce his or her claims.

<sup>2</sup> The Federal Council determines the terms of enforcement assistance.

**Art. 131a**<sup>175</sup>

2. Advance payments

<sup>1</sup> Public law may provide for advance payments to be made should the liable person fail to make the necessary maintenance payments.

<sup>2</sup> If the state authority makes maintenance payments to the entitled person, the maintenance entitlement with all rights is assigned to the state authority.

<sup>174</sup> Amended by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS 2015 4299; BBl 2014 529).

<sup>175</sup> Inserted by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS 2015 4299; BBl 2014 529).

3. Directions to debtors and posting security<sup>176</sup>

### Art. 132

<sup>1</sup> If the party obliged to pay maintenance fails to do so, the court may order his debtors to make payment in whole or in part to the party entitled to maintenance.

<sup>2</sup> If the party obliged to pay maintenance persistently fails to do so, or if there are grounds to suspect that said party is preparing to abscond or is dissipating or concealing his assets, the court may order him to post appropriate security for future maintenance contributions.

F. Children  
I. Parental rights and obligations

### Art. 133<sup>177</sup>

<sup>1</sup> The court regulates parental rights and obligations in accordance with the provisions on the legal effects of the parent-child relationship. In particular it regulates:

1. parental responsibility;
2. residence;
3. contact (Art. 273) or the sharing of parenting duties; and
4. child maintenance contributions.

<sup>2</sup> It shall consider all circumstances important to the child's best interests. It shall take account of a joint proposal by the parents and, if feasible, the opinion of the child.

<sup>3</sup> It may order that the child maintenance contribution continue to be paid after the child reaches the age of majority.

II. Change of circumstances

### Art. 134

<sup>1</sup> At the request of either parent, the child or the child protection authority, new arrangements for parental responsibility shall be made by the child protection authority provided this is in the child's best interests due to a substantial change in circumstances.

<sup>2</sup> The requirements for the modification of other parental rights and - obligations are governed by the provisions on the effects of the parent-child relationship.<sup>178</sup>

<sup>3</sup> If the parents agree, the child protection authority reassesses parental responsibility, residence and approves a child support agreement. In

<sup>176</sup> Amended by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS 2015 4299; BBl 2014 529).

<sup>177</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS 2014 357; BBl 2011 9077).

<sup>178</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS 2014 357; BBl 2011 9077).

the other cases, the court competent to modify the divorce decree decides.<sup>179</sup>

<sup>4</sup> If the court is required to decide on the modification of parental responsibility, residence or the child maintenance contribution for a minor child, it shall if necessary also reassess contact or sharing of parenting duties; in the other cases, the child protection authority shall decide on the modification of contact or sharing of parenting duties.<sup>180</sup>

**Art. 135–149**<sup>181</sup>

**Art. 150–158**

*Repealed*

**Title Five:**<sup>182</sup> **General Effects of Marriage**

**Art. 159**

A. Marital union;  
rights and duties  
of spouses

<sup>1</sup> The wedding ceremony binds the spouses in marital union.

<sup>2</sup> They mutually undertake to strive to safeguard the interests of the marital union and to care jointly for the children.

<sup>3</sup> They owe each other loyalty and support.

**Art. 160**<sup>183</sup>

B. Surname

<sup>1</sup> Each spouse retains his or her surname.

<sup>2</sup> However, the prospective spouses may declare to the civil registrar that they wish bear the surname of the bride or the groom as the family surname.

<sup>3</sup> If the prospective spouses retain their surnames, they decide which of the surnames their children will bear. In justified cases, the civil registrar may relieve the prospective spouses of this obligation.

<sup>179</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>180</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>181</sup> Repealed by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).

<sup>182</sup> Amendment of Title Five in accordance with No I 1 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191). See also Art. 8–8b of the Final Title below.

<sup>183</sup> Amended by No I of the FA of 30 Sept. 2011 (Name and Citizenship), in force since 1 Jan. 2013 (AS **2012** 2569; BBl **2009** 7573 7581).



**Art. 161**<sup>184</sup>

C. Cantonal and communal citizenship

Each spouse retains his or her cantonal and communal citizenship.

**Art. 162**

D. Marital home

The spouses jointly decide where to establish the marital home.

**Art. 163**

E. Maintenance of the family  
I. In general

<sup>1</sup> The spouses jointly provide for the proper maintenance of the family, each according to his or her ability.

<sup>2</sup> They agree on the contributions each of them will make, notably by providing money, looking after the household, caring for the children or supporting the other's career or business.

<sup>3</sup> In so doing they take due account of the needs of the marital union and of their own personal circumstances.

**Art. 164**

II. Allowance for personal use

<sup>1</sup> A spouse who looks after the household, cares for the children or supports the career or business of the other spouse is entitled to receive from the latter a reasonable allowance for his or her own personal use.

<sup>2</sup> When determining said allowance, account must be taken of the personal resources of the receiving spouse and the need to provide conscientiously for the family, career and business.

**Art. 165**

III. Extraordinary contributions by one spouse

<sup>1</sup> Where the contribution made by one spouse to the other's career or business is significantly greater than required in the light of the latter's contribution to the maintenance of the family, he or she is entitled to reasonable compensation.

<sup>2</sup> The same applies if a spouse has contributed significantly more of his or her own income or assets to the maintenance of the family than he or she was obliged to contribute.

<sup>3</sup> However, a spouse is not entitled to compensation if such extraordinary contribution was made under a work, loan or partnership agreement or on the basis of some other legal relationship.

<sup>184</sup> Amended by No I of the FA of 30 Sept. 2011 (Name and Citizenship), in force since 1 Jan. 2013 (AS 2012 2569; BBl 2009 7573 7581).

F. Representa-  
tion of the  
marital union

### Art. 166

<sup>1</sup> While living together under the same roof, both spouses represent the marital union with regard to the day-to-day needs of the family.

<sup>2</sup> A spouse may represent the marital union with regard to the other needs of the family only if:

1. authorised so to do by the other spouse or by court order;
2. the interests of the marital union brook no delay and the other spouse is unable to consent due to illness, absence or other similar reasons.

<sup>3</sup> Each spouse is personally liable for his or her own actions and, to the extent that these do not exceed his or her powers of representation in a manner apparent to third parties, also renders the other spouse jointly and severally liable for such actions.

G. Spouses' <sup>†</sup>  
career or  
business

### Art. 167

In the choice and pursuit of his or her career or business, each spouse must have due regard to the other and to the welfare of the marital union.

H. Transactions  
by the spouses  
I. In general

### Art. 168

Each spouse may enter into transactions with the other or with third parties unless the law provides otherwise.

II. Family home

### Art. 169

<sup>1</sup> A spouse may terminate a tenancy agreement, alienate the family home or limit the rights in respect of the family home by other transactions only with the express consent of the other.

<sup>2</sup> If the spouse cannot obtain such consent or it is withheld without good cause, he or she may petition the court.

J. Duty to inform

### Art. 170

<sup>1</sup> Each spouse has the right to demand information from the other concerning his or her income, assets and debts.

<sup>2</sup> At the request of one spouse, the court may order the other spouse or a third party to furnish the information required and to produce the necessary documents.

<sup>3</sup> This does not apply to any information held by lawyers, solicitors, doctors, clergy and their auxiliary staff which is subject to professional confidentiality.

**Art. 171**

K. Protection of  
the marital union  
I. Counselling  
agencies

The cantons must ensure that spouses experiencing marital problems may seek help individually or jointly from marriage guidance or family counselling agencies.

**Art. 172**

II. Court  
measures  
1. In general

<sup>1</sup> If a spouse fails to fulfil his or her duties to the family or if the spouses disagree on matters of importance to the marital union, they may apply jointly or separately to the court for mediation.

<sup>2</sup> The court reminds the spouses of their duties and attempts to settle their differences; if the spouses consent, experts may be consulted or they may be referred to a marriage guidance or family counselling agency.

<sup>3</sup> If necessary, at the request of one spouse the court will take the steps envisaged by law. The provision governing the protection of the person from violence, threats or harassment applies *mutatis mutandis*.<sup>185</sup>

**Art. 173**

2. While living  
together  
a. Financial  
contributions

<sup>1</sup> At the request of one spouse, the court determines the amounts to be paid for the maintenance of the family.

<sup>2</sup> Likewise, at the request of one spouse, it determines the allowance payable to the spouse who looks after the household, cares for the children or supports the other's career or business.

<sup>3</sup> Payments may be claimed for the future and for one year preceding the request.

**Art. 174**

b. Revocation of  
powers of  
representation

<sup>1</sup> If a spouse exceeds his or her power to represent the marital union or proves incapable of exercising it, at the other spouse's request the court may revoke such power in whole or in part.

<sup>2</sup> The spouse making such request may inform third parties of the revocation only by communications in person.

<sup>3</sup> The revocation is effective towards third parties acting in good faith only if it has been made public by order of the court.

<sup>185</sup> Second sentence inserted by No I of the FA of 23 June 2006 (Protection of the Personality against Violence, Threats or Harassment), in force since 1 July 2007 (AS **2007** 137; BBl **2005** 6871 6897).

**Art. 175**

3. Suspension of  
joint household  
a. Grounds

A spouse is entitled to suspend the joint household for as long as his or her personality rights or financial security or the welfare of the family are seriously endangered by living together.

**Art. 176**

b. Arrangements  
for living apart

<sup>1</sup> If the suspension of the joint household is justified, at the request of one spouse the court will:

- 1.<sup>186</sup> determine the maintenance paid to any children and the other spouse;
2. issue directions on the use of the home and the household effects;
3. order a separation of property where justified in the circumstances.

<sup>2</sup> A spouse may also make such request if living together is impossible, in particular because the other spouse refuses to do so without good cause.

<sup>3</sup> If the spouses have minor children, the court must take the necessary steps in accordance with the provisions governing the legal effects of the parent-child relationship.<sup>187</sup>

**Art. 176a**<sup>188</sup>

4. Enforcement  
a. Enforcement  
assistance and  
advance  
payments

The provisions governing enforcement assistance and advance payments on divorce and consequent to the parent-child relationship apply.

**Art. 177**

b. Directions to  
debtors<sup>189</sup>

If a spouse fails to fulfil his or her duty to maintain the family, the court may order his or her debtors to make payment in full or in part to the other spouse.

**Art. 178**

5. Restriction of  
power to dispose  
of assets

<sup>1</sup> To the extent required to ensure the family's financial security or fulfilment of a financial obligation arising from the marital union, at

<sup>186</sup> Amended by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS 2015 4299; BBl 2014 529).

<sup>187</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>188</sup> Inserted by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS 2015 4299; BBl 2014 529).

<sup>189</sup> Amended by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS 2015 4299; BBl 2014 529).

the request of one spouse the court may make the power to dispose of certain assets conditional on its consent.

<sup>2</sup> The court orders the appropriate protective measures.

<sup>3</sup> If it prohibits a spouse from disposing of land it must have a note to this effect recorded in the land register.

#### **Art. 179**<sup>190</sup>

6. Change of circumstances<sup>191</sup>

<sup>1</sup> If there is a change in circumstances, at the request of either spouse the court shall modify the measures or revoke the same if they are no longer justified. The provisions on a change of circumstances in divorce cases apply *mutatis mutandis*.<sup>192</sup>

<sup>2</sup> If the spouses resume living together, the measures ordered in connection with living apart lapse, with the exception of the separation of property and the child protection measures.

#### **Art. 180**<sup>193</sup>

*Repealed*

### **Title Six:**<sup>194</sup> **Marital Property Law**

#### **Chapter One: General Provisions**

#### **Art. 181**

A. Ordinary property regime

Spouses are subject to the provisions governing participation in acquired property provided they have not agreed otherwise in a marital agreement and provided no extraordinary marital property regime has come into effect.

#### **Art. 182**

B. Marital agreement  
I. Choice of regime

<sup>1</sup> A marital agreement may be concluded before or after the wedding.

<sup>2</sup> The prospective spouses or the spouses may choose, set aside or modify their marital property regime only within the limits of the law.

<sup>190</sup> Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>191</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>192</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>193</sup> Repealed by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan. 2001 (AS **2000** 2355; BBl **1999** 2829).

<sup>194</sup> Amended of Title Six in accordance with No I 1 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191). See also Art. 9–11a of the Final Title below.

II. Capacity to enter into an agreement

**Art. 183**

<sup>1</sup> A person wishing to enter into a marital agreement must have capacity of judgement.

<sup>2</sup> Minors, or adults subject to a deputyship that covers the conclusion of a marital agreement require the consent of their legal representative.<sup>195</sup>

III. Form of the agreement

**Art. 184**

The marital agreement must be executed as a public deed and signed by the parties and, where applicable, by the legal representative.

C. Extraordinary property regime  
I. At the request of one spouse  
1. By court order

**Art. 185**

<sup>1</sup> At the request of one spouse, the court shall order a separation of property where there is good cause to do so.

<sup>2</sup> In particular, good cause exists:

1. if the other spouse is overindebted or his or her share of the common property has been distrained;
2. if the other spouse is endangering the interests of the applicant or of the marital union;
3. if the other spouse unreasonably withholds the consent required for the disposal of common property;
4. if the other spouse refuses to provide the applicant with information concerning his or her income, assets and debts or concerning common property;
5. if the other spouse permanently lacks capacity of judgement.

<sup>3</sup> Where a spouse permanently lacks capacity of judgement, his or her legal representative may likewise request separation of property for this reason.

2. ...

**Art. 186**<sup>196</sup>

**Art. 187**

3. Revocation

<sup>1</sup> The spouses may at any time reinstate their previous marital property regime or implement a new one by marital agreement.

<sup>195</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>196</sup> Repealed by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan. 2001 (AS 2000 2355; BBl 1999 2829).

<sup>2</sup> If the reason for the separation of property no longer exists, at the request of one spouse the court may direct that the previous marital property regime be reinstated.

### Art. 188

II. In the event of bankruptcy or distraint

If a spouse living under the community of property regime is declared bankrupt, separation of property takes effect *ex officio*.

1. Bankruptcy

### Art. 189

2. Distraint

a. By court order

If a spouse living under the community of property regime is pursued for a personal debt and his or her share of the common property is distrained, the debt enforcement supervisory authority may request that the court order a separation of property.

### Art. 190

b. Request<sup>197</sup>

<sup>1</sup> The request is directed against both spouses.

<sup>2</sup> ...<sup>198</sup>

### Art. 191

3. Revocation

<sup>1</sup> If the creditors have been satisfied, at the request of one spouse the court may order the restoration of the community of property regime.

<sup>2</sup> By marital agreement, the spouses may opt for the participation in acquired property regime.

### Art. 192

III. Liquidation of the previous marital property regime

Whenever the separation of property regime comes into effect, the liquidation of the previous regime is governed by the provisions applicable to the latter, unless the law provides otherwise.

### Art. 193

D. Protection of creditors

<sup>1</sup> The establishment, variation or liquidation of a marital property regime may not have the effect of releasing an asset with which one of the spouses or the marital union had hitherto been liable to creditors from such liability.

<sup>2</sup> If such an asset has been transferred to the other spouse, the latter must pay the debt but may be released from such liability to the extent

<sup>197</sup> Amended by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, in force since 1 Jan. 2001 (AS 2000 2355; BBl 1999 2829).

<sup>198</sup> Repealed by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan. 2001 (AS 2000 2355; BBl 1999 2829).

that he or she may prove that the asset received is worth less than the debt.

**Art. 194<sup>199</sup>**

E. ...

**Art. 195**

F. Management of one spouse's assets by the other

<sup>1</sup> Where one spouse expressly or tacitly entrusts management of his or her assets to the other, the provisions governing agency apply unless otherwise agreed.

<sup>2</sup> The provisions governing settlement of debts between spouses are reserved.

**Art. 195a**

G. Inventory

<sup>1</sup> Each spouse may at any time require the other's cooperation in drawing up an inventory of their joint assets in the form of a public deed.

<sup>2</sup> Such an inventory is deemed accurate if made within one year of the inclusion of such assets under the regime.

**Chapter Two:  
Statutory Marital Property Regime of Participation in  
Acquired Property**

**Art. 196**

A. Ownership  
I. Categories

The marital property regime of participation in acquired property comprises the property acquired during the marriage and the individual property of each spouse.

**Art. 197**

II. Acquired property

<sup>1</sup> Acquired property comprises those assets which a spouse has acquired for valuable consideration during the marital property regime.

<sup>2</sup> In particular, the acquired property of a spouse comprises:

1. the proceeds from his or her employment;
2. benefits received from staff welfare schemes, social security and social welfare institutions;
3. compensation for inability to work;

<sup>199</sup> Repealed by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan. 2001 (AS 2000 2355; BBl 1999 2829).



4. income derived from his or her own property;
5. property acquired to replace acquired property.

### Art. 198

III. Individual  
property  
1. By operation  
of law

By operation of law, a spouse's individual property comprises:

1. personal effects used exclusively by that spouse;
2. assets belonging to one spouse at the beginning of the marital property regime or acquired later at no cost by inheritance or otherwise;
3. claims for satisfaction;
4. acquisitions that replace individual property.

### Art. 199

2. By marital  
agreement

<sup>1</sup> Under a marital agreement, spouses may declare acquired property to be individual property set aside for professional or business use.

<sup>2</sup> Furthermore, spouses may stipulate in a marital agreement that income from individual property does not qualify as acquired property.

### Art. 200

IV. Proof

<sup>1</sup> Any person who asserts that a specific object or asset is owned by one or other spouse bears the burden of proof.

<sup>2</sup> If no such proof may be adduced, the object or asset is presumed to be in the co-ownership of both spouses.

<sup>3</sup> Until proven otherwise, all assets of a spouse are deemed to be acquired property.

### Art. 201

B. Management,  
benefits and  
power of  
disposal

<sup>1</sup> Within the limits of the law, each spouse administers and enjoys the benefits of his or her individual property and has power of disposal over it.

<sup>2</sup> If an asset is in the co-ownership of both spouses, neither spouse may dispose of his or her share in it without the other's consent, unless otherwise agreed.

### Art. 202

C. Liability  
toward third  
parties

Each spouse is liable for his or her debts with all his or her property.

**Art. 203**

D. Debts  
between spouses

<sup>1</sup> The marital property regime does not affect the maturity of debts contracted between spouses.

<sup>2</sup> However, if payment of debts or the restitution of objects owed by a spouse would cause him or her serious difficulties which might endanger the marital union, such spouse may request a time limit within which to satisfy the claim; the claim is to be secured where reasonable in the circumstances.

**Art. 204**

E. Dissolution of  
the property  
regime and  
liquidation  
I. Time of  
dissolution

<sup>1</sup> The marital property regime is dissolved on the death of a spouse or on implementation of a different regime.

<sup>2</sup> In the case of divorce, separation, annulment of the marriage or a court order for separation of property, the dissolution of the marital property regime takes retroactive effect as of the date on which the application was filed.

**Art. 205**

II. Taking back  
property and  
settling debts  
1. In general

<sup>1</sup> Each spouse shall take back any of his or her property that is in the other's possession.

<sup>2</sup> Where one spouse shows an overriding interest in gaining sole possession of an object or asset in co-ownership, and notwithstanding any other legal measures available, he or she may request that said object or asset be allocated to him or her in return for compensation.

<sup>3</sup> The spouses settle their debts to each other.

**Art. 206**

2. Participation  
in increased  
value

<sup>1</sup> Where a spouse has contributed to the acquisition, improvement or preservation of an asset belonging to the other without receiving equivalent compensation, and where at the time of the liquidation that asset has increased in value, then his or her claim corresponds to his or her proportionate contribution and is calculated according to the current value of the asset; if, conversely, the asset has decreased in value, his or her claim corresponds to the original contribution.

<sup>2</sup> If such an asset had already been alienated beforehand, the claim is calculated according to the proceeds obtained and is due immediately.

<sup>3</sup> By written agreement, spouses may exclude participation in the increased value or vary the proportion thereof.

III. Calculating the surplus for each spouse

1. Separation of acquired property and individual property

### Art. 207

1 The property acquired during marriage and the individual property of each spouse are separated according to their value at the time of the dissolution of the marital property regime.

2 Lump sum pension or invalidity benefits received by a spouse are added to his or her individual property in an amount equivalent to the present value of the pension or invalidity annuity to which he or she would be entitled on dissolution of the marital property regime.

### Art. 208

2. Additions

1 The following are added to the property acquired during marriage:

1. the value of dispositions made without consideration by one spouse without the other's consent during the five years preceding the dissolution of the marital property regime, save for the usual occasional gifts;
2. the value of assets disposed of by one spouse during the marital property regime with the intention of diminishing the other's share.

2 ...<sup>200</sup>

### Art. 209

3. Compensation operations between acquired property and individual property

1 Where debts incurred in connection with acquired property have been paid out of individual property or where debts incurred in connection with individual property have been paid out of acquired property, there is a claim for compensation when the marital property regime is liquidated.

2 A debt encumbers the property in relation to which it was incurred, and in the event of doubt, it encumbers the acquired property.

3 If assets belonging to one category of property have contributed to the acquisition, improvement or preservation of assets belonging to the other and if the value of the latter has increased or diminished, the claim for compensation corresponds to the proportionate contribution made and is calculated according to the value of the assets at the time of the liquidation or their disposal.

<sup>200</sup> Repealed by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS 2010 1739; BBl 2006 7221).

**Art. 210**

4. Surplus

<sup>1</sup> The remaining total value of the acquired property, including the assets added in and claims for compensation, and after deduction of the debts encumbering the acquired property, constitutes the surplus.

<sup>2</sup> A deficit is disregarded.

**Art. 211**

IV. Valuation  
1. Market value

For the purpose of liquidating the marital property regime, assets are stated at their market value.

**Art. 212**

2. Capitalised value  
a. In general

<sup>1</sup> An agricultural enterprise which one spouse continues to operate as owner or in respect of which the surviving spouse or one of the issue makes a justified claim for undivided allocation is stated at its capitalised value when calculating the proportionate added value and the claim for participation.

<sup>2</sup> The owner of the agricultural enterprise or his or her heirs may bring a claim against the other spouse for proportionate added value or participation only in the amount they would receive if the business were stated at its market value.

<sup>3</sup> The inheritance law provisions governing valuation and the participation of co-heirs in the profit apply *mutatis mutandis*.

**Art. 213**

b. Special circumstances

<sup>1</sup> The allocation value may be increased by a suitable amount if justified by special circumstances.

<sup>2</sup> Special circumstances include in particular the maintenance requirements of the surviving spouse, the purchase price of the agricultural enterprise including capital investments, and the financial circumstances of the spouse to whom the agricultural enterprise belongs.

**Art. 214**

3. Defining juncture

<sup>1</sup> For the purpose of valuing the acquired property at hand at the time of the dissolution of the marital property regime, the defining juncture is the time of the division.

<sup>2</sup> For assets added to the acquired property, the defining juncture is the date on which they were alienated.

**Art. 215**

V. Participation  
in the surplus

1. By law

1 Each spouse or his or her heirs is or are entitled to one-half of the surplus of the other spouse.

2 The claims are set off.

**Art. 216**

2. By agreement

a. In general

1 A different participation in the surplus may be agreed by marital agreement.

2 Such agreements must not adversely affect the statutory inheritance entitlements of children who are not the common issue of the spouses or those of the issue of such children.

**Art. 217**

b. On divorce,  
separation,  
annulment of the  
marriage or  
separation of  
property by court  
order

In the case of divorce, separation, annulment of marriage or separation of property by court order, agreements varying the statutory participation in the surplus are valid only if the marital property agreement expressly so provides.

**Art. 218**

VI. Payment of  
the participation  
claim and the  
share of the  
increased value

1. Deferred  
payment

1 If immediate payment of the participation claim and the share of the increased value would cause serious difficulties for the debtor, he or she may request a deferral.

2 Unless otherwise agreed by the spouses, the participation claim and the share of the increased value bear interest as of completion of the division of property and, where justified in the circumstances, security must be furnished.

**Art. 219**

2. Home and  
household  
effects

1 To ensure that the surviving spouse may maintain his or her accustomed lifestyle, at his or her request he or she will be granted a usufruct of or a right of residence in the home in which the spouses lived and which belonged to the deceased spouse, and this will be set off against his or her entitlement, subject to any contrary provision in the marital agreement.

2 On the same conditions, he or she may request that ownership of the household effects be transferred to him or her.

3 Where justified in the circumstances, at the request of the surviving spouse or the other legal heirs of the deceased spouse, ownership of the home may be granted rather than a usufruct or right of residence.

4 The surviving spouse may not claim such rights in respect of premises in which the deceased practised a profession or ran a business and

which are required by one of his or her issue in order to continue said profession or business, subject to the provisions of agricultural inheritance law.

### Art. 220

3. Claims against third parties

<sup>1</sup> If the assets of the debtor or his or her estate are insufficient to cover the participation claim on division of the property, the entitled spouse or his or her heirs may demand from third-party beneficiaries the return of such dispositions as are to be added to the acquired property up to the amount of the shortfall.

<sup>2</sup> The right to bring a claim is extinguished one year after the spouse or his or her heirs learn of the infringement of their rights, but in any event ten years after the dissolution of the marital property regime.

<sup>3</sup> Moreover, the provisions governing claims in abatement under inheritance law apply *mutatis mutandis*.<sup>201</sup>

## Chapter Three: Community of Property

### Art. 221

A. Ownership  
I. Categories

The marital property regime of community of property comprises the common property and the individual property of each spouse.

### Art. 222

II. Common property  
1. General community of property

<sup>1</sup> The general community of property combines the assets and income of the spouses into common property, with the exception of those assets which by law constitute individual property.

<sup>2</sup> The common property belongs to both spouses jointly.

<sup>3</sup> Neither spouse is entitled to dispose of his or her share of the common property.

### Art. 223

2. Limited community of property  
a. Community restricted to acquired property

<sup>1</sup> By marital agreement, the spouses may restrict community of property to the property acquired during marriage.

<sup>2</sup> Revenue from individual property becomes common property.

<sup>201</sup> Amended by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, in force since 1 Jan. 2001 (AS 2000 2355; BBl 1999 2829).

**Art. 224**

b. Further  
community of  
property regimes

<sup>1</sup> By marital agreement, the spouses may exclude from the community of property specific assets or types of assets, such as land, a spouse's income from work or assets used to practise a profession or run a business.

<sup>2</sup> Unless otherwise agreed, income from such assets does not become common property.

**Art. 225**

III. Individual  
property

<sup>1</sup> Individual property may be created by marital agreement, dispositions by third parties or by law.

<sup>2</sup> By law, items for the exclusive personal use of a spouse and claims for satisfaction constitute individual property.

<sup>3</sup> A spouse's statutory inheritance entitlement may not pass to him or her from his or her relatives as individual property where the marital agreement provides that such assets are common property.

**Art. 226**

IV. Proof

All assets are presumed to be common property unless proven to be the individual property of a spouse.

**Art. 227**

B. Management  
and power of  
disposal

<sup>1</sup> The spouses must manage the common property in the best interests of the marital union.

I. Common  
property

1. Everyday  
housekeeping

<sup>2</sup> Within the limits of everyday housekeeping, each spouse may incur commitments on behalf of the marital union and dispose of common property.

**Art. 228**

2. Extraordinary  
housekeeping

<sup>1</sup> Outside the limits of everyday housekeeping, the spouses may incur commitments on behalf of the common property and dispose thereof only jointly or individually with the other's consent.

<sup>2</sup> Third parties are entitled to presume such consent provided they do not know or cannot be expected to know that it is absent.

<sup>3</sup> The provisions governing representation of the marital union are reserved.

3. Use of common property for professional or business purposes

**Art. 229**

If a spouse practises a profession or runs a business on his or her own using common property with the other's consent, he or she may conclude all transactions that such activities entail.

4. Renunciation and acceptance of inheritances

**Art. 230**

<sup>1</sup> Without the other's consent, a spouse is not entitled to renounce an inheritance which would become common property or accept inheritance of an overindebted estate.

<sup>2</sup> If the spouse is unable to obtain consent or if it is withheld without good cause, he or she may petition the court.<sup>202</sup>

5. Liability and management costs

**Art. 231**

<sup>1</sup> In relation to dealings concerning common property, on dissolution of the marital property regime, each spouse is liable as if he or she were an agent.

<sup>2</sup> The costs of management are borne by the common property.

II. Individual property

**Art. 232**

<sup>1</sup> Each spouse administers and disposes of his or her individual property within the limits of the law.

<sup>2</sup> If income accrues to individual property, the management costs are borne by such property.

C. Liability toward third parties

I. Full liability

**Art. 233**

Each spouse is liable with his or her individual property and the common property:

1. for debts incurred in exercising his or her powers to represent the marital union or in managing the common property;
2. for debts incurred in the pursuit of a profession or business, provided common property has been used for this or the income therefrom becomes common property;
3. for debts for which the other spouse is also personally liable;
4. for debts in respect of which the spouses have agreed with third parties that their common property as well as the debtor's individual property will be liable.

<sup>202</sup> Amended by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, in force since 1 Jan. 2011 (AS 2010 1739; BBl 2006 7221).



**Art. 234**

II. Individual  
liability

<sup>1</sup> For all other debts a spouse is liable only to the extent of his or her individual property and half the value of the common property.

<sup>2</sup> Claims arising from the unjust enrichment of the marital union are reserved.

**Art. 235**

D. Debts  
between spouses

<sup>1</sup> The marital property regime does not affect the maturity of debts contracted between spouses.

<sup>2</sup> However, if payment of debts or the restitution of objects owed by a spouse would cause him or her serious difficulties which might endanger the marital union, such spouse may request to be granted a time limit in which to satisfy the claim; the claim is to be secured where reasonable in the circumstances.

**Art. 236**

E. Dissolution of  
the property  
regime and  
liquidation  
I. Time of  
dissolution

<sup>1</sup> The marital property regime is dissolved on the death of a spouse, the implementation of a different regime or when one of the spouses is declared bankrupt.

<sup>2</sup> In the case of divorce, separation, annulment of the marriage or a court order for separation of property, the dissolution of the marital property regime takes retroactive effect as of the date on which the application was filed.

<sup>3</sup> When determining the composition of common property and individual property, the defining juncture is the dissolution of the marital property regime.

**Art. 237**

II. Allocation to  
individual  
property

Lump sum pension or invalidity benefits received by a spouse that have become common property are added to his or her individual property in the capitalised amount equivalent to the pension or invalidity annuity to which he or she would be entitled on dissolution of the marital property regime.

**Art. 238**

III. Compensa-  
tion operations  
between joint  
and individual  
property

<sup>1</sup> Where debts encumbering one category of property were paid out of assets belonging to the other, respective compensation claims between the common property and the individual property of each spouse arise on the dissolution of the marital property regime.

<sup>2</sup> A debt encumbers the property in relation to which it was incurred, but in the case of doubt it encumbers the common property.

**Art. 239**

IV. Participation  
in increased  
value

Where the individual property of a spouse or the common property has contributed to the acquisition, improvement or preservation of an asset belonging to another category of property, the provisions governing increased value in relation to participation in acquired property apply *mutatis mutandis*.

**Art. 240**

V. Valuation

For the purpose of valuing the common property at hand at the time of the dissolution of the marital property regime, the defining juncture is the time of the division.

**Art. 241**

VI. Division  
1. On death or  
implementation  
of a different  
marital property  
regime

<sup>1</sup> If the community of property regime is dissolved by the death of a spouse or the implementation of a different marital property regime, each party or his or her heirs is entitled to one-half of the common property.

<sup>2</sup> A different method of division may be agreed by marital agreement.

<sup>3</sup> Such agreements must not adversely affect the statutory inheritance entitlements of the spouse's issue.

**Art. 242**

2. In other cases

<sup>1</sup> On divorce, separation, annulment of the marriage or separation of property by law or court order, each spouse shall take back from the common property such property as would have been his or her individual property under the participation in acquired property regime.

<sup>2</sup> The remaining common property is divided equally between the spouses.

<sup>3</sup> Agreements to vary the statutory method of division are valid only if the marital agreement expressly so provides.

**Art. 243**

VII. Division of  
the property  
1. Individual  
property

If the community of property is dissolved by the death of a spouse, the surviving spouse may request that such property as would have been his or her individual property under the participation in acquired property regime be allocated to him or her and count toward his or her share of the estate.

**Art. 244**

2. Home and  
household  
effects

<sup>1</sup> If the home in which the spouses lived or any household effects belong to the common property, the surviving spouse may request that

such property be allocated to him or her and count toward his or her share of the estate.

<sup>2</sup> Where justified in the circumstances, at the request of the surviving spouse or the other legal heirs of the deceased spouse, a usufruct or right of residence may be granted in lieu of ownership.

<sup>3</sup> If the community of property is not dissolved by death, each spouse may make such requests where he or she may show an overriding interest.

#### **Art. 245**

3. Other assets If a spouse demonstrates an overriding interest, he or she may also demand that other assets be allocated to him or her and count toward his or her share.

#### **Art. 246**

4. Further provisions In other respects the provisions governing the division of property in co-ownership and the division of estates apply *mutatis mutandis*.

### **Chapter Four: Separation of Property**

#### **Art. 247**

A. Management, benefits and power of disposal  
I. In general Within the limits of the law, each spouse shall administer and enjoy the benefits of his or her own property and has power of disposal over it.

#### **Art. 248**

II. Proof <sup>1</sup> Any person who asserts that a specific object or asset is owned by one or other spouse bears the burden of proof.  
<sup>2</sup> If no such proof may be adduced, there is a presumption of co-ownership.

#### **Art. 249**

B. Liability toward third parties Each spouse is liable for his or her debts with all his or her property.

#### **Art. 250**

C. Debts between spouses <sup>1</sup> The marital property regime does not affect the maturity of debts contracted between spouses.  
<sup>2</sup> However, if payment of debts or the restitution of objects owed by a spouse would cause him or her serious difficulties which might en-

danger the marital union, such spouse may request to be granted a time limit in which to satisfy the claim; the claim is to be secured where reasonable in the circumstances.

**Art. 251**

D. Allocation of property in co-ownership

Where one spouse shows an overriding interest in gaining sole possession of an object or asset in co-ownership, and notwithstanding any other legal measures available, he or she may request that said object or asset be allocated to him or her in return for compensation.

**Division Two: Kinship**

**Title Seven: Formation of the Parent-child Relationship<sup>203</sup>**

**Chapter One: General Provisions<sup>204</sup>**

**Art. 252<sup>205</sup>**

A. Formation of parent-child relationship in general

<sup>1</sup> The parent-child relationship is formed between child and mother on the birth of the child.

<sup>2</sup> It is formed between child and father by virtue of the latter being married to the mother, by recognition or by court declaration.

<sup>3</sup> Moreover, the parent-child relationship is formed by adoption.

**Art. 253<sup>206</sup>**

B. ...

**Art. 254<sup>207</sup>**

<sup>203</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>204</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>205</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>206</sup> Repealed by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan. 2001 (AS **2000** 2355; BBl **1999** 2829).

<sup>207</sup> Repealed by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).

## Chapter Two: Paternity of the Husband<sup>208</sup>

### Art. 255<sup>209</sup>

- A. Presumption
- 1 Where a child is born in wedlock, the husband is deemed to be the father.
  - 2 If the husband dies, he is deemed to be the father provided the child is born within 300 days of his death or, if born thereafter, if it is shown that the child was conceived before the husband's death.
  - 3 If the husband has been declared presumed dead, he is deemed to have been the father provided the child is born within 300 days of the life-threatening event or the last sign of life.

### Art. 256<sup>210</sup>

- B. Challenge
- I. Right to challenge
- 1 The presumption of paternity may be challenged in court:
    1. by the husband;
    - 2.<sup>211</sup> by the child if the spouses cease living together while the child is still a minor.
  - 2 The husband's challenge is directed against the child and the mother, that of the child against the husband and the mother.
  - 3 The husband has no right of challenge if he consented to impregnation by a third party. The child's right to challenge paternity is subject to the Reproductive Medicine Act of 18 December 1998<sup>212, 213</sup>

### Art. 256a<sup>214</sup>

- II. Grounds for challenge
1. In the case of conception in wedlock
- 1 If a child was conceived in wedlock, the challenging party must show that the husband is not the father.
  - 2 The child is presumed to have been conceived in wedlock if it was born no earlier than 180 days after the wedding and no later than 300 days after the marriage was dissolved as a result of death.<sup>215</sup>

- 208 Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).
- 209 Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).
- 210 Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).
- 211 Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).
- 212 SR **810.11**
- 213 Amended by Art. 39 of the Federal Act on Medically Assisted Reproduction of 18 Dec. 1998, in force since 1 Jan. 2001 (AS **2000** 3055; BBl **1996** III 205).
- 214 Inserted by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).
- 215 Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

**Art. 256b**<sup>216</sup>

2. In the case of conception before marriage or while spouses were living apart

<sup>1</sup> If a child was conceived before the marriage was concluded or at a time when the spouses were living apart, no further grounds need be given for the challenge.

<sup>2</sup> However, in such cases the paternity of the husband is still presumed where the court is satisfied that he had sexual intercourse with the mother around the date of the conception.

**Art. 256c**<sup>217</sup>

III. Time limits

<sup>1</sup> The husband must file the challenge within one year of learning of the birth and of the fact that he is not the father or that another man had sexual intercourse with the mother around the date of the conception, but in any event not later than five years after the birth.

<sup>2</sup> The child's challenge must be filed at the latest within one year of attaining the age of majority.<sup>218</sup>

<sup>3</sup> Once these time limits have expired, a challenge of paternity is admissible provided there is good cause for the delay.

**Art. 257**<sup>219</sup>

C. Conflict of presumptions

<sup>1</sup> Where a child was born within 300 days of the dissolution of the marriage as a result of death and the mother has since remarried, the second husband is deemed to be the father.<sup>220</sup>

<sup>2</sup> If this presumption is disproved, the first husband is deemed to be the father.

**Art. 258**<sup>221</sup>

D. Challenge by the parents

<sup>1</sup> If the husband died or lost capacity of judgement before the time limit expired, his father or his mother may challenge his paternity.

<sup>2</sup> In this case the provisions governing a challenge by the husband apply *mutatis mutandis*.

<sup>216</sup> Inserted by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>217</sup> Inserted by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>218</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>219</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>220</sup> Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS 1999 1118; BBl 1996 I 1).

<sup>221</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>3</sup> The one-year time limit for bringing the claim begins at the earliest on the date on which the father or mother learns of the husband's death or loss of capacity of judgement.

#### **Art. 259**<sup>222</sup>

E. Marriage of the parents

<sup>1</sup> If the parents marry each other, the provisions governing children born in wedlock apply *mutatis mutandis* to a child born prior to the marriage, providing the paternity of the husband is established by recognition or court declaration.

<sup>2</sup> Recognition may be challenged:

1. by the mother;
- 2.<sup>223</sup> by the child or, after his or her death, by his or her issue if the spouses ceased living together while the child was still a minor or if recognition did not occur until after the child's twelfth birthday;
3. by the husband's commune of origin or residence;
4. by the husband.

<sup>3</sup> The provisions governing challenge of recognition apply *mutatis mutandis*.

### **Chapter Three: Recognition and Court Declaration of Paternity**<sup>224</sup>

#### **Art. 260**<sup>225</sup>

A. Recognition  
I. Admissibility  
and form

<sup>1</sup> Where the parent-child relationship exists only with the mother, the father may recognise the child.

<sup>2</sup> Where the recognising person is a minor or subject to a general deputyship or if the adult protection authority has issued a related order, recognition requires the consent of his or her legal representative.<sup>226</sup>

<sup>222</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>223</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>224</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>225</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>226</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>3</sup> Recognition is effected by means of a declaration made before the civil registrar or by testamentary disposition or, if an action to declare paternity is pending, by a declaration made to the court.

**Art. 260a**<sup>227</sup>

II. Challenge  
1. Right to challenge

<sup>1</sup> Recognition may be challenged before the courts by any interested party, namely the mother, the child or, after its death, its issue, and by the commune of origin or domicile of the recognising person.

<sup>2</sup> The recognising person is entitled to file a challenge only if he or she recognised the child under threat of imminent and substantial risk to his or her own life, limb, reputation or property or to those of a person close to him or her, or in the erroneous belief that he was the father.

<sup>3</sup> The challenge is directed against the recognising person and the child, insofar as they themselves are not the challenging persons.

**Art. 260b**<sup>228</sup>

2. Grounds

<sup>1</sup> The challenging person must prove that the recognising person is not the child's father.

<sup>2</sup> However, mother and child are only required to prove this if the recognising person may satisfy the court that he had sexual intercourse with the mother around the time of the child's conception.

**Art. 260c**<sup>229</sup>

3. Time limits

<sup>1</sup> The challenge must be filed within one year of the date on which the claimant learned of the recognition and the fact that the recognising person is not the father, or that another man had sexual intercourse with the mother around the time of the conception, or on which he or she learned of his or her error or on which the threat ceased, but in any event within five years of the recognition.

<sup>2</sup> In all cases, the child may file the challenge at any time prior to the elapse of one year after attaining the age of majority.<sup>230</sup>

<sup>3</sup> Once these time limits have expired, a challenge of recognition is admissible provided there is good cause for the delay.

<sup>227</sup> Inserted by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>228</sup> Inserted by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>229</sup> Inserted by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>230</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).



- Art. 261**<sup>231</sup>
- B. Action to determine paternity  
I. Right to bring the action
- 1 Both mother and child are entitled to bring an action to declare the existence of the parent-child relationship between the child and the father.
  - 2 The action is brought against the father or, if he has died, in order of priority against his issue, parents or siblings or, where none exist, against the competent authority of his last domicile.
  - 3 If the father has died, the court must inform his wife that the action has been brought so that she may safeguard her interests.

- Art. 262**<sup>232</sup>
- II. Presumption
- 1 If the defendant had sexual intercourse with the mother during the period between the 300<sup>th</sup> day and the 180<sup>th</sup> day before the child's birth, his paternity is presumed.
  - 2 Paternity is also presumed even if the child was conceived prior to the 300<sup>th</sup> day or after the 180<sup>th</sup> day prior to birth provided the defendant had sexual intercourse with the mother during the period in which the child was conceived.
  - 3 There is no such presumption if the defendant shows that his paternity is either impossible or less probable than that of another man.

- Art. 263**<sup>233</sup>
- III. Time limits
- 1 The action is admissible both before and after the birth but must be brought:
    1. by the mother within one year of the birth;
    - 2.<sup>234</sup> by the child at any time prior to the elapse of one year after attaining the age of majority.
  - 2 If a parent-child relationship already exists with another man, the action may in any event be brought within one year of the date on which said relationship is annulled.
  - 3 Once these time limits have expired, an action for determination of paternity is admissible provided there is good cause for the delay.

<sup>231</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>232</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>233</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>234</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

## Chapter Four:<sup>235</sup> Adoption

### Art. 264<sup>236</sup>

A. Adoption of  
minors  
I. General  
requirements

<sup>1</sup> A minor child may be adopted if the persons wishing to adopt have raised and cared for the child for at least one year and provided the general circumstances suggest that establishing a parent-child relationship would be in the child's best interests without being unfair for any other children of the adoptive parents.

<sup>2</sup> Adoption is only possible, if the persons wishing to adopt the child are able to provide for the child up to the child's majority on the basis of their age and their personal circumstances.

### Art. 264a<sup>237</sup>

II. Joint adoption

<sup>1</sup> Spouses may adopt a child jointly if they have been in the same household for at least three years and both are at least 28 years old.

<sup>2</sup> Exceptions from the minimum age may be made if this is necessary for the welfare of the child. The spouses must justify the exception.

### Art. 264b<sup>238</sup>

III. Adoption by  
a single person

<sup>1</sup> A person who is not married and does not live in a registered partnership is permitted to adopt a child alone if he or she is at least 28 years old.

<sup>2</sup> A married person who is at least 28 years old is permitted to adopt alone where the other spouse permanently lacks capacity of judgement or has been of unknown whereabouts for more than 2 years or if the spouses have been separated by court order for more than 3 years.

<sup>3</sup> A person living in a registered partnership who is at least 28 years old is permitted to adopt a child alone if his or her registered partner permanently lacks capacity of judgement or has been of unknown whereabouts for more than 2 years.

<sup>4</sup> Exceptions from the minimum age may be made if this is necessary for the welfare of the child. The person wishing to adopt must justify the exception.

<sup>235</sup> Originally Chapter Three.

<sup>236</sup> Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

<sup>237</sup> Inserted by No I 1 of the FA of 30 June 1972 (AS 1972 2819; BBl 1971 I 1200). Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

<sup>238</sup> Inserted by No I 1 of the FA of 30 June 1972 (AS 1972 2819; BBl 1971 I 1200). Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

**Art. 264c**<sup>239</sup>

IV. Adoption of a stepchild

1 A person is permitted to adopt the child of the person:

1. to whom he or she is married;
2. with whom he or she lives in a registered partnership;
3. with whom he or she cohabits.

2 The couple must have been in the same household for at least three years.

3 Persons who cohabit are not permitted to be married or to be bound by a registered partnership.

**Art. 264d**<sup>240</sup>

V. Difference in age

1 The age difference between the child and the persons wishing to adopt may not be less than 16 years and not more than 45 years.

2 Exceptions may be made if this is necessary for the welfare of the child. The person wishing to adopt must justify the exception.

**Art. 265**<sup>241</sup>

VI. Consent of the child and the child protection authority

1 If the child is capable of judgement, its consent is required for the adoption.

2 Where the child has a legal guardian or a legal representative, adoption requires the consent of the child protection authority even if the child is capable of judgement.

**Art. 265a**<sup>242</sup>VII. Parents' consent<sup>243</sup>  
1. Form

1 Adoption requires the consent of the child's father and mother.

2 Such consent must be given by oral or written declaration to the child protection authority of the parents' or child's domicile or temporary residence and must be recorded.

3 Such consent is valid even if the persons wishing to adopt are not named or not yet determined.<sup>244</sup>

<sup>239</sup> Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBI 2015 877).

<sup>240</sup> Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBI 2015 877).

<sup>241</sup> Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBI 2015 877).

<sup>242</sup> Inserted by No I of the FA of 30 June 1972, in force since 1 April 1973 (AS 1972 2819; BBI 1971 I 1200).

<sup>243</sup> Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBI 2015 877).

<sup>244</sup> Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBI 2015 877).

**Art. 265b**<sup>245</sup>

2. Time of consent

<sup>1</sup> Consent to adoption may not be given until at least six weeks after the birth of the child.

<sup>2</sup> It may be revoked within six weeks of having been accepted.

<sup>3</sup> Where consent, having been revoked, is given again, it is then final.

**Art. 265c**<sup>246</sup>3. Dispensing with consent  
a. Requirements

The consent of a parent may be dispensed with if the identity of that parent is unknown, or if he or she has been of unknown whereabouts for some length of time, or permanently lacks capacity of judgement.

**Art. 265d**<sup>247</sup>

b. Decision

<sup>1</sup> Where the child is entrusted to persons wishing to adopt with a view to subsequent adoption and the consent of one parent is not forthcoming, the child protection authority at the child's domicile shall, at the request of the legal guardian or a legal representative, an adoption agency or the persons wishing to adopt, decide whether such consent can be dispensed with, as a rule before the child is placed in care.<sup>248</sup>

<sup>2</sup> In all other cases, the decision is made at the time of the adoption.

<sup>3</sup> ...<sup>249</sup>

**Art. 266**<sup>250</sup>

B. Adoption of an adult

<sup>1</sup> An adult may be adopted if:

1. he or she is permanently in need of help for physical, mental or psychological reasons and the persons wishing to adopt have looked after him or her for at least one year;
2. the persons wishing to adopt raised and cared for the person for at least one year while he or she was still a minor; or
3. there are other good reasons and he or she has lived in the same household with the persons wishing to adopt for at least one year.

<sup>245</sup> Inserted by No I 1 of the FA of 30 June 1972, in force since 1 April 1973 (AS 1972 2819; BBl 1971 I 1200).

<sup>246</sup> Inserted by No I 1 of the FA of 30 June 1972, in force since 1 April 1973 (AS 1972 2819; BBl 1971 I 1200).

<sup>247</sup> Inserted by No I 1 of the FA of 30 June 1972, in force since 1 April 1973 (AS 1972 2819; BBl 1971 I 1200).

<sup>248</sup> Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

<sup>249</sup> Repealed by No I of the FA of 17 June 2016 (Adoption), with effect from 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

<sup>250</sup> Amended by No I 1 of the FA of 30 June 1972, in force since 1 April 1973 (AS 1972 2819; BBl 1971 I 1200).

<sup>2</sup> In all other respects, the provisions governing adoption of minors apply *mutatis mutandis*, with the exception of the provision on parental consent.

**Art. 267**<sup>251</sup>

C. Effects  
I. In general

<sup>1</sup> The adoptive child acquires the legal status of a child of the persons wishing to adopt.

<sup>2</sup> Previous parent-child relationships are extinguished.

<sup>3</sup> The child's relationship with the parent who:

1. is married to;
2. lives in a registered partnership with;
3. cohabits with;

the adopting person is not extinguished.

**Art. 267a**<sup>252</sup>

II. Name

<sup>1</sup> In the case of joint adoption and adoption by a single person, the minor may be given a new first name if there are good reasons for doing so. Prior to this, the child is heard in person in an appropriate manner by the competent authority or by a third party appointed for this purpose, unless this is inadvisable due to the child's age or for other good cause. If the child is at least twelve years of age, a change of name requires his or her consent.

<sup>2</sup> The name of the child is determined in accordance with the provisions governing the legal effects of the parent-child relationship. These apply *mutatis mutandis* to the adoption of the child by the registered partner of its mother or father.

<sup>3</sup> The competent authority may authorise an adult to be adopted to continue using his or her existing name if there are good reasons for doing so.

<sup>4</sup> The change of name of an adult to be adopted does not affect the naming of persons whose name is derived from the previous name of the person to be adopted, unless they expressly agree to a change of name.

<sup>251</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>252</sup> Inserted by No I 1 of the FA of 30 June 1972, in force since 1 April 1973 (AS **1972** 2819; BBl **1971** I 1200). Amended by No I of the FA of 30 Sept. 2011 (Name and Citizenship), in force since 1 Jan. 2013 (AS **2012** 2569; BBl **2009** 7573 7581)

**Art. 267b**<sup>253</sup>

III. Citizenship The citizenship of a minor is determined by provisions governing the legal effects of the parent-child relationship.

**Art. 268**<sup>254</sup>

D. Procedure  
I. In general <sup>1</sup> Adoption is pronounced by the competent cantonal authority at the adoptive parents' domicile.

<sup>2</sup> The adoption requirements must already be met when the application is submitted.<sup>255</sup>

<sup>3</sup> Once the application has been submitted, the death or loss of capacity of judgement of the person wishing to adopt does not preclude the adoption provided the other requirements are still fulfilled.<sup>256</sup>

<sup>4</sup> If the child attains the age of majority after the application for adoption has been submitted, the provisions governing the adoption of minors continue to apply provided the requirements for adoption were previously fulfilled.<sup>257</sup>

<sup>5</sup> The adoption decision shall contain all the information required for entry in the civil register relating to the first name, surname and citizenship of the adopted person.<sup>258</sup>

**Art. 268a**<sup>259</sup>

II. Investigation <sup>1</sup> An application for adoption may not be upheld until all material circumstances have been thoroughly investigated, where necessary in consultation with the relevant specialists.

<sup>2</sup> In particular, the investigation must look into the character and health of the persons wishing to adopt and the child, their mutual relationship, their suitability as parents, their financial situation, motives and family circumstances and the history of the child care relationship.<sup>260</sup>

<sup>253</sup> Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

<sup>254</sup> Amended by No I 1 of the FA of 30 June 1972, in force since 1 April 1973 (AS 1972 2819; BBl 1971 I 1200).

<sup>255</sup> Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

<sup>256</sup> Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

<sup>257</sup> Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

<sup>258</sup> Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

<sup>259</sup> Inserted by No I 1 of the FA of 30 June 1972, in force since 1 April 1973 (AS 1972 2819; BBl 1971 I 1200).

<sup>260</sup> Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

3 ...261

**Art. 268<sup>a</sup>bis** 262

III. Hearing for  
the child

1 The child shall be heard in person in an appropriate manner by the cantonal authority responsible for the adoption procedure or by a third party appointed for this purpose, unless this is inadvisable due to the child's age or for other good cause.

2 Minutes shall be kept of the hearing.

3 A child capable of judgement may appeal against a decision to refuse a hearing.

**Art. 268<sup>a</sup>ter** 263

IV. Representa-  
tion for the child

1 The cantonal authority responsible for the adoption procedure shall order the child to be represented and appoint a person experienced in welfare and legal matters as the child's deputy.

2 If a child with the capacity to consent so requests, a representative must be appointed.

3 The child may challenge the rejection of his or her request by filing an objection.

**Art. 268<sup>a</sup>quater** 264

V. Taking  
account of the  
attitude of family  
members

1 Where the persons wishing to adopt have issue of their own, the latter's attitude to the adoption must be taken into account.

2 Prior to the adoption of an adult, the attitude of following persons must also be taken into account:

1. the spouse or registered partner of the person to be adopted;
2. the biological parents of the person to be adopted
3. the issue of the person to be adopted, unless this is inadvisable due to their age or for other good cause.

3 These persons shall, if possible, be notified of the adoption decision.

261 Repealed by No I of the FA of 17 June 2016 (Adoption), with effect from 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

262 Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

263 Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

264 Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

**Art. 268b**<sup>265</sup>

D<sup>bis</sup>. Confidentiality of adoption information

<sup>1</sup> The adopted child and the adoptive parents are entitled to confidentiality of adoption information.

<sup>2</sup> Identifying information about the minor or his or her adoptive parents may only be disclosed to the biological parents if the child is capable of judgement, and the adoptive parents and the child have consented to disclosure.

<sup>3</sup> Identifying information about the adult child may be disclosed to the biological parents and their direct descendants if the child has consented to disclosure.

**Art. 268c**<sup>266</sup>

D<sup>ter</sup>. Information on the adoption, the biological parents and their issue

<sup>1</sup> The adoptive parents must inform the child of his or her adoption when his or her age or maturity permits.

<sup>2</sup> A minor is entitled to information about his or her biological parents, provided it is not possible to draw conclusions about their identity. The child shall be given identifying information only if he or she can show an interest worthy of protection.

<sup>3</sup> An adult child may at any time request that the personal details of his or her biological parents and further information about them be disclosed to him or her. The adult child may also request that information about the direct descendants of his or her biological parents be disclosed to him or her if the descendants are of age and have consented to the disclosure.

**Art. 268d**<sup>267</sup>

D<sup>quater</sup>. Cantonal information centre and tracing services

<sup>1</sup> Information about the biological parents, their direct descendants and the child may be obtained from the cantonal authority responsible for the adoption procedure.

<sup>2</sup> The authority shall inform the person referred to in the request for information about the request and, where necessary, obtain his or her consent to contact the person requesting information. The authority may delegate these tasks to a specialised tracing service.

<sup>3</sup> If the person referred to in the request for information refuses to make personal contact, the authority or the authorised tracing service

<sup>265</sup> Inserted by No I 1 of the FA of 30 June 1972, in force since 1 April 1973 (AS **1972** 2819; BBl **1971** I 1200).

<sup>266</sup> Inserted by Annex No. 2 of the FA of 22 June 2001 on the Hague Adoption Convention and Measures to Protect Children in respect of Inter-Country Adoption (AS **2002** 3988; BBl **1999** 5795). Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

<sup>267</sup> Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).



shall inform the person requesting information and draw his or her attention to the personal rights of the person referred to in the request for information.

<sup>4</sup> The cantons shall designate a body to provide advice to the biological parents, their direct descendants or the child on request.

**Art. 268<sup>e268</sup>**

Dquinquies,  
Contact with the  
biological  
parents

<sup>1</sup> The adoptive parents and the biological parents may agree that the biological parents be entitled to reasonable contact with the minor. This agreement and any amendments thereto shall be submitted to the child protection authority at the child's place of residence for approval. The child protection authority or a third party appointed by it shall hear the child in person in an appropriate manner before the decision is taken, unless this is inadvisable due to the child's age or for other good cause. If the child is capable of judgement, its consent is required for the agreement.

<sup>2</sup> If the best interests of the child are at risk or if there is disagreement about the implementation of the agreement, the child protection authority shall decide.

<sup>3</sup> The child may refuse contact with its biological parents at any time. The adoptive parents may not pass on information to the biological parents against the child's will.

**Art. 269<sup>269</sup>**

E. Challenge  
I. Grounds  
1. Lack of  
consent

<sup>1</sup> Where for no just cause consent has not been obtained, those persons whose consent is required may bring an action to challenge the adoption providing this does not seriously impair the interests of the child.

<sup>2</sup> However, the parents are not entitled to bring such action where they may appeal against the decision to the Federal Supreme Court.

**Art. 269<sup>a270</sup>**

2. Other defects

<sup>1</sup> If the adoption displays other grave defects, it may be challenged by any interested party and in particular by the commune of origin or domicile.

<sup>2</sup> However, a challenge is excluded if the defect has been rectified in the interim or if it relates solely to procedural provisions.

<sup>268</sup> Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBI 2015 877).

<sup>269</sup> Amended by No I I of the FA of 30 June 1972, in force since 1 April 1973 (AS 1972 2819; BBI 1971 I 1200).

<sup>270</sup> Inserted by No I I of the FA of 30 June 1972, in force since 1 April 1973 (AS 1972 2819; BBI 1971 I 1200).

**Art. 269b**<sup>271</sup>

- II. Time limits     An action to challenge the adoption must be brought within six months of discovering the grounds for the challenge and in any event within two years of the adoption.

**Art. 269c**<sup>272</sup>

- F. Adoption agency services     <sup>1</sup> The Confederation is responsible for supervising child adoption agency activities.
- <sup>2</sup> Any person engaging in such activities professionally or in connection with his or her professional activities requires an official licence; this does not apply to agency services rendered by the child protection authority.<sup>273</sup>
- <sup>3</sup> The Federal Council enacts the implementing regulations and determines the manner in which the cantonal authorities responsible for placing children in foster care with a view to subsequent adoption are to be involved in assessing fulfilment of the requirements for approval of adoption and in carrying out the necessary supervision.
- <sup>4</sup> ...<sup>274</sup>

**Title Eight: Effects of the Parent-Child Relationship**<sup>275</sup>**Section One: Community of Parents and Children**<sup>276</sup>**Art. 270**<sup>277</sup>

- A. Family surname  
I. Child of married parents     <sup>1</sup> Where the parents are married to each other but bear different surnames, the child takes the surname that the parents decided would be given to their children when they married.

<sup>271</sup> Inserted by No I 1 of the FA of 30 June 1972, in force since 1 April 1973 (AS **1972** 2819; BBl **1971** I 1200).

<sup>272</sup> Inserted by No I 3 of the FA of 30 June 1972 (AS **1972** 2819; BBl **1971** I 1200). Amended by Annex No. 2 of the FA of 22 June 2001 on the Hague Adoption Convention and Measures to Protect Children in respect of Inter-Country Adoption, in force since 1 Jan. 2003 (AS **2002** 3988; BBl **1999** 5795).

<sup>273</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>274</sup> Repealed by Annex No. 15 of the Federal Administrative Court Law of 17 June 2005, with effect from 1 Jan. 2007 (AS **2006** 2197; BBl **2001** 4202).

<sup>275</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>276</sup> Inserted by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>277</sup> Amended by No I of the FA of 30 Sept. 2011 (Name and Citizenship), in force since 1 Jan. 2013 (AS **2012** 2569; BBl **2009** 7573 7581).

<sup>2</sup> Within one year of the birth of their first child, the parents may request that the child take the surname of the other parent.

<sup>3</sup> If the parents bear a joint family name, the child takes that name.

**Art. 270a**<sup>278</sup>

II. Child of unmarried parents

<sup>1</sup> If one parent has parental responsibility, the child takes that parent's surname before marriage. If the parents share parental responsibility, they decide which of their surnames before marriage their children should take.

<sup>2</sup> If joint parental responsibility is established after the birth of the first child, either parent may within a year of its establishment declare before the civil registrar that the child should take the other parent's name before marriage. This declaration applies to all common children, regardless of who is given parental responsibility.

<sup>3</sup> If neither parent has parental responsibility, the child takes the mother's name before marriage.

<sup>4</sup> A change in the allocation of parental responsibility has no effect on names. The provisions on changing names are reserved.

**Art. 270b**<sup>279</sup>

III. Consent of the child

If the child has attained the age of twelve, his or her surname may only be changed if he or she consents.

**Art. 271**<sup>280</sup>

B. Citizenship

<sup>1</sup> The child acquires the cantonal and communal citizenship of the parent whose surname the child bears.

<sup>2</sup> Where a child acquires the surname of the other parent while still a minor, the child acquires the cantonal and communal citizenship of that parent.

**Art. 272**<sup>281</sup>

C. Support and common welfare

Parents and children owe each other such support, consideration and respect as the good of the family community requires.

<sup>278</sup> Inserted by No I of the FA of 30 Sept. 2011 (Name and Citizenship) (AS **2012** 2569; BBl **2009** 7573 7581). Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>279</sup> Inserted by No I of the FA of 30 Sept. 2011 (Name and Citizenship), in force since 1 Jan. 2013 (AS **2012** 2569; BBl **2009** 7573 7581).

<sup>280</sup> Amended by No I of the FA of 30 Sept. 2011 (Name and Citizenship), in force since 1 Jan. 2013 (AS **2012** 2569; BBl **2009** 7573 7581).

<sup>281</sup> Amended by No I of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

**Art. 273**<sup>282</sup>

D. Contact  
 I. Parents and children  
 1. Principle

<sup>1</sup> Parents not granted parental responsibility or whose children are not residents with them are entitled to reasonable contact with their minor children, and their children are entitled to contact with them.<sup>283</sup>

<sup>2</sup> The child protection authority may remind parents, foster parents or the child of their duties and issue them with instructions where the exercise or failure to exercise contact entitlements is detrimental to the child or where such reminder or direction is required for some other reason.

<sup>3</sup> Contact entitlements must be stipulated if either the father or the mother so requests.

**Art. 274**<sup>284</sup>

2. Restrictions

<sup>1</sup> The father and the mother must refrain from any conduct that impairs the child's relationship with the other parent or makes the task of the person with custody more difficult.<sup>285</sup>

<sup>2</sup> Where contact with the child is not in its best interests, or the parents breach their duties in the course of such contact or have not cared for the child to any meaningful degree, or other good cause exists, the parents' right of contact with the child may be refused or withdrawn.

<sup>3</sup> Where the parents have consented to the adoption of their child or their consent may be dispensed with, their right of contact with the child is extinguished as soon as the child is placed in foster care with a view to future adoption.

**Art. 274a**<sup>286</sup>

II. Third parties

<sup>1</sup> In extraordinary circumstances, a right of contact with the child may also be granted to other persons and in particular to relatives, to the extent this serves the child's best interests.

<sup>2</sup> The restrictions on parents' visiting rights apply *mutatis mutandis*.

<sup>282</sup> Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>283</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>284</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>285</sup> Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>286</sup> Inserted by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

**Art. 275**<sup>287</sup>

III. Responsible authorities

<sup>1</sup> Responsibility for orders regulating rights of contact with the child lies with the child protection authority at the child's domicile and with that of his or her place of temporary residence, insofar as the latter has taken or is taking child protection measures.

<sup>2</sup> If the court regulates parental responsibility, residence or the child maintenance contribution in accordance with the provisions on the divorce and protection of the marital union, it shall also regulate contact.<sup>288</sup>

<sup>3</sup> Where no orders have yet been issued regulating the father's and mother's contact entitlements, no contact may be had against the will of the person granted parental responsibility or with whom the child resides.

**Art. 275a**<sup>289</sup>

E. Right to information

<sup>1</sup> Parents who do not exercise parental responsibility should be informed of special events in the child's life and consulted before important decisions affecting its development are taken.

<sup>2</sup> They are entitled to obtain information concerning the child's condition and development from third parties involved in its care, such as teachers and doctors, in the same manner as the person with parental responsibility.

<sup>3</sup> The provisions governing responsibility for and limitations on contact with the child apply *mutatis mutandis*.

**Section Two: Parents' Duty of Maintenance**<sup>290</sup>**Art. 276**<sup>291</sup>A. General  
I. Object and scope<sup>292</sup>

<sup>1</sup> Maintenance is provided by caring for and raising the child and in the form of monetary payments.<sup>293</sup>

<sup>287</sup> Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>288</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>289</sup> Inserted by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>290</sup> Inserted by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>291</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>292</sup> Inserted by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS **2015** 4299; BBl **2014** 529).

<sup>293</sup> Amended by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS **2015** 4299; BBl **2014** 529).

<sup>2</sup> The parents must, each according to their own abilities, provide for the child's maintenance, including the costs of caring for and raising the child, his or her education and measures taken for his or her protection.<sup>294</sup>

<sup>3</sup> The parents are released from their duty of maintenance to the extent that the child may reasonably be expected to meet the costs thereof from his or her own earnings or other resources.

**Art. 276a**<sup>295</sup>

II. Precedence of maintenance for minors

<sup>1</sup> The duty of maintenance towards a minor shall take precedence over other maintenance duties under family law.

<sup>2</sup> In justified cases, the court may disregard this rule, in particular in order to prevent any disadvantage to a child entitled to maintenance who is of age.

**Art. 277**<sup>296</sup>

B. Duration

<sup>1</sup> The parents' duty of maintenance lasts until the child attains the age of majority.<sup>297</sup>

<sup>2</sup> If at that juncture the child has not yet had a suitable education, the parents must pay for his or her maintenance, to the extent conscionable in the overall circumstances, until such time as the child can complete a suitable education within the customary timescale.<sup>298</sup>

**Art. 278**<sup>299</sup>

C. Married parents

<sup>1</sup> For the duration of their marriage, the parents bear the costs of maintenance in accordance with the provisions of marital law.

<sup>2</sup> Each spouse must give the other all reasonable assistance in discharging the duty to maintain children born prior to the marriage.

<sup>294</sup> Amended by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS **2015** 4299; BBl **2014** 529).

<sup>295</sup> Inserted by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS **2015** 4299; BBl **2014** 529).

<sup>296</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>297</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>298</sup> Amended by No I of the FA of 7 Oct. 1994, in force since 1 Jan. 1996 (AS **1995** 1126; BBl **1993** I 1169).

<sup>299</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

**Art. 279**<sup>300</sup>

D. Court action  
I. Right to sue<sup>301</sup> 1 The child is entitled to sue the father or the mother or both for maintenance in future and for one year prior to the bringing of such action.

2–3 ...<sup>302</sup>

**Art. 280–284**<sup>303</sup>

II. and III. ...

**Art. 285**<sup>304</sup>

IV. Amount of child maintenance contribution  
1. Parents' contribution

1 The child maintenance contribution should correspond to the child's needs and to the parents' financial circumstances and resources; the child's assets and income must be taken into account.

2 The child maintenance contribution also serves to ensure that the child is cared for by the parents or by third parties.

3 The child maintenance contribution is payable in advance on the dates stipulated by the court.

**Art. 285a**<sup>305</sup>

2. Other payments for maintenance of the child

1 Family allowance credits paid to the parent required to pay maintenance must be paid in addition to the maintenance.

2 Unless the court rules otherwise, any child allowance, social security children's supplement and similar child support benefits to which the parent subject to the duty of maintenance is entitled must be paid in addition to the child maintenance contribution.

3 Where as a result of old age or invalidity the parent subject to the duty of maintenance subsequently receives social security, children's supplements or similar child support benefits which replace his or her employment income, he or she must pay said benefits to the child; by operation of law, his or her existing child maintenance contribution is automatically reduced by the amount of such new benefits.

<sup>300</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>301</sup> Amended by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, in force since 1 Jan. 2001 (AS 2000 2355; BBl 1999 2829).

<sup>302</sup> Repealed by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan. 2001 (AS 2000 2355; BBl 1999 2829).

<sup>303</sup> Repealed by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS 2010 1739; BBl 2006 7221).

<sup>304</sup> Amended by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS 2015 4299; BBl 2014 529).

<sup>305</sup> Inserted by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS 2015 4299; BBl 2014 529).

**Art. 286**<sup>306</sup>

V. Change of  
circumstances  
1. In general<sup>307</sup>

<sup>1</sup> The court may order that the child maintenance contribution be automatically increased or decreased in the event of specified changes in the child's needs, the parents' financial resources or the cost of living.

<sup>2</sup> If circumstances change considerably, at the request of one parent or the child the court will set a new level of child maintenance contribution or revoke it entirely.

<sup>3</sup> Should the child have unforeseen, extraordinary needs the court may order the parents to make a special financial contribution.<sup>308</sup>

**Art. 286a**<sup>309</sup>

2. Shortfalls

<sup>1</sup> If it was previously established in an approved maintenance agreement or a decision that no maintenance contribution could be set to provide due maintenance for the child, and should the circumstances of the parent liable to pay maintenance have since improved substantially, the child is entitled to claim payments that were not met by this parent during the previous five years in which payments were owed to provide due maintenance.

<sup>2</sup> This claim must be brought within one year of it being known that the circumstances have improved substantially.

<sup>3</sup> This claim passes with all rights to the other parent or to the state authority in as far as this parent or the state authority has met the missing share of the due maintenance.

**Art. 287**<sup>310</sup>

E. Maintenance  
agreements  
I. Regular  
payments

<sup>1</sup> Maintenance agreements are binding on the child only once they have been approved by the child protection authority.

<sup>2</sup> Child maintenance contributions stipulated in such agreements may be modified, providing such changes have not been excluded with the approval of the child protection authority.

<sup>3</sup> If the agreement is concluded in court proceedings, such approval must be given by the court.

<sup>306</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>307</sup> Inserted by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS 2015 4299; BBl 2014 529).

<sup>308</sup> Inserted by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS 1999 1118; BBl 1996 I 1).

<sup>309</sup> Inserted by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS 2015 4299; BBl 2014 529).

<sup>310</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).



- Art. 287a**<sup>311</sup>
- II. Scope of a maintenance agreement
- Where maintenance contributions are set in a maintenance agreement, the agreement must specify:
- a. the income and assets of each parent and each child from which the set amount is calculated;
  - b. the amount set for each child;
  - c. the amount required to cover any shortfall in the due maintenance of each child;
  - d. if and to what extent the maintenance contributions will be adjusted to reflect changes in living costs.
- Art. 288**<sup>312</sup>
- III. Final settlement<sup>313</sup>
- <sup>1</sup> Full and final settlement of the child's maintenance entitlement may be agreed if it is in the child's best interests.
- <sup>2</sup> The settlement agreement becomes binding on the child only:
1. once the child protection authority or, in the case of an agreement reached during court proceedings, the court has approved it, and
  2. once the settlement amount has been paid into the account designated in the approval.
- Art. 289**<sup>314</sup>
- F. Fulfilment  
I. Entitlement
- <sup>1</sup> The right to child maintenance contributions is that of the child and, so long as he or she is a minor, is fulfilled by payment to the child's legal representative or to the person with whom the child resides, unless the court decides otherwise.<sup>315</sup>
- <sup>2</sup> However, where the state authority assumes the cost of maintaining the child, such claim and all attendant rights pass to the state authority.
- <sup>311</sup> Inserted by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS **2015** 4299; BBl **2014** 529).
- <sup>312</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).
- <sup>313</sup> Originally No II.
- <sup>314</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).
- <sup>315</sup> Amended by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS **2015** 4299; BBl **2014** 529).

**Art. 290**<sup>316</sup>

II. Enforcement  
1. Enforcement  
assistance

<sup>1</sup> If a father or mother does not fulfil his or her obligation to provide maintenance, a specialist office designated by cantonal law shall, on application, help the child and the other parent to enforce the maintenance claim appropriately and free of charge.

<sup>2</sup> The Federal Council determines the terms of enforcement assistance.

**Art. 291**<sup>317</sup>

2. Directions to  
debtors

If the parents neglect to take due care of the child, the court may order their debtors to make payment in whole or in part to the child's legal representative.

**Art. 292**<sup>318</sup>

III. Security

If the parents are persistently neglectful in their duty of maintenance, or if there are grounds to suspect that they are preparing to abscond or are dissipating or concealing their assets, the court may order them to furnish appropriate security for future child maintenance contributions.

**Art. 293**<sup>319</sup>

G. Public law

<sup>1</sup> Subject to the duty of relatives to provide support, public law determines who must bear the costs of maintenance if neither the parents nor the child may defray them.

<sup>2</sup> Public law also governs the provision of advances to maintain the child if the parents fail to fulfil their duty of maintenance.

**Art. 294**<sup>320</sup>

H. Foster parents

<sup>1</sup> Foster parents are entitled to receive an appropriate fostering allowance unless otherwise agreed or clearly dictated by the circumstances.

<sup>2</sup> Where children are fostered by close relatives or with a view to subsequent adoption there is a presumption that no remuneration is due.

<sup>316</sup> Amended by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS 2015 4299; BBl 2014 529).

<sup>317</sup> Amended by No I I of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>318</sup> Amended by No I I of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>319</sup> Amended by No I I of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>320</sup> Amended by No I I of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

**Art. 295**<sup>321</sup>

J. Rights of the  
unmarried  
mother

<sup>1</sup> Up to one year after the birth at the latest, the mother may file a claim against the father or his legal heirs for compensation.<sup>322</sup>

1. in respect of the confinement costs;
2. in respect of the costs of maintenance for at least four weeks prior to the birth and at least eight weeks thereafter;
3. in respect of other expenses rendered necessary by the pregnancy or confinement, including the initial equipment for the child.

<sup>2</sup> On grounds of equity, the court may award partial or full compensation for such costs if the pregnancy ends prematurely.

<sup>3</sup> Third-party payments to which the mother is entitled by law or by contract must be taken into consideration to the extent justified in the circumstances.

**Section Three: Parental Responsibility**<sup>323</sup>**Art. 296**<sup>324</sup>

A. Principles

<sup>1</sup> Parental responsibility serves the best interests of the child.

<sup>2</sup> Until such time as they attain the age of majority, children remain the joint parental responsibility of their father and mother.

<sup>3</sup> Parents who are minors or subject to a general deputyship may not exercise parental responsibility. When the parents attain the age of majority, they are assigned parental responsibility. If the general deputyship is revoked, the child protection authority shall assign parental responsibility in a manner appropriate to the child's best interests.

**Art. 297**<sup>325</sup>

Abis. Death of a  
parent

<sup>1</sup> If the parents have joint parental responsibility and one parent dies, the surviving parent retains sole parental responsibility.

<sup>321</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>322</sup> Amended by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, in force since 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).

<sup>323</sup> Inserted by No I 1 of the FA of 25 June 1976 (AS **1977** 237; BBl **1974** II 1). Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>324</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>325</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>2</sup> If a parent who has sole parental responsibility dies, the child protection authority shall assign parental responsibility to the surviving parent or if a legal guardian is appointed for the child, to the person more suited to safeguarding the child's best interests.

**Art. 298**<sup>326</sup>

Ater. Divorce and other marital proceedings

<sup>1</sup> In divorce proceedings or proceedings to protect the marital union, the court shall assign one parent sole parental responsibility if this is necessary to safeguard the child's best interests.

<sup>2</sup> It may limit itself to regulating residence, contact or sharing of parenting duties if there is no prospect of the parents agreeing on these matters.

<sup>2bis</sup> When regulating residence, contact and the sharing of parenting duties it shall take account of the right of the child to maintain regular personal relationships with both parents.<sup>327</sup>

<sup>2ter</sup> Where joint parental responsibility is awarded, with respect to the child's best interests, it shall consider the possibility of the child residing with both parents on an alternating basis, if this is requested by one of the parents or by the child.<sup>328</sup>

<sup>3</sup> It shall request the child protection authority to appoint a legal guardian for the child if neither the mother nor the father can be expected to accept parental responsibility.

**Art. 298a**<sup>329</sup>

Aquater. Recognition and court declaration of paternity  
I. Joint declaration by the parents

<sup>1</sup> If the parents are not married to each other and if the father recognises the child, or the parent-child relationship is established by court judgment but joint parental responsibility was not ordered at the time of the judgment, joint parental responsibility is established based on a joint declaration by the parents.

<sup>2</sup> In the declaration, the parents confirm that they:

1. are prepared to accept joint responsibility for the child; and
2. have agreed on residence and contact or on the sharing of parenting duties and on the child maintenance contribution for the child.

<sup>326</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS 2014 357; BBl 2011 9077).

<sup>327</sup> Inserted by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS 2015 4299; BBl 2014 529).

<sup>328</sup> Inserted by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS 2015 4299; BBl 2014 529).

<sup>329</sup> Inserted by No I 4 of the FA of 26 June 1998 (AS 1999 1118; BBl 1996 I 1). Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS 2014 357; BBl 2011 9077).

<sup>3</sup> Before making the declaration, the parents may seek advice from the child protection authority.

<sup>4</sup> If the parents make the declaration at the same time as recognising paternity, the declaration is made to the civil registrar. A subsequent declaration must be made to the child protection authority at the child's domicile.

<sup>5</sup> Unless and until the declaration has been made, the mother has sole parental responsibility.

**Art. 298b**<sup>330</sup>

II. Decision of  
the child  
protection  
authority

<sup>1</sup> If a parent refuses to make a declaration on joint parental responsibility, the other parent may request the child protection authority at the child's domicile to intervene.

<sup>2</sup> The child protection authority shall order joint parental responsibility, unless the mother should retain sole parental responsibility or sole parental responsibility should be assigned to the father in order to safeguard the child's best interests.

<sup>3</sup> At the same time as deciding on parental responsibility, the child protection authority shall regulate any other matters in dispute. An action for payment of the maintenance contribution may be brought before the competent court; in such a case the court also decides on parental responsibility and other matters relating to the child.<sup>331</sup>

<sup>3bis</sup> In its decision on residence, contact and the sharing of parenting duties, the child protection authority shall take account of the right of the child to maintain regular personal relationships with both parents.<sup>332</sup>

<sup>3ter</sup> Where joint parental responsibility is awarded, with respect to the child's best interests, it shall consider the possibility of the child residing with both parents on an alternating basis, if this is requested by one of the parents or by the child.<sup>333</sup>

<sup>4</sup> If the mother is a minor or subject to a general deputyship, the child protection authority shall assign parental responsibility to the father or appoint a legal guardian for the child, depending on which measure is more suitable to safeguard the child's best interests.

<sup>330</sup> Inserted by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>331</sup> Second sentence amended by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS **2015** 4299; BBl **2014** 529).

<sup>332</sup> Inserted by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS **2015** 4299; BBl **2014** 529).

<sup>333</sup> Inserted by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS **2015** 4299; BBl **2014** 529).

## III. Paternity action

**Art. 298c**<sup>334</sup>

If the court upholds a paternity action, it shall order joint parental responsibility unless the mother retains sole parental responsibility or sole parental responsibility is assigned to the father in order to safeguard the child's best interests.

## IV. Change in circumstances

**Art. 298a**<sup>335</sup>

<sup>1</sup> At the request of either parent, the child or *ex officio*, the child protection authority shall reassign parental responsibility if this is necessary to safeguard the child's best interests due to a substantial change in circumstances.

<sup>2</sup> It may limit itself to regulating residence, contact or the sharing of parenting duties.

<sup>3</sup> An action for a change to the maintenance payments may be brought to the competent court; in such a case the court may make a new ruling on parental responsibility and other matters relating to the child.<sup>336</sup>

## Aquinquies. Change in the situation after the adoption of a stepchild in a cohabitation relationship

**Art. 298e**<sup>337</sup>

If the person who adopts the child cohabits with the child's mother or father, and there is a substantial change in the circumstances, the provision on the change of circumstances applies *mutatis mutandis* in the case of recognition and judgement of paternity.

Asexies. Step-parents<sup>339</sup>**Art. 299**<sup>338</sup>

Each spouse must give the other reasonable support in exercising parental responsibility over the latter's children and must represent the other spouse as circumstances require.

<sup>334</sup> Inserted by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>335</sup> Inserted by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>336</sup> Inserted by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS **2015** 4299; BBl **2014** 529).

<sup>337</sup> Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

<sup>338</sup> Amended by No I I of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>339</sup> Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

**Art. 300**<sup>340</sup>Asepties, Foster  
parents<sup>341</sup>

<sup>1</sup> If a child is placed in foster care with third parties, unless the relevant orders provide otherwise, these third parties exercise parental responsibility over the child in loco parentis to the extent required for the proper fulfilment of their duties.

<sup>2</sup> Foster parents must be consulted before any important decisions are taken regarding the child.

**Art. 301**<sup>342</sup>B. Scope  
I. In general

<sup>1</sup> The parents raise and care for a child with his or her best interests in mind and take all necessary decisions unless the child has capacity to act.

<sup>1bis</sup> The parent who is taking care of the child may decide alone if:

1. the matter is routine or urgent;
2. the other parent cannot be consulted without incurring unreasonable trouble or expense.<sup>343</sup>

<sup>2</sup> The child owes his or her parents obedience; according to how mature the child is, the parents shall allow the child the freedom to shape his or her own life and, wherever feasible, take due account of the child's opinion in important matters.

<sup>3</sup> The child is not permitted to leave the family home without the parents' consent, nor may he or she be unlawfully removed from them.

<sup>4</sup> The parents give the child his or her first name.

**Art. 301a**<sup>344</sup>II. Deciding on  
the place of  
residence

<sup>1</sup> Parental responsibility includes the right to decide on the child's place of residence.

<sup>2</sup> If parents exercise joint parental responsibility and if one parent wishes to change the child's place of residence, this requires the consent of the other parent or a decision of the court or the child protection authority if:

<sup>340</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>341</sup> Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

<sup>342</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>343</sup> Inserted by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>344</sup> Inserted by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

- a. the new place of residence is outside Switzerland; or
- b. the change of place of residence has serious consequences for the ability of the other parent to exercise parental responsibility and have contact.

<sup>3</sup> If one parent has sole parental responsibility and if he or she wishes to change the child's place of residence, he must inform the other parent of this in good time.

<sup>4</sup> A parent who wishes to change his or her own domicile has the same duty to provide information.

<sup>5</sup> If required, the parents shall agree to modify the rules on parental responsibility, residence, contact and the child maintenance contribution in such a way as to safeguard the child's best interests. If they are unable to agree, the court or the child protection authority decides.

**Art. 302**<sup>345</sup>

III. Upbringing<sup>346</sup>

<sup>1</sup> The parents must raise the child according to their circumstances and encourage and safeguard the child's physical, mental and moral development.

<sup>2</sup> The parents must arrange for the child, especially if he or she has physical or learning disabilities, to receive an appropriate general and vocational education that corresponds as closely as possible to the child's abilities and inclinations.

<sup>3</sup> To that end, the parents must co-operate as appropriate with school authorities and, where required, with public and charitable youth support agencies.

**Art. 303**<sup>347</sup>

IV. Religious upbringing<sup>348</sup>

<sup>1</sup> The parents are free to determine the child's religious upbringing.

<sup>2</sup> Any agreement restricting this freedom is invalid.

<sup>3</sup> Once a child is 16 years of age, he or she is free to decide his or her own religious denomination.

<sup>345</sup> Amended by No I I of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>346</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>347</sup> Amended by No I I of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>348</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).



**Art. 304**<sup>349</sup>

V. Representa-  
tion  
1. In relation to  
third parties  
a. In general<sup>350</sup>

<sup>1</sup> By operation of law, the parents are vested with the power to represent the child in all dealings with third parties to the extent they have parental responsibility for the child.<sup>351</sup>

<sup>2</sup> If both parents have parental responsibility, all third parties acting in good faith may assume that each parent acts with the other's consent.<sup>352</sup>

<sup>3</sup> Parents acting as their child's representative may not provide any financial guarantees, establish any foundations or make gifts on behalf of the client, with the exception of customary occasional gifts.<sup>353</sup>

**Art. 305**<sup>354</sup>

b. Child's legal  
status<sup>355</sup>

<sup>1</sup> A child under parental responsibility may by his or her own acts establish rights and obligations and exercise strictly personal rights under the law of persons.<sup>356</sup>

<sup>2</sup> The child is liable with all his or her assets for any obligations entered into, without regard to the parents' property rights.

**Art. 306**<sup>357</sup>

2. Within the  
family communi-  
ty

<sup>1</sup> Children with capacity of judgement who are under parental responsibility may, with their parents' consent, act for the family as a whole, but in so doing engage not themselves but their parents.<sup>358</sup>

<sup>2</sup> If the parents are prevented from acting or if they have interests in a matter that conflict with those of the child, the child protection authority shall appoint a deputy or regulate the matter itself.<sup>359</sup>

<sup>349</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>350</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>351</sup> Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>352</sup> Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>353</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>354</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>355</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>356</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>357</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>358</sup> Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>359</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>3</sup> In the event of a conflict of interests, the parents' powers become automatically void by law in relation to the matter concerned.<sup>360</sup>

**Art. 307**<sup>361</sup>

C. Child protection  
I. Appropriate measures

<sup>1</sup> If the child's best interests are threatened and the parents are unwilling or unable to remedy the situation, the child protection authority must take all appropriate measures to protect the child.

<sup>2</sup> The child protection authority has the same duty with regard to children placed with foster parents or otherwise living outside the family home.

<sup>3</sup> In particular it is entitled to remind parents, foster parents or the child of their duties, issue specific instructions regarding care, upbringing or education and appoint a suitable person or agency with powers to investigate and monitor the situation.

**Art. 308**<sup>362</sup>

II. Deputyship<sup>363</sup>

<sup>1</sup> Where circumstances so require, the child protection authority shall appoint a child deputy whose function is to help the parents look after the child by providing advice and practical support.

<sup>2</sup> It may assign special powers to the deputy, in particular to represent the child in the paternity action, in safeguarding the child's right to child support and the child's other rights and in supervising contact.<sup>364</sup>

<sup>3</sup> Parental responsibility may be restricted accordingly.

**Art. 309**<sup>365</sup>

**Art. 310**<sup>366</sup>

III. Revocation of the right to decide on place of residence<sup>367</sup>

<sup>1</sup> Where there is no other way to avert a threat to the child's best interests, the child protection authority must remove the child from the

<sup>360</sup> Inserted by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>361</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>362</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>363</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS 2014 357; BBl 2011 9077).

<sup>364</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS 2014 357; BBl 2011 9077).

<sup>365</sup> Repealed by No I of the FA of 21 June 2013 (Parental Responsibility), with effect from 1 July 2014 (AS 2014 357; BBl 2011 9077).

<sup>366</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>367</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS 2014 357; BBl 2011 9077).

parents or from any third parties with whom he or she is staying and place the child in a suitable location.

<sup>2</sup> At the request of the parents or the child, the child protection authority must do likewise if relations between them have deteriorated to the extent that it is no longer conscionable for the child to remain in the family home and provided no other practical remedy is available in the circumstances.

<sup>3</sup> Where a child has lived for some length of time with foster parents, the child protection authority may forbid the parents to take the child back if such action might pose a serious risk to the child's development.

#### **Art. 311**<sup>368</sup>

IV. Withdrawal  
of parental  
responsibility  
1. Ex-officio<sup>369</sup>

<sup>1</sup> If other child protection measures have failed or offer little prospect of proving adequate, the child protection authority shall revoke parental responsibility:<sup>370</sup>

- 1.<sup>371</sup> if the parents are unable to exercise parental responsibility as required on account of inexperience, illness, disability, absence, violent behaviour or other similar reasons;
2. if the parents have not cared for the child to any meaningful degree or have flagrantly violated their duties towards the child.

<sup>2</sup> Where parental responsibility is withdrawn from both parents, a legal guardian is appointed for their children.

<sup>3</sup> Unless expressly ordered otherwise, the withdrawal of parental responsibility is effective in respect of all the children, including those born subsequently.

#### **Art. 312**<sup>372</sup>

2. With the  
parents' con-  
sent<sup>373</sup>

The child protection authority shall withdraw parental responsibility:<sup>374</sup>

- <sup>368</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).
- <sup>369</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).
- <sup>370</sup> Amended by No I 2 of the FA of 19. Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).
- <sup>371</sup> Amended by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).
- <sup>372</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).
- <sup>373</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).
- <sup>374</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

1. if the parents so request for good cause;
2. if the parents have consented to having the child adopted in future by unnamed third parties.

**Art. 313**<sup>375</sup>

V. Change in circumstances

<sup>1</sup> If circumstances change, the child protection measures in place must be adapted to suit the new situation.

<sup>2</sup> On no account may parental responsibility be restored within less than one year of its withdrawal.

**Art. 314**<sup>376</sup>

VI. Procedure  
1. General

<sup>1</sup> The provisions on the procedure before the adult protection authority apply *mutatis mutandis*.

<sup>2</sup> In appropriate cases, the child protection authority may request the parents to attempt mediation.

<sup>3</sup> If the child protection authority appoints a deputy, it shall state the tasks of the deputy and any restrictions on parental responsibility in the decision.

**Art. 314a**<sup>377</sup>

2. Hearing for the child

<sup>1</sup> The child is heard in person in an appropriate manner by the child protection authority or by a third party appointed for this purpose, unless this is inadvisable due to the child's age or other good cause.

<sup>2</sup> The record of the hearing contains only the findings of relevance to the decision. The parents are informed of these findings.

<sup>3</sup> A child capable of judgement may appeal against a decision to refuse a hearing.

**Art. 314a**<sup>bis 378</sup>

3. Representation for the child

<sup>1</sup> If necessary, the child protection authority shall order the child to be represented and appoint a person experienced in welfare and legal matters as the child's deputy.

<sup>375</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>376</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>377</sup> Inserted by No II of the FA of 6 Oct. 1978 (AS 1980 31; BBl 1977 III 1). Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>378</sup> Inserted by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>2</sup> The child protection authority shall consider the appointment of a representative in particular if:

1. the proceedings relate to the child's accommodation;
2. the parties file differing applications in relation to regulating parental responsibility or important contact issues.

<sup>3</sup> The child's deputy may file applications and appeals.

**Art. 314b**<sup>379</sup>

4. Committal to a secure institution or psychiatric hospital

<sup>1</sup> If the child must be committed to a secure institution or a psychiatric hospital, the adult protection provisions on care-related hospitalisation apply *mutatis mutandis*.

<sup>2</sup> If the child is capable of judgement, he or she may petition the court directly.

**Art. 314c**<sup>380</sup>

5. Right to notify

<sup>1</sup> Any person may notify the child protection authorities if a child's physical, mental or sexual integrity appears to be at risk.

<sup>2</sup> If a report is in the interest of the child, persons who are subject to professional confidentiality under the Swiss Criminal Code<sup>381</sup> are also entitled to notify the authorities. This provision does not apply to auxiliary persons bound by professional confidentiality under the Criminal Code.

**Art. 314d**<sup>382</sup>

6. Duty to notify

<sup>1</sup> The following persons, provided they are not subject to professional confidentiality under the Swiss Criminal Code<sup>383</sup>, are obliged to report if there are clear indications that the physical, psychological or sexual integrity of a child is at risk and that they cannot remedy the threat as part of their professional activities:

1. specialists from the fields of medicine, psychology, care services, childcare, education, counselling, religion and sport who have regular contact with children;
2. persons who learn of such a case in their official capacity.

<sup>379</sup> Inserted by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBI 2006 7001).

<sup>380</sup> Inserted by No I of the FA of 15 Dec. 2017 (Child Protection), in force since 1 Jan. 2019 (AS 2018 2947; BBI 2015 3431).

<sup>381</sup> SR 311.0

<sup>382</sup> Inserted by No I of the FA of 15 Dec. 2017 (Child Protection), in force since 1 Jan. 2019 (AS 2018 2947; BBI 2015 3431).

<sup>383</sup> SR 311.0

<sup>2</sup> The duty to notify is fulfilled when a person notifies a superior.

<sup>3</sup> The cantons may provide for further notification obligations.

**Art. 314e**<sup>384</sup>

7. Cooperation  
and administra-  
tive assistance

<sup>1</sup> The persons and third parties involved in the proceedings are obliged to cooperate in ascertaining the facts of the case. The child protection authority issues the necessary orders to protect any interests worthy of protection. If necessary, it shall issue an order for the compulsory enforcement of the duty to cooperate.

<sup>2</sup> Persons bound by professional confidentiality in accordance with the Swiss Criminal Code<sup>385</sup> are entitled to cooperate without having to be released from this confidentiality requirement beforehand. This provision does not apply to auxiliary persons bound by professional confidentiality under the Criminal Code.

<sup>3</sup> Persons bound by professional confidentiality in accordance with the Swiss Criminal Code are obliged to cooperate if the person entitled to confidentiality has authorised them to do so or if the superior authority or the supervisory authority has released them from professional confidentiality at the request of the child protection authority. Article 13 of the Lawyers Act of 23 June 2000<sup>386</sup> remains reserved.

<sup>4</sup> Administrative authorities and courts shall pass on the necessary documentation, reports and information, provided there is no conflict with interests worthy of protection.

**Art. 315**<sup>387</sup>

VII. Jurisdiction  
1. In general<sup>388</sup>

<sup>1</sup> Child protection measures are ordered by the child protection authorities at the child's domicile.<sup>389</sup>

<sup>2</sup> If the child lives with foster parents or otherwise outside the parental family home or if there is risk in delay, responsibility also rests with the authorities of the place in which the child is currently staying.

<sup>3</sup> If the latter authorities implement a child protection measure, they must inform the authority at the child's domicile.

<sup>384</sup> Inserted by No I of the FA of 15 Dec. 2017 (Child Protection), in force since 1 Jan. 2019 (AS 2018 2947; BBl 2015 3431).

<sup>385</sup> SR 311.0

<sup>386</sup> SR 935.61

<sup>387</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>388</sup> Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS 1999 1118; BBl 1996 I 1).

<sup>389</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

**Art. 315a**<sup>390</sup>

2. In marital proceedings  
a. Jurisdiction of the court

<sup>1</sup> If the court is called on to rule on relations between the parents and the children in accordance with the provisions governing divorce or protection of the marital union, it must also order all necessary child protection measures and instruct the child protection authority to implement them.<sup>391</sup>

<sup>2</sup> The court may also modify child protection measures already in place to take account of changes in circumstances.

<sup>3</sup> However, the child protection authority retains the power:<sup>392</sup>

1. to continue child protection proceedings introduced prior to the court proceedings;
2. to order such measures as are required immediately to protect the child where the court is unlikely to be able to do so in good time.

**Art. 315b**<sup>393</sup>

b. Amendment of court orders

<sup>1</sup> The court has jurisdiction to amend court orders regarding custody awards and child protection:

1. during divorce proceedings;
2. in proceedings to alter the divorce decree pursuant to the regulations governing divorce;
3. in proceedings to modify measures for protection of the marital union; the regulations governing divorce are applicable *mutatis mutandis*.

<sup>2</sup> In all other cases jurisdiction lies with the child protection authority.<sup>394</sup>

<sup>390</sup> Inserted by No I 1 of the FA of 25 June 1976 (AS 1977 237; BBl 1974 II 1). Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS 1999 1118; BBl 1996 I 1).

<sup>391</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>392</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>393</sup> Inserted by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS 1999 1118; BBl 1996 I 1).

<sup>394</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

**Art. 316**<sup>395</sup>

VIII. Supervision of foster children

<sup>1</sup> Any person taking in foster children requires authorisation from and is under the supervision of the child protection authority at his domicile or some other body designated by the canton.

<sup>1bis</sup> Where a child is fostered with a view to subsequent adoption, a single cantonal authority is responsible.<sup>396</sup>

<sup>2</sup> The Federal Council enacts implementing regulations.

**Art. 317**<sup>397</sup>

IX. Cooperation in youth support

The cantons issue such regulations as are required to ensure effective cooperation between the authorities and official bodies in the areas of child protection under civil law, the criminal law relating to young offenders and other youth support activities.

**Section Four: Property of the Child**<sup>398</sup>**Art. 318**<sup>399</sup>

A. Management

<sup>1</sup> As long as they have parental responsibility for the child, the parents have the right and the duty to administer the child's property.

<sup>2</sup> If a parent dies, the surviving parent must file an inventory of the child's property with the child protection authority.<sup>400</sup>

<sup>3</sup> If the child protection authority regards it as appropriate in view of the nature and extent of the child's property and the personal circumstances of the parents, it shall order an inventory to be prepared or regular accounts and reports to be submitted.<sup>401</sup>

<sup>395</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>396</sup> Inserted by Annex No. 2 of the FA of 22 June 2001 on the Hague Adoption Convention and Measures to Protect Children in respect of Inter-Country Adoption, in force since 1 Jan. 2003 (AS **2002** 3988; BBl **1999** 5795).

<sup>397</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>398</sup> Inserted by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>399</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>400</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>401</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).



- Art. 319**<sup>402</sup>
- B. Use of income
- 1 The parents are permitted to use the income from the child's property for the child's maintenance, upbringing and education and, where equitable, also for the requirements of the household.
- 2 Any surplus accrues to the child's property.
- Art. 320**<sup>403</sup>
- C. Drawing on the child's assets
- 1 Settlements, compensation and similar payments may be used in portions to fund the child's maintenance in accordance with its current requirements.
- 2 Where necessary to meet the costs of maintenance, upbringing or education, the child protection authority may permit the parents to make use of other parts of the child's assets in specific amounts.
- Art. 321**<sup>404</sup>
- D. Freely disposable property of the child  
I. Endowments
- 1 The parents are not permitted to draw on revenue from the child's assets if, when given to the child, they were designated as interest-bearing investments or savings or use of the revenue by the parents was expressly excluded.
- 2 Management by the parents is excluded only where expressly so provided when the child is endowed with the assets.
- Art. 322**<sup>405</sup>
- II. Statutory entitlement
- 1 By testamentary disposition the child's statutory inheritance entitlement may also be excluded from management by the parents.
- 2 If the testator appoints a third party to administer the bequest, the child protection authority may require the latter to carry out periodic accounting and reporting.
- Art. 323**<sup>406</sup>
- III. Employment income, professional and business assets
- 1 The child manages and enjoys the benefits of all fruits of his or her own labour and of those of his or her assets that are released by his or her parents for use in the child's professional or business activities.
- 402 Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).
- 403 Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).
- 404 Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).
- 405 Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).
- 406 Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 1).

<sup>2</sup> If the child lives with its parents in the family home, they may require the child to make an appropriate contribution to his or her maintenance.

**Art. 324**<sup>407</sup>

E. Protection of the child's property  
I. Appropriate measures

<sup>1</sup> Where there is no adequate guarantee that the child's property will be diligently managed, the child protection authority takes the necessary measures to protect it.

<sup>2</sup> In particular, the child protection authority may issue instructions regarding such management and, where the periodic accounting and reporting is insufficient, may order the parents to deposit the property or furnish security.

<sup>3</sup> Procedure and jurisdiction are regulated *mutatis mutandis* by the provisions governing child protection.

**Art. 325**<sup>408</sup>

II. Withdrawal of management

<sup>1</sup> If there is no other way to avert a threat to the child's property, the child protection authority shall appoint a child welfare advocate to manage it.

<sup>2</sup> The child protection authority does likewise if a child's property that is not managed by the parents is threatened.

<sup>3</sup> Where there is serious concern that income from the child's property or the amounts designated for use or released to cover the child's needs are not being used as intended, the child protection authority may also appoint a child welfare advocate to manage those assets.

**Art. 326**<sup>409</sup>

F. End of asset management  
I. Return of property

On termination of parental responsibility or the parents' management, the parents must hand over the child's property together with a final statement of account to the adult child or to the child's legal representative.

**Art. 327**<sup>410</sup>

II. Liability

<sup>1</sup> The parents are liable to make restitution as if they were authorised agents.

<sup>407</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>408</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>409</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>410</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>2</sup> The parents must surrender the proceeds of any property alienated in good faith.

<sup>3</sup> The parents do not owe compensation for any authorised expenditures on the child or the household.

## Section Five:<sup>411</sup> Minors subject to Guardianship

### Art. 327a

A. Principle If a child is not subject to parental responsibility, the child protection authority shall appoint a guardian for the child.

### Art. 327b

B. Legal status  
I. Of the child A child subject to guardianship has the same legal status as a child subject to parental responsibility.

### Art. 327c

II. Of the guardian  
<sup>1</sup> A guardian has the same rights as the parents.  
<sup>2</sup> The provisions on adult protection, and in particular on appointing a and acting as a deputy and the involvement of the adult protection authority apply *mutatis mutandis*.  
<sup>3</sup> If the child must be committed to a secure institution or psychiatric hospital, the adult protection provisions on care-related hospitalisation apply *mutatis mutandis*.

## Title Nine: Family Community

### Chapter One: Duty of Assistance

#### Art. 328<sup>412</sup>

A. Persons obliged to lend assistance  
<sup>1</sup> A person living in financial comfort has a duty to lend assistance to any lineal relatives of older or younger generations who would suffer hardship without such assistance.

<sup>2</sup> The duty of maintenance of parents, spouses and registered partners is reserved.<sup>413</sup>

<sup>411</sup> Inserted by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>412</sup> Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>413</sup> Amended by Annex No. 8 of the Federal Act on Partnerships of 18 June 2004, in force since 1 Jan. 2007 (AS **2005** 5685; BBl **2003** 1288).

**Art. 329**

B. Scope and enforcement of the claim for assistance<sup>414</sup>

<sup>1</sup> The claim for assistance is directed against those with a duty to provide it in order of their inheritance entitlements; the amount is dependent on the degree of assistance required to maintain the indigent claimant and on the circumstances of the person obliged to provide it.

<sup>1bis</sup> No claim for support may be made if the hardship arises from a restriction in the ability to pursue gainful employment owing to the care of one's own children.<sup>415</sup>

<sup>2</sup> Where in the light of special circumstances the court deems it inequitable to require a person to fulfil his duty of assistance, the court may restrict such duty or revoke it entirely.<sup>416</sup>

<sup>3</sup> The provisions governing child maintenance entitlement and the transfer of such entitlement to the state authority are applicable *mutatis mutandis*.<sup>417</sup>

**Art. 330**

C. Maintenance of foundlings

<sup>1</sup> Foundlings are maintained by the commune in which they have become naturalised.

<sup>2</sup> If a foundling's parentage is established, the commune may require those relatives with a duty of assistance and, as a last recourse, the state authority under such duty to compensate it for the costs incurred in maintaining the foundling.

**Chapter Two: Authority within the Household****Art. 331**

A. Requirement

<sup>1</sup> Where by law, agreement or family custom persons living in common household have a head of the family, such person holds authority within the household.

<sup>414</sup> Amended by No I 2 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>415</sup> Inserted by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS **2015** 4299; BBl **2014** 529).

<sup>416</sup> Amended by No I 2 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>417</sup> Amended by No I 2 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>2</sup> The authority extends over all persons living in the household, whether relatives by blood<sup>418</sup> or by marriage or employees or persons in a similar position based on a contractual relationship.<sup>419</sup>

### Art. 332

B. Effect  
I. House rules  
and welfare

<sup>1</sup> The house rules to which the household members are subject must take due account of the interests of all involved.

<sup>2</sup> In particular, the household members must be allowed the freedom required for their education, occupation and religious practices.

<sup>3</sup> All property brought in by the household members must be kept safe and sound by the head of the family with the same care and attention given to his own property.

### Art. 333

II. Liability

<sup>1</sup> If damage is caused by a member of the household who is a minor, suffers from a mental disability, is subject to a general deputyship, or is mentally ill, the head of the family is liable unless he can show that his supervision of the household was as diligent as would normally be expected in the circumstances prevailing.<sup>420</sup>

<sup>2</sup> The head of the family is obliged to ensure that the condition of a household member who suffers from a mental disability or a mental illness does not result in risk or injury to himself or to others.<sup>421</sup>

<sup>3</sup> Where necessary, the head of the family must notify the competent authority with a view to having the requisite precautionary measures put in place.

### Art. 334<sup>422</sup>

III. Claims of  
children and  
grandchildren  
1. Requirements

<sup>1</sup> Adult children or grandchildren who have contributed their labour or income to parents or grandparents with whom they live in a common household are entitled to suitable compensation in return.<sup>423</sup>

<sup>2</sup> In the event of dispute the court determines the amount of compensation, the security required and the payment method.

<sup>418</sup> Term amended by No I 3 of the FA of 30 June 1972, in force since 1 April 1973 (AS 1972 2819; BBl 1971 I 1200).

<sup>419</sup> Amended by No II Art. 2 No. 2 of the FA of 25 June 1971, in force since 1 Jan. 1972 (AS 1971 1465; BBl 1967 II 241).

<sup>420</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>421</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>422</sup> Amended by No I 1 of the FA of 6 Oct. 1972, in force since 15 Feb. 1973 (AS 1973 93; BBl 1970 I 805, 1971 I 737).

<sup>423</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

2. Asserting claims

**Art. 334<sup>bis</sup>** 424

<sup>1</sup> The compensation due to children or grandchildren may be claimed on the debtor's death.

<sup>2</sup> It may also be claimed during the debtor's lifetime if his property is distrained or he is declared bankrupt, the common household ceases to exist or the business changes hands.

<sup>3</sup> The claim is not subject to a statutory time limit, but must be brought at the latest on division of the deceased debtor's estate.

### Chapter Three: Family Property

**Art. 335**

A. Family foundations

<sup>1</sup> A body of assets may be tied to a family by means of a family foundation created under the law of persons or inheritance law in order to meet the costs of raising, endowing or supporting family members or for similar purposes.

<sup>2</sup> It is no longer permitted to establish a fee tail.

**Art. 336**

B. Ownership in undivided shares  
I. Formation  
1. Authority

Members of a family may tie a body of assets to the family by placing all or part of an inheritance or other property under joint ownership in undivided shares.

**Art. 337**

2. Form

The agreement establishing joint ownership in undivided shares is valid only if done as a public deed signed by all co-owners or their representatives.

**Art. 338**

II. Duration

<sup>1</sup> Joint ownership in undivided shares may be constituted for a limited or indefinite duration.

<sup>2</sup> If constituted for an indefinite duration, it may be terminated by any co-owner subject to six months' notice.

<sup>3</sup> Where the co-owned asset is an agricultural enterprise, such notice must always expire on a spring or autumn date in accordance with local custom.

<sup>424</sup> Inserted by No I 1 of the FA of 6 Oct. 1972, in force since 15 Feb. 1973 (AS 1973 93; BBl 1970 I 805, 1971 I 737).

III. Effect  
1. Type of  
ownership

### Art. 339

1 Joint ownership in undivided shares binds the co-owners together in common economic activity.

2 Unless otherwise provided, they enjoy equal rights in the co-owned property.

3 For the duration of their joint ownership in undivided shares, they may neither seek a division of the property nor dispose of their own share.

2. Management  
and representa-  
tion  
a. In general

### Art. 340

1 The affairs of the joint ownership in undivided shares are regulated by all the co-owners acting collectively.

2 Each co-owner may take ordinary administrative actions on his own initiative.

b. Manager's  
powers

### Art. 341

1 The co-owners may appoint one of their number to act as their manager.

2 The manager represents the co-owners in all external dealings and directs their economic activities.

3 Where representation by the other co-owners is excluded, such exclusion may be invoked against third parties acting in good faith only if the sole representative is entered in the commercial register.

3. Common  
property and  
personal  
property

### Art. 342

1 The property under joint ownership in undivided shares is owned collectively by all the co-owners.

2 The co-owners are jointly and severally liable for debts encumbering such property.

3 Except where otherwise agreed, all property belonging to a co-owner besides that owned collectively in undivided shares, and all property inherited or acquired in some other manner without valuable consideration during the co-ownership is the personal property of that co-owner.

IV. Dissolution  
1. Grounds

### Art. 343

Joint ownership in undivided shares is dissolved:

1. by agreement or notice of termination;
2. on expiry of the period for which ownership in undivided shares was established, providing it is not tacitly renewed;

3. on realisation of a co-owner's share of the property that has been distrained;
4. if a co-owner is declared bankrupt;
5. at the request of a co-owner for good cause.

#### Art. 344

2. Notice, insolvency, marriage

<sup>1</sup> If one co-owner gives notice to terminate joint ownership in undivided shares or is declared bankrupt, or if his share is realised after having been distrained, joint ownership in undivided shares may be maintained by the other co-owners provided they reach a settlement with him or his creditors.

<sup>2</sup> A co-owner who marries is entitled to request such settlement without giving notice of termination.

#### Art. 345

3. Death of a co-owner

<sup>1</sup> On the death of a co-owner, heirs who are not also co-owners are entitled only to settlement of his share.

<sup>2</sup> Where he is survived by issue entitled to inherit his share, with the consent of the other co-owners such issue may accede to the joint ownership in undivided shares in his place.

#### Art. 346

4. Division

<sup>1</sup> Division of the collectively owned property or settlement of a withdrawing co-owner's share is based on the condition of the property when the grounds for dissolution arose.

<sup>2</sup> Its implementation may not be requested at an inopportune time.

#### Art. 347

V. Revenue-generating co-ownership

1. Nature

<sup>1</sup> The co-owners may entrust the exploitation and representation of the collectively owned property to one of their number on condition that he pay each co-owner a share of the net profit annually.

<sup>2</sup> Unless otherwise agreed, such share is determined equitably on the basis of the average revenues generated by the property over a sufficiently long period and with due regard to the work done by the person managing it.

#### Art. 348

2. Special grounds for dissolution

<sup>1</sup> If the collectively owned property is not properly managed or the managing co-owner fails to meet his obligations towards the other co-owners, the joint ownership in undivided shares may be dissolved.



<sup>2</sup> Where there is good cause, a co-owner may request the court to authorise him to assume joint management of the property, taking due consideration of the provisions governing the division of the estate.

<sup>3</sup> In all other respects, revenue-generating joint ownership in undivided shares is subject to the provisions governing the joint ownership in undivided shares of a collectively managed business.

**Art. 349–358**<sup>425</sup>

**Art. 359**<sup>426</sup>

**Division Three:** <sup>427</sup> **The Protection of Adults**

**Title Ten:**

**Own Arrangements for Care and Statutory Measures**

**Section One: Own Arrangements for Care**

**Subsection One: The Advance Care Directive**

**Art. 360**

A. Principle

<sup>1</sup> A person with capacity to act may instruct a natural person or legal entity to take responsibility for his or her personal care or the management of his or her assets or to act as his or her legal agent in the event that he or she is no longer capable of judgement.

<sup>2</sup> He or she must define the tasks that are to be assigned and may issue instructions on how these tasks are to be fulfilled.

<sup>3</sup> He or she may provide for a replacement for the event that the appointee is not suitable for the tasks, does not accept the mandate or terminates the mandate.

**Art. 361**

B. Execution and revocation  
I. Execution

<sup>1</sup> The advance care directive must be executed in holographic form or publicly authenticated.

<sup>2</sup> A holograph advance care directive must be handwritten, dated and signed by the client from beginning to end.

<sup>3</sup> On request, the Civil Register Office shall record in the central database the fact that a person has executed an advance care directive

<sup>425</sup> Repealed by No I 4 of the FA of 26 June 1998, with effect from 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>426</sup> Repealed by No II 21 of the FA of 15 Dec. 1989 on Approval of Cantonal Decrees by the Federal Government, with effect from 1 Feb. 1991 (AS **1991** 362; BBl **1988** II 1333).

<sup>427</sup> Amended by No I 1 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

and the place where it is kept. The Federal Council shall issue the required provisions, in particular on the access to the data.

### Art. 362

- II. Revocation
- <sup>1</sup> The client may revoke the advance care directive at any time in either of the ways provided for its execution.
  - <sup>2</sup> He or she may also revoke the advance care directive by destroying the document.
  - <sup>3</sup> If he or she executes a new advance care directive without expressly revoking the previous directive, the new advance care directive replaces the previous one unless it is clearly no more than an amendment to the same.

### Art. 363

- C. Decision on effectiveness and acceptance
- <sup>1</sup> Where the adult protection authority learns that a person is no longer capable of judgement, but it is unaware if there is an advance care directive, it shall enquire at the Civil Register Office.
  - <sup>2</sup> If there is an advance care directive, the adult protection authority shall verify if:
    1. the directive has been validly executed;
    2. the requirements for its effectiveness are met;
    3. the appointee is fit for his or her duties; and
    4. if further adult protection measures are required.
  - <sup>3</sup> If the appointee accepts the advance care directive, the authority shall advise him or her of his or her obligations under the provisions of the Code of Obligations<sup>428</sup> on agency contracts and issue him or her with a formal document stating his or her powers.

### Art. 364

- D. Interpretation and clarification
- The appointee may request the adult protection authority to interpret the advance care directive and to add clarification to secondary points.

### Art. 365

- E. Fulfilment
- <sup>1</sup> The appointee shall represent the client in accordance with the advance care directive and fulfil his or her duties with due care in accordance with the provisions of the Code of Obligations<sup>429</sup> on agency contracts.

<sup>428</sup> SR 220  
<sup>429</sup> SR 220

<sup>2</sup> Where transactions must be carried out that are not covered by the advance care directive, or if the appointee has an interest in a matter that conflicts with that of the client, the appointee shall notify the adult protection authority immediately.

<sup>3</sup> In the event of a conflict of interest, the powers of the appointee cease to apply by law.

### Art. 366

F. Remuneration and expenses

<sup>1</sup> If the advance care directive has no instructions on the remuneration of the appointee, the adult protection authority shall specify appropriate remuneration provided this appears justified given the extent of the duties or if the services provided by the appointee are normally remunerated.

<sup>2</sup> The remuneration and the required expenses are charged to the client.

### Art. 367

G. Termination

<sup>1</sup> The appointee may terminate the advance care directive at any time subject to giving two months' written notice to the adult protection authority.

<sup>2</sup> For good cause, the appointee may terminate the directive without notice.

### Art. 368

H. Intervention by the adult protection authority

<sup>1</sup> If the interests of the client are endangered or no longer protected, the adult protection authority may take the required measures *ex officio* or at the request of a closely associated person.

<sup>2</sup> It may in particular issue the appointee with instructions, order the appointee to file an inventory, regular accounts and reports or revoke all or some of his or her powers.

### Art. 369

I. Regaining the capacity of judgement

<sup>1</sup> If the client regains the capacity of judgement, the advance care directive shall by law cease to have effect.

<sup>2</sup> If the interests of the client are endangered thereby, the appointee must continue to carry out the tasks assigned to him or her until the client can safeguard his or her own interests.

<sup>3</sup> The appointee is bound as if the directive still applies by transactions that he or she enters into before he or she learns that the directive has ceased to apply.

## Subsection Two: The Patient Decree

### Art. 370

#### A. Principle

<sup>1</sup> A person who is capable of judgement may specify in a patient decree which medical procedures he or she agrees or does not agree to in the event that he or she is no longer capable of judgement.

<sup>2</sup> He or she may also designate a natural person who in the event that he or she is no longer capable of judgement should discuss the medical procedures with the attending doctor and decide on his or her behalf. He or she may issue instructions to this person.

<sup>3</sup> He or she may issue alternative instructions for the event that the designated person is not suitable for the tasks, does not accept the mandate or terminates the mandate.

### Art. 371

#### B. Execution and revocation

<sup>1</sup> The patient decree must be executed in writing, and be dated and signed.

<sup>2</sup> Any person who has executed a patient decree may have this fact and the place where it is kept entered on his or her health insurance card. The Federal Council shall issue the required provisions, in particular on the access to the data.

<sup>3</sup> The provision on revoking an advance care directive applies *mutatis mutandis*.

### Art. 372

#### C. Loss of capacity of judgement

<sup>1</sup> If the patient lacks capacity of judgement and it is not known if there is a patient decree, the attending doctor shall ascertain the position from the health insurance card. The foregoing does not apply to urgent cases.

<sup>2</sup> The doctor shall comply with the patient decree unless it violates statutory regulations or there is reasonable doubt that it is based on the patient's free will or still corresponds to his or her presumed will.

<sup>3</sup> The doctor shall make a note in the patient records of any reasons why the patient decree was not complied with.

### Art. 373

#### D. Intervention by the adult protection authority

<sup>1</sup> Any person closely related to the patient may contact the adult protection authority in writing and claim that:

1. the patient decree is not being complied with;
2. the interests of the patient are being endangered or no longer safeguarded;

3. the patient decree is not based on the patient's free will.
- <sup>2</sup> The provision on intervention by the adult protection authority in the case of an advance care directive applies *mutatis mutandis*.

## **Section Two: Statutory Measures for Persons lacking Capacity of Judgement**

### **Sub-Section One: Representation by the Spouse or Registered Partner**

#### **Art. 374**

A. Requirements for and extent of the right to act as representative

<sup>1</sup> Any person who as spouse or registered partner cohabits with a person who is no longer capable of judgement or who regularly and personally provides that person with support has a statutory right to act as that person's representative if there is no advance care directive and no deputy has been appointed.

<sup>2</sup> The right to act as representative includes:

1. all legal acts that are normally required to meet the need for support;
2. due management of income and other assets; and
3. the right to open and deal with post, if necessary.

<sup>3</sup> For legal acts involving exceptional asset management, the spouse or the registered partner must obtain the consent of the adult protection authority.

#### **Art. 375**

B. Exercise of the right to act as representative

The exercise of the right to act as representative is governed by the provisions of the Code of Obligations<sup>430</sup> on agency contracts *mutatis mutandis*.

#### **Art. 376**

C. Intervention by the adult protection authority

<sup>1</sup> If there is any doubt as to whether the requirements for representation are met, the adult protection authority shall decide on the right to act as representative and if required shall provide the spouse or the registered partner with a document stating his or her powers.

<sup>2</sup> If the interests of the person lacking capacity of judgement are endangered or no longer safeguarded, the adult protection authority shall at the request of a closely associated person or *ex officio* revoke

the power of the spouse or registered partner to act as representative partly or fully and shall appoint a deputy.

### **Sub-Section Two: Representation in relation to Medical Procedures**

#### **Art. 377**

A. Treatment plan

<sup>1</sup> If a person lacking capacity of judgement has not given instructions on treatment in a patient decree, the attending doctor shall plan the required treatment in consultation with the person entitled to act as representative in relation to medical procedures.

<sup>2</sup> The doctor shall inform the representative about all the important aspects of the planned medical procedures, and in particular about the reasons therefor, their purpose, form, methods, risks, side effects and costs, the consequences of not carrying out the treatment and any alternative treatment options.

<sup>3</sup> If possible, the person lacking capacity of judgement shall also be involved in making the decision.

<sup>4</sup> The treatment plan shall be adapted to ongoing developments.

#### **Art. 378**

B. The representative

<sup>1</sup> The following persons are entitled in the following order to represent the person lacking capacity of judgement and to grant or refuse consent to the planned out-patient or in-patient measures:

1. a person appointed in a patient decree or in an advance care directive;
2. a deputy with a right to act as representative in relation to medical procedures;
3. any person who as a spouse or registered partner cohabits with the person lacking capacity of judgement or who regularly and personally provides him or her with support;
4. any person who cohabits with the person lacking capacity of judgement and who regularly and personally provides him or her with support;
5. issue who regularly and personally provide the person lacking capacity of judgement with support;
6. the parents, if they regularly and personally provide the person lacking capacity of judgement with support;
7. siblings, if they regularly and personally provide the person lacking capacity of judgement with support.

<sup>2</sup> If two or more persons have the right to act as representative, the doctor, acting in good faith, may require that each act with the agreement of the others.

<sup>3</sup> If a patient decree contains no instructions, the representative shall decide according to the presumed wishes and interests of the person lacking capacity of judgement.

### **Art. 379**

C. Urgent cases In urgent cases, the doctor may carry out medical procedures according to the presumed wishes and interests of the person lacking capacity of judgement.

### **Art. 380**

D. Treatment of a mental disorder The treatment of a mental disorder of a person lacking capacity of judgement in a psychiatric hospital is governed by the provisions on care-related hospitalisation.

### **Art. 381**

E. Intervention by the adult protection authority <sup>1</sup> The adult protection authority shall establish a representative deputyship if there is no representative available or the representative does not wish to exercise the right to act.

<sup>2</sup> It shall appoint a representative or establish a representative deputyship if:

1. it is unclear who has a right to act as representative
2. the persons with a right to act as representative are unable to agree; or
3. the interests of the person lacking capacity of judgement are endangered or no longer safeguarded.

<sup>3</sup> It shall act at the request of the doctor, another closely associated person or *ex officio*.

## **Sub-Section Three: Stays in Residential or Care Institutions**

### **Art. 382**

A. Care agreement <sup>1</sup> If a person lacking capacity of judgement is cared for in a residential or nursing institution for a longer period, a written care agreement must be drawn up to regulate the services that the institution provides and the costs thereof.

<sup>2</sup> In determining the services provided by the institution, account must be taken of the wishes of the person concerned as far as possible.

<sup>3</sup> Responsibility for representing the person lacking capacity of judgement in concluding, amending or terminating the care agreement is governed *mutatis mutandis* by the provisions on representation relating to medical procedures.

### Art. 383

B. Restriction of freedom of movement  
I. Requirements

<sup>1</sup> The residential or nursing institution may restrict the freedom of movement of the person lacking capacity of judgement only if less stringent measures are clearly insufficient or prove to be so and the measure serves to:

1. prevent serious danger to the life or physical integrity of the client or third parties; or
2. remedy serious disruption to life in and around the institution.

<sup>2</sup> Before his or her freedom of movement is restricted, it shall be explained to the person concerned what is happening, why the measure has been ordered, how long it will probably last and who will be responsible for the person concerned during this period. The foregoing does not apply in emergencies.

<sup>3</sup> An order to restrict freedom of movement shall be revoked as soon as possible and in every case reviewed regularly to ascertain whether it is still required.

### Art. 384

II. Records and Information

<sup>1</sup> A record shall be kept of any measure restricting freedom of movement. This shall contain in particular the names of the person ordering the measure, the purpose, the nature and the duration the measure.

<sup>2</sup> The representative in relation to medical procedures shall be notified of the measure restricting freedom of movement and may inspect the record at any time.

<sup>3</sup> The persons supervising the residential or nursing institution shall also have a right to inspect the record.

### Art. 385

III. Intervention by the adult protection authority

<sup>1</sup> The person concerned or a closely related person may submit a written request at any time for the adult protection authority at the location of the institution to intervene in relation to a measure restricting freedom of movement.

<sup>2</sup> If the adult protection authority establishes that the measure fails to meet the statutory requirements, it shall amend the measure, revoke it



or order an official adult protection measure. If necessary, it shall notify the institution's supervisory authority.

<sup>3</sup> Any request for an assessment to be made by the adult protection authority shall be passed on to the authority immediately.

#### **Art. 386**

C. Protection of privacy

<sup>1</sup> The residential or nursing institution shall protect the privacy of a person lacking capacity of judgement and where possible encourage contacts with persons outside the institution.

<sup>2</sup> If no one outside the institution expresses an interest in the client, the residential or nursing institution shall notify the adult protection authority.

<sup>3</sup> The freedom to choose one's doctor shall be respected unless there is good cause for not doing so.

#### **Art. 387**

D. Supervision of residential and care institution

The cantons shall make residential and care institution in which person lacking capacity of judgement are cared for subject to supervision, unless federal regulations already guarantee supervision.

### **Title Eleven: Official Measures**

#### **Section One: General Principles**

#### **Art. 388**

A. Aim

<sup>1</sup> Official adult protection measures shall aim to secure the best interests and protection of persons in need.

<sup>2</sup> Where possible, they should preserve and encourage the independence of the persons concerned.

#### **Art. 389**

B. Subsidiarity and proportionality

<sup>1</sup> The adult protection authority shall order a measure if:

1. support for the person in need offered by his or her family, other closely related persons or private or public services is or proves to be insufficient;
2. where the person in need is no longer capable of judgement, he or she has failed to make any or sufficient arrangements for his or her own care and the statutory measures are insufficient.

<sup>2</sup> Any official measure must be necessary and suitable.

## Section Two: The Deputyship

### Sub-Section One: General Provisions

#### Art. 390

- A. Requirements <sup>1</sup> The adult protection authority shall establish a deputyship if an adult:
1. due to a learning disability, a mental disorder or a similar inherent debility is wholly or partially unable to manage his or her own affairs;
  2. due to a temporary loss of the capacity of judgement or temporary absence is neither able to take care of matters that must be dealt with, nor has appointed a representative.
- <sup>2</sup> Account must be taken of the burden on and the protection of family members and third parties.
- <sup>3</sup> The deputyship shall be established at the request of the person concerned (the client) or a closely associated person or *ex officio*.

#### Art. 391

- B. Scope of responsibilities <sup>1</sup> The adult protection authority shall define the scope of the deputyship's responsibilities according to the needs of the client.
- <sup>2</sup> The scope of responsibilities shall relate to personal care, the management of his or her assets or legal matters.
- <sup>3</sup> Without the consent of the client, the deputy may only open his or her post or enter his or her residence if the adult protection authority has expressly granted the power to do so.

#### Art. 392

- C. Dispensing with a deputyship
- If establishing a deputyship is clearly a disproportionate measure due the extent of the work involved, the adult protection authority may:
1. do what is required itself, and in particular consent to a transaction;
  2. instruct third parties to carry out individual tasks; or
  3. designate a suitable person or agency that must be consulted and informed on specific matters.

## Sub-Section Two: Types of Deputyship

### Art. 393

A. Assistance deputyship

<sup>1</sup> An assistance deputyship is established with the consent of the person in need if he or she needs assistance in order to deal with certain matters.

<sup>2</sup> The assistance deputyship does not limit the capacity of the client to act.

### Art. 394

B. Representative deputyship  
I. In general

<sup>1</sup> A representative deputyship is established if the person in need is unable to deal with certain matters and therefore must be represented.

<sup>2</sup> The adult protection authority may limit the capacity of the client to act accordingly.

<sup>3</sup> Even if his or her capacity to act has not been limited, the client is bound by the acts of the deputy.

### Art. 395

II. Asset management

<sup>1</sup> If the adult protection authority establishes a representative deputyship to manage assets, it shall specify the assets to be managed by the deputy. It may make all or part of the income, all or part of the capital or all or part of the income and capital subject to the deputy's management.

<sup>2</sup> The management powers also cover savings from the managed income or the revenue from the managed capital unless the adult protection authority provides otherwise.

<sup>3</sup> Without limiting the capacity of the client to act, the adult protection authority may prohibit him or her from accessing individual assets.

<sup>4</sup> If the adult protection authority prohibits the client from disposing of heritable property, it must arrange for a note to be made in the land register.

### Art. 396

C. Advisory deputyship

<sup>1</sup> An advisory deputyship shall be established if the client requires for his or her own protection that certain acts be made subject to the consent of the deputy.

<sup>2</sup> The client's capacity to act shall thus be limited accordingly by law.

### Art. 397

D. Combination of deputyships

Assistance, representative and advisory deputyships may be combined with each other.

E. General  
deputyship

**Art. 398**

<sup>1</sup> A general deputyship is established if a person, in particular due to permanent loss of capacity of judgement, is in particular need.

<sup>2</sup> It covers all aspects of personal care, management of assets and legal matters.

<sup>3</sup> The client's capacity to act is revoked by law.

**Sub-Section Three: End of the Deputyship**

**Art. 399**

<sup>1</sup> The deputyship ends by law on the death of the client.

<sup>2</sup> The adult protection authority shall terminate a deputyship at the request of the client or of a closely associated person or *ex officio* as soon as there is no reason for it to continue.

**Sub-Section Four: The Deputy**

**Art. 400**

A. Appointment  
I. General  
requirements

<sup>1</sup> The adult protection authority shall appoint as deputy a natural person who has the personal aptitude and knowledge to carry out the planned tasks, who has the time required to do so and who can carry out the tasks in person. Where circumstances require, it may appoint two or more persons.

<sup>2</sup> The person may only be appointed with their consent.<sup>431</sup>

<sup>3</sup> The adult protection authority shall ensure that the deputy receives the instructions, advice and support that he or she requires

**Art. 401**

II. Wishes of the  
client or his or  
her closely  
associated  
persons

<sup>1</sup> If the client proposes someone as his or her deputy, the adult protection authority shall agree to the proposal provided the person proposed is suitable and is prepared to accept the deputyship

<sup>2</sup> It shall if possible take account of the wishes of family members or other closely associated persons.

<sup>3</sup> If the client rejects a specific person as the deputy, the adult protection authority shall respect this wish provided it is reasonable.

<sup>431</sup> Inserted by No I 1 of the FA of 29 Sept. 2017, in force since 1 Jan. 2019 (AS 2018 2801; BBl 2017 1811 3205).

**Art. 402**

III. Appointment  
of two or more  
persons

1 If the adult protection authority appoints two or more persons as deputies, it shall specify whether their tasks should be carried out jointly or who is responsible for which tasks.

2 Two or more deputies may be required to carry out their tasks jointly only if they agree to do so.

**Art. 403**

B. Incapacity  
and conflict of  
interests

1 If the deputy is unable to act or if the deputy's interests conflict with those of the client, the adult protection authority shall appoint a substitute deputy or regulate the matter itself.

2 In the event of a conflict of interests, the powers of the deputy cease to apply by law in the relevant matter.

**Art. 404**

C. Remuneration  
and expenses

1 The deputy is entitled to appropriate remuneration and to the reimbursement of necessary expenses from the assets of the client. In the case of professional deputies, the remuneration is paid and expenses reimbursed by the employer.

2 The adult protection authority determines the level of remuneration. It takes account in particular of the extent and the complexity of the tasks assigned to the deputy.

3 The cantons shall issue implementing provisions and rules on remuneration and reimbursing expenses if they cannot be paid out of the assets of the client.

**Sub-Section Five: Deputyship Tasks****Art. 405**

A. Assumption  
of office

1 The deputy shall obtain the information required to fulfil his or her tasks and shall make personal contact with the client.

2 If the deputyship involves asset management, the deputy shall immediately make an inventory of the assets to be managed in cooperation with the adult protection authority.

3 If justified in the circumstances, the adult protection authority may order a public inventory to be made. This has the same effect for creditors as a public inventory under the law of succession.

4 Third parties are obliged to provide all the information required for the inventory to be made.

B. Relationship  
with the client**Art. 406**

<sup>1</sup> The deputy shall carry out his or her tasks in the interests of the client, take account of the client's opinions, where possible, and respect the client's desire to organise his or her life in a way that corresponds to his or her abilities and accords with his or her wishes and ideas.

<sup>2</sup> The deputy shall try to develop a relationship of mutual trust with the client and to prevent any deterioration in the client's debility or to reduce the effect thereof.

C. Client's  
autonomy**Art. 407**

Even if his or her capacity to act has been revoked, a client who is capable of judgement may through his or her own acts establish rights and obligations under the law of persons, and exercise strictly personal rights.

D. Asset  
management  
I. Tasks**Art. 408**

<sup>1</sup> The deputy shall manage the assets with due care and carry out all the legal acts connected with their management.

<sup>2</sup> In particular the deputy may:

1. accept payments due to the client by third parties thus discharging their obligations;
2. pay debts where appropriate;
3. represent the client in attending to his or her everyday needs, if necessary.

<sup>3</sup> The Federal Council shall issue provisions on the investment and safe custody of assets.

II. Personal  
allowance**Art. 409**

The deputy shall provide the client with an allowance from the client's assets which the client is free to spend.

## III. Accounts

**Art. 410**

<sup>1</sup> The deputy shall keep accounts and submit them to the adult protection authority for approval at regular intervals specified by the authority, and at least every two years.

<sup>2</sup> The deputy shall explain the accounts to the client and provide him or her with a copy on request.

**Art. 411**

- E. Reporting
- 1 The deputy shall submit a report on the client's situation and the deputyship to the adult protection authority as often as necessary, but at least every two years.
  - 2 The deputy shall if possible consult the client when preparing the report and provide the client with a copy request.

**Art. 412**

- F. Special transactions
- 1 The deputy may not provide any financial guarantees, establish any foundations or make gifts on behalf of the client, with the exception of customary occasional gifts.
  - 2 Assets that are of special value to the client or his or her family shall not be disposed of if possible.

**Art. 413**

- G. Duties of care and confidentiality
- 1 In fulfilling his or her tasks, the deputy shall have the same duty of care as an agent under the provisions of the Code of Obligations<sup>432</sup>.
  - 2 The deputyship is subject to a duty of confidentiality unless this is contrary to overriding interests.
  - 3 Third parties must be notified of the existence of the deputyship provided this is required for the deputy to duly fulfil his or her tasks.

**Art. 414**

- H. Amendment of conditions
- The deputy shall notify the adult protection authority immediately of any circumstances that require the measure to be amended or make the termination of the deputyship possible.

**Sub-Section Six:  
Role of the Adult Protection Authority****Art. 415**

- A. Examination of accounts and report
- 1 The adult protection authority shall examine the accounts and grant or refuse approval thereof; if necessary, they shall require the accounts to be corrected.
  - 2 It shall examine the report and, if necessary, require it to be amended.
  - 3 If necessary, it shall take measures to safeguard the interests of the client appropriately.

**Art. 416**

B. Transactions  
requiring consent  
I. By law

<sup>1</sup> The consent of the adult protection authority is required before the deputy may carry out any of the following transactions on behalf of the client:

1. liquidation of the household, terminating the lease on a dwelling where the client lives;
2. long-term contracts for the client's accommodation;
3. acceptance or renunciation of an inheritance if an express declaration is required therefor, as well as contracts of succession and contracts dividing an estate;
4. the acquisition, sale, pledge and other burdening of immovable property and the construction of buildings that goes beyond ordinary administrative activities;
5. the acquisition, sale and pledge of other assets and the creation of a usufruct where such transactions do not fall under the conduct of ordinary administration and management;
6. the acceptance and granting of substantial loans, entering into bill-of-exchange-related liabilities;
7. annuity payments and similar benefits as well as life assurance, provided these do not form part of an occupational pension in connection with a contract of employment;
8. the takeover or liquidation of a business, involvement in a company with personal liability or a substantial capital participation;
9. declaration of inability to pay, conduct of legal proceedings, conclusion of a settlement, an arbitration agreement or a composition agreement, subject to the reservation of provisional measures by the deputy in cases of urgency.

<sup>2</sup> The adult protection authority's consent is not required if a client who is capable of judgement grants his or her consent and his or her capacity to act is not limited by the deputyship.

<sup>3</sup> Contracts between the deputy and the client shall always require the adult protection authority's consent other than in the case of assignments issued by the client that do not involve the payment of a fee.

**Art. 417**

II. By order

The adult protection authority may for good cause order that other transactions should require its consent.



III. Lack of  
consent

#### **Art. 418**

If a transaction has been entered into without the required consent of the adult protection authority, this shall only affect the client to the extent provided for under the provisions of the law of persons on lack of consent from a legal representative.

### **Sub-Section Seven: Intervention by the Adult Protection Authority**

#### **Art. 419**

The client, a closely related person or any person with a legitimate interest may call on the adult protection authority to intervene in relation to acts or omissions by the deputy or by a third party or agency to which the adult protection authority has issued an assignment.

### **Sub-Section Eight: Special Provisions for Family Members**

#### **Art. 420**

If the client's spouse, registered partner, parents, issue, sibling, or de facto life partner is appointed deputy, the adult protection authority may wholly or partly absolve the deputy of the obligations to prepare an inventory, submit regular reports and accounts, and obtain consent for specific transaction if this is justified by the circumstances.

### **Sub-Section Nine: Termination of the Office of Deputy**

#### **Art. 421**

A. By law

The office of deputy terminates by law:

1. on expiry of a term of office set by the adult protection authority, unless the deputy is confirmed in office;
2. with the end of the deputyship;
3. with termination of employment as a professional deputy;
4. in the event that the deputy is made subject to a deputyship, becomes incapable of judgement, or dies.

**Art. 422**

B. Discharge

I. At the deputy's request

<sup>1</sup> The deputy may request to be discharged at the earliest after serving a term of four years.

<sup>2</sup> Prior to this, the deputy may request to be discharged for good cause.

**Art. 423**

II. Other cases

<sup>1</sup> The adult protection authority shall discharge the deputy if:

1. he or she is no longer suitable to carry out the tasks;
2. there is other good cause for his or her discharge.

<sup>2</sup> The client or a closely associated person may request that the deputy be discharged.

**Art. 424**

C. Continuation of transactions

The deputy must continue with transactions that cannot be postponed until a successor takes over office, unless the adult protection authority orders otherwise. This provision does not apply to a professional deputy.

**Art. 425**

D. Final report and final accounts

<sup>1</sup> When the term of office ends, the deputy shall submit a final report to the adult protection authority and if applicable file the final accounts. The adult protection authority may waive this requirement for professional deputies if the employment relationship ends.

<sup>2</sup> The adult protection authority shall examine and approve the final report and the final accounts in the same way as the regular reports and accounts.

<sup>3</sup> It shall pass on the final report and final accounts to the client or his or her heirs and if applicable to the new deputy and shall at the same time draw the attention of these persons to the provisions on accountability.

<sup>4</sup> It shall also inform them whether it exonerated the deputy or refused to approve the final report or the final accounts.

**Section Three: Care-Related Hospitalisation****Art. 426**A. The measures  
I. Hospitalisation for treatment or care

<sup>1</sup> A person suffering from a mental disorder or mental disability or serious neglect (the patient) may be committed to an appropriate institution if the required treatment or care cannot be provided otherwise.

<sup>2</sup> The burden that the patient places on family members and third parties and their protection must be taken into account.

<sup>3</sup> The patient shall be discharged as soon as the requirements for hospitalisation no longer are fulfilled.

<sup>4</sup> The patient or a closely related person may request his or her discharge at any time. A decision must be made on the request immediately.

#### **Art. 427**

II. Detention of persons admitted voluntarily

<sup>1</sup> If a person suffering from a mental disorder who has entered an institution voluntarily wishes to leave the institution, he or she may be detained by the institution's medical management for a maximum of three days if he or she:

1. is a risk to his or her own life or limb; or
2. is a serious risk to the life or the physical integrity of others.

<sup>2</sup> At the end of the three day period, the patient may leave the institution unless he or she is subject to an enforceable hospitalisation order.

<sup>3</sup> The patient shall be notified in writing that he or she may petition the court.

#### **Art. 428**

B. Responsibility for hospitalisation and discharge  
I. Adult protection authority

<sup>1</sup> The adult protection authority is responsible for ordering hospitalisation and discharge.

<sup>2</sup> In specific cases, it may delegate responsibility for discharge to the institution.

#### **Art. 429**

II. Doctors  
1. Responsibility

<sup>1</sup> The cantons may designate doctors who in addition to the adult protection authority are authorised to order hospitalisation for a period specified by cantonal law. The period may not exceed six weeks.

<sup>2</sup> Hospitalisation may not continue beyond the specified period at the latest unless an enforceable hospitalisation order from the adult protection authority applies.

<sup>3</sup> The institution decides on discharge.

#### **Art. 430**

2. Procedures

<sup>1</sup> The doctor shall examine and interview the patient in person.

<sup>2</sup> The hospitalisation order shall contain at least the following information:

1. the place and date of the examination;

2. the name of the doctor;
3. the diagnosis, reasons therefor and the purpose of hospitalisation;
4. instructions on rights of appeal.

<sup>3</sup> An appeal does not have suspensive effect unless the doctor or the competent court orders otherwise.

<sup>4</sup> A copy of the hospitalisation order shall be given to the patient; a further copy shall be given to the institution on the patient's admission.

<sup>5</sup> The doctor shall if possible notify a person closely related to the patient in writing on his or her committal and on the rights of appeal.

### **Art. 431**

C. Regular review

<sup>1</sup> The adult protection authority shall conduct a review at the latest six months after hospitalisation of whether the requirements for hospitalisation are still being met and whether the institution is still suitable.

<sup>2</sup> It shall conduct a second review within the following six months. Thereafter it shall conduct a review as often as necessary, but at least once every year.

### **Art. 432**

D. Authorised representative

Any person committed to an institution may appoint a person that he or she trusts as a representative to support him or her during his or her stay and until the conclusion of all related procedures.

### **Art. 433**

E. Medical measures in the case of a mental disorder

I. Treatment plan

<sup>1</sup> If a person is committed to an institution to be treated for a mental disorder, the attending doctor shall draw up written treatment plan in consultation with the patient and if applicable his or her authorised representative.

<sup>2</sup> The doctor shall inform the patient and the authorised representative of all matters relevant to the planned medical procedures, and in particular the reasons therefor, their purpose, nature, modalities, risks and side effects, of the consequences of not undergoing treatment and of any alternative treatment options.

<sup>3</sup> The treatment plan shall be given to the patient so that he or she may consent. Where the patient is incapable of judgement, account must be taken of any patient decree.

<sup>4</sup> The treatment plan is adjusted to take account of ongoing developments.

- Art. 434**
- II. Treatment without consent
- 1 In the absence of the patient's consent, the chief physician in the department may order in writing the medical procedures planned in the treatment plan if:
1. failure to carry out the treatment could lead to serious damage to the patient's health or seriously endanger the life or the physical integrity of third parties;
  2. the patient is unable to exercise judgement in relation to his or her need for treatment; and
  3. no appropriate measure is available that is less invasive.
- 2 Written notice of the order shall be given to the patient and his or her authorised representative together with instructions on rights of appeal.
- Art. 435**
- III. Emergencies
- 1 In an emergency, essential medical procedures may be carried out immediately to protect the patient or third parties.
- 2 If the institution is aware how the person wishes to be treated, it shall take account of those wishes.
- Art. 436**
- IV. Pre-discharge interview
- 1 If there is a risk that the medical condition will recur, the attending doctor shall attempt to agree with the client before discharge on principles for treatment in the event that the patient is committed to the institution again.
- 2 The pre-discharge interview must be documented.
- Art. 437**
- V. Cantonal law
- 1 The cantons shall regulate follow-up care.
- 2 They may provide for out-patient measures.
- Art. 438**
- F. Measures restricting freedom of movement
- Measures restricting the patient's freedom of movement in the institution are governed by the provisions on restricting the freedom of movement of patients in residential or care institutions *mutatis mutandis*. The right to appeal to the court is reserved.
- Art. 439**
- G. Petition to the court
- 1 In the following cases, the patient or a closely related person may petition the competent court in writing:

1. in cases of hospitalisation ordered by a doctor;
2. in cases where the patient is detained by the institution;
3. in cases where a request for discharge is refused by the institution;
4. in cases where a mental disorder is treated without consent;
5. in cases of measures restricting freedom of movement.

<sup>2</sup> The deadline for appealing to the court is ten days from the date on which notice of the decision is given. In the case of measures restricting freedom of movement, an appeal may be made to the court at any time.

<sup>3</sup> The procedure is governed *mutatis mutandis* by the provisions on proceedings before a judicial appellate authority.

<sup>4</sup> An application for judicial assessment must be passed on to the competent court immediately.

## Title Twelve: Organisation

### Section One: Authorities and Local Jurisdiction

#### Art. 440

A. Adult protection authority

<sup>1</sup> The adult protection authority is a specialist authority. It is appointed by the cantons.

<sup>2</sup> It has a quorum of three members for taking decisions. The cantons may provide for exceptions for specific matters.

<sup>3</sup> It also carries out the tasks of the child protection authority.

#### Art. 441

B. Supervisory authority

<sup>1</sup> The cantons shall appoint the supervisory authorities.

<sup>2</sup> The Federal Council may issue provisions on supervision.

#### Art. 442

C. Local jurisdiction

<sup>1</sup> The adult protection authority at the place of residence of the client has jurisdiction. In ongoing proceedings, the same authority retains jurisdiction until the case has been concluded.

<sup>2</sup> In urgent cases, the authority where the client is actually residing has jurisdiction. If this authority carries out a measure, it shall notify the authority in the client's normal place of residence.

<sup>3</sup> In the case of a deputyship due to absence, the authority at the place where the majority of the assets have been managed or have been transferred to the client has jurisdiction.

<sup>4</sup> The cantons are entitled to declare the authority in the client's place of origin rather than place of residence to have jurisdiction over citizens of the canton who are resident in the canton, provide the commune of origin is wholly or partly responsible for supporting persons in need.

<sup>5</sup> If a person subject to a measure changes place of residence, the authority at the new place shall take responsibility for the measure immediately, unless there is good cause for not doing so.

## Section Two: Procedure

### Sub-section One: Before the Adult Protection Authority

#### Art. 443

A. Notification  
rights and  
obligations

<sup>1</sup> Any person may notify the adult protection authority if a person appears to be in need of assistance. The provisions on professional confidentiality are reserved.

<sup>2</sup> Any person who while acting in an official capacity learns that a person needs assistance and is unable to provide this assistance in the context of their professional activities is required to notify the adult protection authority. The provisions on professional confidentiality remain reserved.<sup>433</sup>

<sup>3</sup> The cantons may provide for further notification obligations.<sup>434</sup>

#### Art. 444

B. Verification  
of jurisdiction

<sup>1</sup> The adult protection authority shall verify its jurisdiction *ex officio*.

<sup>2</sup> If it decides that it has no jurisdiction, it shall assign the case immediately to the authority that it regards as having jurisdiction.

<sup>3</sup> If it is uncertain as to whether it has jurisdiction, it shall consult the authority that it believes may have jurisdiction.

<sup>4</sup> If no agreement is reached after consultation, the authority originally involved shall refer the question of jurisdiction to the appellate authority.

<sup>433</sup> Inserted by No I of the FA of 15 Dec. 2017 (Child Protection), in force since 1 Jan. 2019 (AS 2018 2947; BBl 2015 3431).

<sup>434</sup> Inserted by No I of the FA of 15 Dec. 2017 (Child Protection), in force since 1 Jan. 2019 (AS 2018 2947; BBl 2015 3431).

**Art. 445**

C. Precautionary measures

<sup>1</sup> The adult protection authority shall at the request of a person participating in the proceedings or *ex officio* take all the precautionary measures required for the duration of the proceedings. It may in particular order an adult protection measure as a precautionary measure.

<sup>2</sup> In cases of particular urgency, it may take precautionary measures immediately without hearing the persons participating in the proceedings. At the same time, it shall give these persons the opportunity to express their views, after which it shall review its decision.

<sup>3</sup> An appeal against precautionary measures may be filed within ten days of notice thereof being given.

**Art. 446**

D. Procedural principles

<sup>1</sup> The adult protection authority investigates the circumstances of the case *ex officio*.

<sup>2</sup> It shall conduct the required enquiries and gather the required evidence. It may instruct a suitable person or agency to carry out enquiries. If necessary, it shall commission an opinion from an expert.

<sup>3</sup> It is not limited by the requests made by the persons participating in the proceedings.

<sup>4</sup> It shall apply the law *ex officio*.

**Art. 447**

E. Hearing

<sup>1</sup> The client shall be heard in person unless to do so appears inappropriate.

<sup>2</sup> In a case involving care-related hospitalisation, the adult protection authority shall normally hear the client normally as a panel.

**Art. 448**

F. Obligations to cooperate and administrative assistance

<sup>1</sup> The persons participating in the proceedings and third parties are obliged to cooperate in the enquiries into the circumstances. The adult protection authority shall make the arrangements required to safeguard legitimate interests. If necessary, it shall order the enforcement of the duty to cooperate.

<sup>2</sup> Doctors, dentists, pharmacists, midwives and birth assistants, chiropractors and psychologists and their auxiliary personnel are only obliged to cooperate if the person entitled to confidentiality has authorised them to do so or if a superior authority or the supervisory authority has relieved them of the obligation of professional confiden-



tiality at their own request or at the request of the adult protection authority.<sup>435</sup>

<sup>3</sup> Members of the clergy, lawyers, defence agents, mediators and former welfare deputies appointed in the case are not subject to the obligation to cooperate.

<sup>4</sup> Administrative authorities and courts shall hand over the required files, draw up reports and provide information unless legitimate interests require otherwise.

#### **Art. 449**

G. Assessment in an institution <sup>1</sup> If a psychiatric assessment is essential and cannot be carried out on an out-patient basis, the adult protection authority shall have the client admitted to a suitable institution for assessment.

<sup>2</sup> The provisions on the procedure for care-related hospitalisation apply *mutatis mutandis*.

#### **Art. 449a**

H. Appointment of a representative If necessary, the adult protection authority shall order that the client be represented and appoint a person experienced in care-related and legal matters as deputy.

#### **Art. 449b**

I. Inspection of files <sup>1</sup> The persons participating in the proceedings have the right to inspect the case files, unless legitimate interests require otherwise.

<sup>2</sup> If a person participating in the proceedings is refused access to any case files, the information therein may only be used in the proceedings if the authority discloses the content relevant to the case verbally or in writing to the person concerned.

#### **Art. 449c**

J. Notification duty The adult protection authority shall notify the civil register office if:

1. it makes a person subject to a general deputyship due to permanent loss of the capacity of judgement;
2. an advance care directive become effective for a person permanently lacking capacity of judgement.

<sup>435</sup> Amended by No I of the FA of 15 Dec. 2017 (Child Protection), in force since 1 Jan. 2019 (AS 2018 2947; BBl 2015 3431).

## Sub-section Two: Before the Appellate Authority

### Art. 450

A. Object and right of appeal

<sup>1</sup> Decisions of the adult protection authority are subject to a right of appeal to the competent court.

<sup>2</sup> The following persons have a right of appeal:

1. persons participating in the proceedings;
2. persons closely associated with the client;
3. persons with a legitimate interest in the contested decision being reversed or amended.

<sup>3</sup> The appeal must be filed with the court in writing and with a statement of the grounds.

### Art. 450a

B. Grounds of appeal

<sup>1</sup> The appeal may challenge:

1. an infringement of the law;
2. an incorrect or incomplete finding of legally relevant fact;
3. an inappropriate decision.

<sup>2</sup> An appeal is also competent on the grounds of denial of justice or unjustified delay.

### Art. 450b

C. Deadline for filing the appeal

<sup>1</sup> The appeal must be filed within thirty days of notification of the decision. This deadline also applies to persons entitled to appeal who are not required to be notified of the decision.

<sup>2</sup> In the case of a decision concerning care-related accommodation, the appeal must be filed within ten days of notification of the decision.

<sup>3</sup> An appeal on the grounds of denial of justice or unjustified delay may be filed at any time.

### Art. 450c

D. Suspensive effect

An appeal has suspensive effect unless the adult protection authority or the judicial appellate authority rules otherwise.

### Art. 450d

E. Consultation with the lower instance and reconsideration

<sup>1</sup> The judicial appellate authority shall give the adult protection authority the opportunity to express its position.

<sup>2</sup> Instead of submitting its views, the adult protection authority may reconsider its decision.

F. Special provisions in the case of care-related hospitalisation

#### Art. 450e

<sup>1</sup> A statement of grounds is not required for an appeal against a decision relating to care-related hospitalisation.

<sup>2</sup> The appeal does not have suspensive effect unless the adult protection authority or the judicial appellate authority rules otherwise.

<sup>3</sup> In cases involving mental disorders, the decision must be based on the opinion of an expert.

<sup>4</sup> The judicial appellate authority shall normally hear the client as a panel of judges. If necessary, it shall order that the client be represented and appoint a person experienced in care-related and legal matters as deputy.

<sup>5</sup> Normally, it decides within five working days of the appeal being filed.

### Sub-Section Three: Joint Provision

#### Art. 450f

In addition, the provisions of the Civil Procedure Ordinance apply *mutatis mutandis*, unless the cantons provide otherwise.

### Sub-Section Four: Enforcement

#### Art. 450g

<sup>1</sup> The adult protection authority shall enforce decisions on request or *ex officio*.

<sup>2</sup> If the adult protection authority or the judicial appellate authority in the decision has already ordered compulsory enforcement measures, these may be enforced directly.

<sup>3</sup> The person responsible for enforcement may enlist the help of the police if necessary. Normally a warning must be given before direct compulsory measures are applied.

### Section Three: Relationship with Third parties and Duty of Cooperation

#### Art. 451

A. Duty of confidentiality and information

<sup>1</sup> The adult protection authority is subject to a duty of confidentiality in the absence of overriding interests.

<sup>2</sup> Any person who shows a credible interest may request the adult protection authority to provide information on the existence and the effects of an adult protection measure.

#### **Art. 452**

B. Effect of the measures on third parties

<sup>1</sup> An adult protection measure may be cited in opposition to third parties even if they are acting in good faith.

<sup>2</sup> If the deputyship limits the capacity of the client to act, debtors must be notified that contractual performance only relieves them of their obligations payment if it is made to the deputy. Prior to notice being given, the deputyship may not be cited in opposition to debtors acting in good faith.

<sup>3</sup> If a person subject to an adult protection measure induces other persons to accept his or her capacity to act in error, he or she is liable to them for any loss or damage caused thereby.

#### **Art. 453**

C. Duty of cooperation

<sup>1</sup> If there is a serious risk that a person in need will endanger himself or herself or commit a felony or misdemeanour that seriously damages another person physically or mentally or causes them material loss, the adult protection authority shall cooperate with the agencies concerned and the police.

<sup>2</sup> In such cases, persons subject to official or professional confidentiality are entitled to notify the adult protection authority.

### **Section Four: Accountability**

#### **Art. 454**

A. Principle

<sup>1</sup> Any person who is injured by an unlawful act or omission related to official adult protection measures has the right to damages and, if justified by the seriousness of the injury it, to satisfaction.

<sup>2</sup> The same right applies if the adult protection authority or the supervisory authority behaves unlawfully in relation to other adult protection matters.

<sup>3</sup> The canton is liable; the injured party has no right to damages against the person who caused the injury.

<sup>4</sup> The canton's right of recourse against the person that caused the injury is governed by the cantonal law.

**Art. 455**

B. Limitation periods

<sup>1</sup> The right to claim damages or satisfaction is subject to a time limit of one from the day on which the injured person became aware of the injury, but in any case, ten years from the date of the act causing injury.

<sup>2</sup> If the claim is based on a criminal offence for which criminal law specifies a longer limitation period, the longer period applies.

<sup>3</sup> If the injury is related to the ordering or conduct of a long-term measure, the time limit for a claim against the canton does not begin to apply before the long-term measure ends or is continued by another canton.

**Art. 456**

C. Liability under agency law

The liability of a person entrusted with another's care as well as that of a spouse or registered partner of a person lacking capacity of judgement or of a representative in the case of medical measures, insofar as that person is not a welfare deputy is governed by the provisions of the Code of Obligations<sup>436</sup> on agency.

**Part Three: Law of Succession****Division One: Heirs****Title Thirteen: Statutory Heirs****Art. 457**

A. Related<sup>437</sup> heirs

<sup>1</sup> The nearest heirs of a deceased person are his or her issue.

I. Issue

<sup>2</sup> Children inherit in equal parts.

<sup>3</sup> Predeceased children are replaced by their own issue in all degrees per stirpes.

**Art. 458**

II. Parental line

<sup>1</sup> Where the deceased is not survived by any issue, the estate passes to the parental line.

<sup>2</sup> The father and mother each inherit one-half of the estate.

<sup>3</sup> A predeceased parent is replaced by his or her issue in all degrees per stirpes.

<sup>436</sup> SR 220

<sup>437</sup> Term amended by No I 3 of the FA of 30 June 1972, in force since 1 April 1973 (AS 1972 2819; BBl 1971 I 1200).

<sup>4</sup> Where there are no issue on one side, the entire estate passes to the heirs on the other.

**Art. 459**

III. Grandparental line

<sup>1</sup> Where the deceased is survived by neither issue nor heirs in the parental line, the estate passes to the line of the grandparents.

<sup>2</sup> Where the grandparents of the paternal and maternal lines survive the deceased, they inherit in equal parts on both sides.

<sup>3</sup> A predeceased grandparent is replaced by his or her issue in all degrees per stirpes.

<sup>4</sup> If a grandparent on the paternal or maternal side has predeceased without issue, that entire half of the estate is inherited by the heirs on that side.

<sup>5</sup> If there are no heirs in either the paternal or the maternal side, the entire estate passes to the heirs in the other side.

**Art. 460**<sup>438</sup>

IV. Scope of succession rights

The succession rights of relatives end with the line of the grandparents.

**Art. 461**<sup>439</sup>

**Art. 462**<sup>440</sup>

B. Surviving spouses and registered partners

Surviving spouses and registered partners receive:

1. one-half of the estate, where they are obliged to share with the deceased's issue;
2. three-quarters of the estate, where they are obliged to share with heirs in the parental line;
3. the entire estate, where no heirs exist in the parental line either.

**Art. 463–464**<sup>441</sup>

<sup>438</sup> Amended by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

<sup>439</sup> Repealed by No I 2 of the FA of 25 June 1976, with effect from 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>440</sup> Amended by Annex No. 8 of the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS **2005** 5685; BBl **2003** 1288).

<sup>441</sup> Repealed by No I 2 of the FA of 5 Oct. 1984, with effect from 1 Jan 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

**Art. 465**<sup>442</sup>

C...

**Art. 466**<sup>443</sup>D. State  
authority

Where the deceased leaves no heirs, his or her estate passes to the canton in which he or she was last resident or to the commune designated by the law of that canton.

**Title Fourteen: Testamentary Dispositions****Section One: Testamentary Capacity****Art. 467**

A. Wills

Any person who has the capacity of judgement and is at least 18 years old has the right to draw up a will disposing of his or her property in accordance with the limits and forms prescribed by law.

**Art. 468**<sup>444</sup>B. Contract of  
succession

<sup>1</sup> Any person who is capable of judgement and has reached the age of 18 may conclude a contract of succession as a testator.

<sup>2</sup> Persons subject to a deputyship that covers the conclusion of a contract of succession require the consent of their legal representative.

**Art. 469**C. Voidable  
dispositions

<sup>1</sup> Dispositions made in error or under the influence of malicious deception, threats or coercion are void.

<sup>2</sup> However, they become valid if not revoked by the testator within one year of his or her discovering the error or deception or of his or her release from the threat or coercion.

<sup>3</sup> If a disposition contains an obvious error with regard to persons or objects and the testator's true intention may be established with certainty, the disposition shall be rectified accordingly.

<sup>442</sup> Repealed by No I 3 of the FA of 30 June 1972, with effect from 1 April 1973 (AS **1972** 2819; BBl **1971** I 1200). However, see Art. 12a Final Title below.

<sup>443</sup> Amended by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

<sup>444</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

## Section Two: Testamentary Freedom

### Art. 470

A. Disposable part  
I. Scope of testamentary powers

<sup>1</sup> A person who is survived by issue, parents, a spouse or a registered partner may make a testamentary disposition of that part of his or her property which exceeds the statutory entitlement of the survivor or survivors.<sup>445</sup>

<sup>2</sup> A person who is not survived by any such heirs may dispose of his or her entire property by testamentary disposition.

### Art. 471<sup>446</sup>

II. Statutory entitlement

The statutory entitlement is:

1. for any issue, three-quarters of their statutory succession rights;
2. for each parent, one-half;
- 3.<sup>447</sup> for the surviving spouse or registered partner, one-half.

### Art. 472<sup>448</sup>

III. ...

### Art. 473

IV. Dispositions in favour of the spouse

<sup>1</sup> By a testamentary disposition, the testator may grant the surviving spouse a usufruct of the entire part of the estate passing to their common issue.<sup>449</sup>

<sup>2</sup> This usufruct shall replace the statutory succession right due to the spouse where the common issue are co-heirs with the spouse. In addition to this usufruct, the disposable part is one-quarter of the estate.<sup>450</sup>

<sup>3</sup> If the surviving spouse remarries, the usufruct ceases to apply to that part of the estate which, on succession, could not have been encum-

<sup>445</sup> Amended by Annex No. 8 of the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS **2005** 5685; BBl **2003** 1288).

<sup>446</sup> Amended by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

<sup>447</sup> Amended by Annex No. 8 of the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS **2005** 5685; BBl **2003** 1288).

<sup>448</sup> Repealed by No I 2 of the FA of 5 Oct. 1984 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

<sup>449</sup> Amended by No I of the Swiss Civil Code of 5 Oct. 2001, in force since 1 March 2002 (AS **2002** 269; BBl **2001** 1121 2011 2111).

<sup>450</sup> Amended by No I of the Swiss Civil Code of 5 Oct. 2001, in force since 1 March 2002 (AS **2002** 269; BBl **2001** 1121 2011 2111).



bered by a usufruct under the provisions ordinarily governing the statutory entitlements of the deceased's issue.<sup>451</sup>

#### Art. 474

- V. Calculation of the disposable part
1. Deduction of debts
- 1 The disposable part is calculated on the basis of the value of the deceased's assets at the time of his or her death.
- 2 In calculating this value, the deceased's debts, the funeral expenses, the costs of sealing and of drawing up the inventory and the maintenance claims of members of the household for one month are deducted from value of the estate.

#### Art. 475

2. Inter vivos gifts
- Inter vivos gifts are added to the estate insofar as they are subject to an action in abatement.

#### Art. 476

3. Insurance claims
- Where a life assurance claim maturing on the death of the deceased was established in favour of a third party by an inter vivos or testamentary disposition or mortis causa or was transferred by the deceased during his or her lifetime to a third party without valuable consideration, the redemption value of such insurance claim at the time of death is added to the estate.

#### Art. 477

- B. Disinheritance
- I. Grounds
- The testator has the power to deprive an heir of his or her statutory entitlement by means of a testamentary disposition:
- 1.<sup>452</sup> if the heir has committed a serious crime against the testator or a person close to him or her;
  2. if the heir has seriously breached his or her duties under family law towards the testator or the latter's dependants.

#### Art. 478

- II. Effect
- 1 The disinherited person may neither participate in the estate nor bring an action in abatement.
- 2 Unless disposed of otherwise by the testator, the disinherited person's portion passes to the testator's statutory heirs as if the disinherited person had predeceased.

<sup>451</sup> Amended by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

<sup>452</sup> Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>3</sup> The disinherited person's issue retain their statutory entitlements as if he or she had predeceased.

### Art. 479

III. Burden of proof

<sup>1</sup> A disinheritance is valid only if the testator indicates the reason for the disinheritance in his or her testamentary disposition.

<sup>2</sup> If the disinherited person challenges the disinheritance on the grounds that the reason therefor is incorrect, any heir or legatee wishing to benefit from the disinheritance must prove that the reason is correct.

<sup>3</sup> Where no such proof may be adduced or no reason for the disinheritance is indicated, the disposition shall be upheld insofar as it does not deprive the disinherited person of his or her statutory entitlement unless it was made by the testator in obvious error regarding the reason for the disinheritance.

### Art. 480

IV. Disinheritance of an insolvent person

<sup>1</sup> If unpaid debt certificates exist in respect of any of the issue of the testator, the latter may deprive the said issue of one-half of his or her statutory entitlement providing he or she leaves that half to the existing or subsequently born children of the said issue.

<sup>2</sup> At the disinherited person's request, the disinheritance is void if, on succession, the unpaid debt certificates no longer exist against him or her or if their total amount does not exceed one-quarter of his or her share of the estate.

## Section Three: Types of Disposition

### Art. 481

A. In general

<sup>1</sup> Within the limits of his or her right to dispose of his or her property, the testator may dispose of it in part or in full by will or by contract of succession.

<sup>2</sup> Any property in respect of which no testamentary disposition has been made passes to the statutory heirs.

### Art. 482

B. Burdens and conditions

<sup>1</sup> The testator may attach burdens or conditions to the disposition, the fulfilment of which may be requested by any interested party once the disposition becomes effective.

<sup>2</sup> Immoral or unlawful burdens or conditions render the disposition null and void.

<sup>3</sup> Where they are merely onerous to third parties or meaningless, they are deemed not to exist.

<sup>4</sup> If an animal receives a bequest by testamentary disposition, this disposition is deemed to be a burden by which the animal must be cared for according to its needs.<sup>453</sup>

### **Art. 483**

C. Naming of heirs

<sup>1</sup> The testator may name one or more heirs to the entire estate or to a fraction thereof.

<sup>2</sup> Any disposition by which a beneficiary should receive all or a specified fraction of the deceased's estate is deemed to constitute the naming of an heir.

### **Art. 484**

D. Legacy  
I. Nature

<sup>1</sup> The testator may bequeath a legacy to a beneficiary without naming that person as an heir.

<sup>2</sup> He or she may bequeath a specific legacy or the usufruct of the whole or a part of the estate, or he or she may instruct the heirs or other legatees to make payments to that person from the value of the estate or to release that person from obligations.

<sup>3</sup> If the testator bequeaths a specific legacy but the object is not part of the estate and no other intention is evident from the disposition, no obligation is placed on the obligor of the legacy.

### **Art. 485**

II. Duty on the obligor of the legacy

<sup>1</sup> The object must be delivered to the beneficiary in the same condition that it was in on succession, including damage and growth and with or without encumbrance.

<sup>2</sup> With regard to expenditure on and deterioration of the legacy since the succession, the obligor of the legacy has the same rights and duties as an agent without authority.

### **Art. 486**

III. Relationship to the estate

<sup>1</sup> Where the legacies exceed the value of the estate or of the bequest to the obligor or of the disposable part, application may be made to have them abated proportionately.

<sup>2</sup> If the obligors do not survive the testator, are unworthy to inherit or disclaim their inheritance, the legacies remain nonetheless effective.

<sup>453</sup> Inserted by No I of the FA of 4 Oct. 2002 (Article of Basic Principles: Animals), in force since 1 April 2003 (AS **2003** 463; BBl **2002** 4164 5806).

<sup>3</sup> If the testator has bequeathed a legacy to a statutory or named heir, the latter has the right to claim the legacy even if he or she disclaims his or her inheritance.

**Art. 487**

E. Substitution In his or her disposition, the testator may designate one or more persons to whom the estate or legacy shall pass in the event that the initial heir or legatee is predeceased or disclaims it.

**Art. 488**

F. Remaindermen  
I. Designation of a remainderman <sup>1</sup> The testator is entitled in his or her dispositions to require the named heir, as provisional heir, to deliver the estate to a third party, as remainderman.

<sup>2</sup> No such obligation may be imposed on the remainderman.

<sup>3</sup> The same provisions apply to legacies.

**Art. 489**

II. Time of delivery <sup>1</sup> Except where the disposition stipulates otherwise, the time of delivery is deemed to be the death of the provisional heir.

<sup>2</sup> Where a different time is specified and that time has not yet occurred on the death of the provisional heir, the inheritance passes to his or her heirs against security.

<sup>3</sup> If for whatever reason that time may no longer occur, the inheritance passes unreservedly to the heirs of the provisional heir.

**Art. 490**

III. Security <sup>1</sup> In all cases in which remaindermen are designated, the competent authority must order an inventory to be drawn up.

<sup>2</sup> Delivery of the inheritance to the provisional heir is made only against security, except where the testator has expressly released him or her from such an obligation; in the case of immovable property, security may be provided by entering the delivery obligation under priority notice in the land register.

<sup>3</sup> If the provisional heir is unable to provide security or jeopardises the remainderman's expectancy, the inheritance must be placed under probate administration.

**Art. 491**

IV. Legal status  
1. Of the provisional heir <sup>1</sup> A provisional heir acquires the inheritance in the same manner as any named heir.

<sup>2</sup> He or she becomes the owner of the inheritance with an obligation to deliver it.

### Art. 492

2. Of the remainderman

<sup>1</sup> The remainderman acquires the testator's bequest if he or she is alive at the stipulated delivery time.

<sup>2</sup> If he or she dies before then, the inheritance passes to the provisional heir unless the testator has ordered otherwise.

<sup>3</sup> If the provisional heir dies before the testator or is unworthy of inheritance or disclaims the inheritance, it passes to the remainderman.

### Art. 492<sup>a</sup><sup>454</sup>

V. Issue lacking capacity of judgement

<sup>1</sup> If any issue permanently lacks capacity of judgement and if he or she is not survived by issue or a spouse, the testator may designate a remainderman in respect of the residue.

<sup>2</sup> The designation of the remainderman ceases to apply by law if the issue, contrary to expectation, becomes capable of judgement.

### Art. 493

G. Foundations

<sup>1</sup> The testator is entitled to bequeath all or part of the disposable portion of his or her property to a foundation for any purpose of his or her choosing.

<sup>2</sup> However, the foundation is valid only if it conforms to the legal requirements.

### Art. 494

H. Contracts of succession  
I. Contracts naming heirs and making legacies

<sup>1</sup> The testator may, by contract of succession, undertake to another person to bequeath his or her estate or a legacy to that person or a third party.

<sup>2</sup> He or she is free to dispose of his or her property as he or she sees fit.

<sup>3</sup> However, testamentary dispositions or gifts that are incompatible with obligations entered into under the contract of succession are subject to challenge.

### Art. 495

II. Renunciation of inheritance  
1. Significance

<sup>1</sup> The testator may conclude an inheritance renunciation contract with an heir with or without valuable consideration.

<sup>454</sup> Inserted by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>2</sup> The renouncing party is not deemed to be an heir on succession.

<sup>3</sup> Unless the contract provides otherwise, the renunciation of an inheritance also applies to the issue of the renouncing party.

#### **Art. 496**

2. Void renunciation

<sup>1</sup> Where certain persons are named in the renunciation contact as heirs in lieu of the renouncing party, the renunciation is void if such persons fail to acquire the inheritance for whatever reason.

<sup>2</sup> Where an inheritance is renounced in favour of co-heirs, the renunciation is presumed to be effective only in respect of the heirs of the line descending from their nearest common ascendant and has no effect with regard to more distant heirs.

#### **Art. 497**

3. Rights of the creditors of the estate

If the deceased was insolvent on succession and his or her creditors are not satisfied by the heirs, the renouncing party and his or her heirs may be held liable to the extent that they received valuable consideration for the renounced inheritance within the five years prior to the death of the deceased and were still enriched by such consideration on succession.

### **Section Four: Formal Requirements of Testamentary Dispositions**

#### **Art. 498**

A. Wills  
I. Drawing up a will  
1. In general

The testator may make his or her will in the form of a public deed or in holographic or oral form.

#### **Art. 499**

2. By public deed  
a. Formal requirements

A will by public deed is made in the presence of two witnesses by a public official, notary public or other person authorised under cantonal law to conduct such business.

#### **Art. 500**

b. Role of the public official

<sup>1</sup> The testator must inform the official of his or her wishes, whereupon the official draws up the deed or causes it to be drawn up and gives it to the testator to read.

<sup>2</sup> The deed must be signed by the testator.

<sup>3</sup> The official must date and sign the deed.

**Art. 501**

c. Role of the witnesses

<sup>1</sup> As soon as the public deed has been signed and dated, the testator must declare to the two witnesses, in the presence of the official, that he or she has read the document and that it contains his or her will.

<sup>2</sup> The witnesses must sign the deed and in so doing confirm that the testator made said declaration in their presence and that, in their judgment, in so doing he or she was in full possession of testamentary capacity.

<sup>3</sup> It is not necessary for the witnesses to be informed of the content of the deed.

**Art. 502**

d. Drawing up a will without the testator reading and signing it

<sup>1</sup> If the testator does not read and sign the deed, the official must read it out in the presence of the two witnesses and the testator, who must then declare that the deed contains his or her will.

<sup>2</sup> In this case the witnesses must not only attest to the testator's declaration and their judgment concerning his or her testamentary capacity but must also confirm, by appending their signatures, that the deed was read out to the testator by the official in their presence.

**Art. 503**

e. Persons involved

<sup>1</sup> Persons who lack capacity to act, have been deprived of their civil rights due to a criminal conviction<sup>455</sup> or are unable to read or write, lineal relatives<sup>456</sup> or siblings of the testator or their spouses and the testator's spouse are not permitted to act as authenticating officials or witnesses when making a will in the form of a public deed.

<sup>2</sup> No disposition may be made in the will in favour of any authenticating officer or witness or his or her lineal relatives, siblings or spouse.

**Art. 504**

f. Safekeeping of wills

The cantons must ensure that public officials entrusted with wills either keep the original or a copy of such deeds themselves or else forward them to an authority for safekeeping.

<sup>455</sup> The suspension of civil rights and privileges due to criminal conviction has been abolished (see AS 1971 777; BBl 1965 I 561 and AS 1974 55; BBl 1974 I 1457).

<sup>456</sup> Term amended by No 13 of the FA of 30 June 1972, in force since 1 April 1973 (AS 1972 2819; BBl 1971 I 1200).

**Art. 505**

3. Holographic will

<sup>1</sup> A holographic will must be written in the testator's own hand from start to finish, include an indication of the day, month and year on which it is drawn up, and be signed by the testator.<sup>457</sup>

<sup>2</sup> The cantons must ensure that such wills can be forwarded, whether open or sealed, to an authority for safekeeping.

**Art. 506**

4. Oral will  
a. Dispositions

<sup>1</sup> Where the testator is prevented from using any other form of will by extraordinary circumstances such as the imminent risk of death, breakdown in communications, epidemic or war, he or she is entitled to make a will in oral form.

<sup>2</sup> To do so, he or she must declare his or her will in the presence of two witnesses and instruct them to have it drawn up as required in the form of a deed.

<sup>3</sup> The witnesses are subject to the same disqualification provisions as apply to wills made in the form of public deeds.

**Art. 507**

b. Conversion into deed

<sup>1</sup> The oral will, including the place, day, month and year, must be written down immediately by one of the witnesses, then signed by both and lodged without delay with a judicial authority together with a declaration that the testator was in full possession of his or her testamentary capacity and that he or she informed them of his or her will in the special circumstances prevailing at that time.

<sup>2</sup> The two witnesses may instead have the will recorded by a judicial authority along with the same declaration.

<sup>3</sup> If the testator makes his or her oral will while on military service, an officer with the rank of captain or higher may take the place of the judicial authority.

**Art. 508**

c. Loss of validity

If the testator subsequently has the opportunity to draw up his or her will in another form, the oral will ceases to be valid 14 days after such opportunity arises.

<sup>457</sup> Amended by No I of the FA of 23 June 1995, in force since 1 Jan. 1996 (AS 1995 4882; BBl 1994 III 516, V 607).



**Art. 509**

II. Revocation  
and destruction  
1. Revocation

1 The testator may revoke his or her will at any time in one of the forms envisaged for drawing it up.

2 Such revocation may apply to all or part of the will.

**Art. 510**

2. Destruction

1 The testator may revoke his or her will by destroying the deed.

2 If the deed is destroyed by others wilfully or by accident, the will likewise becomes void inasmuch as its content may no longer be ascertained precisely and completely; claims for damages are reserved.

**Art. 511**

3. Subsequent  
wills

1 If the testator makes a will without expressly revoking a previous will, the later will supersedes the earlier unless it is manifestly no more than a codicil thereto.

2 Likewise, a bequest of a specific object is revoked if the testator subsequently makes a new disposition of the same object that is incompatible with the previous disposition.

**Art. 512**

B. Contracts of  
succession  
I. Execution

1 In order to be valid, a contract of succession must meet the same formal requirements as a will executed as a public deed.

2 The contracting parties must simultaneously declare their intentions to the public official and sign the deed before him or her and two witnesses.

**Art. 513**

II. Revocation  
1. Inter vivos  
a. By contract  
and by will

1 The contract of succession may be revoked at any time by written agreement between the parties.

2 The testator may unilaterally revoke the naming of an heir or a legacy provided the heir or legatee is guilty of conduct constituting grounds for disinheritance after the contract was concluded.

3 The unilateral revocation must be done in one of the forms prescribed for drawing up wills.

**Art. 514**

b. By withdrawal  
from the contract

A person entitled to benefits inter vivos under a contract of succession may declare his or her withdrawal from the contract in accordance

with the provisions of the Code of Obligations<sup>458</sup> in the event of failure to perform such benefits or to furnish security for them.

### Art. 515

2. Predeceased heir

<sup>1</sup> Where the heir or legatee does not survive the testator, the contract becomes void.

<sup>2</sup> Where at the time of the heir's death the testator has been enriched as a result of the contract of succession, unless otherwise provided, the heirs of the deceased may demand restitution of the amount involved.

### Art. 516

C. Restriction of testamentary freedom

If a testator becomes subject to a restriction of testamentary freedom after he or she has made a testamentary disposition, the disposition is not annulled but is subject to action in abatement.

## Section Five: Executors

### Art. 517

A. Appointment of executors

<sup>1</sup> In the will, the testator may appoint one or more persons with capacity to act to execute the will.

<sup>2</sup> The probate authority shall notify these persons of the appointment *ex officio* and they must state whether they accept it within 14 days of such notification, silence being deemed tacit acceptance.

<sup>3</sup> They are entitled to adequate recompense for their activities.

### Art. 518

B. Function of an executor

<sup>1</sup> Unless otherwise provided by the testator, the executors have the same rights and duties as an official estate administrator.

<sup>2</sup> The executors' function is to represent the testator's wishes and, in particular, to administer the estate, settle debts left by the testator, distribute legacies and divide the estate in accordance with the testator's instructions or as required by law.

<sup>3</sup> Where more than one executor has been appointed, these powers are exercised jointly, unless the testator has provided otherwise.

## Section Six: Declaration of Invalidity and Abatement of Dispositions

### Art. 519

A. Action for declaration of invalidity  
I. On grounds of lack of testamentary capacity, lack of free will, unlawfulness or immorality

<sup>1</sup> Where contested, a testamentary disposition may be declared invalid:

1. if it was made by the testator at a time when he or she lacked testamentary capacity;
2. if it is the product of a lack of free will;
3. if its content or a condition attached to it is immoral or unlawful.

<sup>2</sup> An action of declaration of invalidity may be brought by any interested heir or legatee.

### Art. 520

II. On grounds of formal defect  
1. In general<sup>459</sup>

<sup>1</sup> If the testamentary disposition is formally defective, it is declared invalid on being contested before a court.

<sup>2</sup> If the formal defect consists in the certain persons being party to the execution of the disposition who or whose family members are beneficiaries under the testamentary disposition, only the clauses relating to those beneficiaries shall be declared invalid.

<sup>3</sup> The right of action is governed by the same provisions as apply in the event of a lack of testamentary capacity.

### Art. 520<sup>a</sup><sup>460</sup>

2. In holographic wills

If the formal defect in a holographic will consists in the day, month or year not being indicated correctly or at all, the will may be declared invalid only if the precise date cannot be ascertained in some other manner and is necessary in order to determine the testator's testamentary capacity, the chronological order of multiple wills or any other issue affecting the validity of the will.

### Art. 521

III. Time limits

<sup>1</sup> The right to bring an action of declaration of invalidity is subject to a time limit of one year after the contesting party learned of the will and the ground for nullity and in any event a maximum of ten years after the commencement of probate proceedings.

<sup>459</sup> Amended by No I of the FA of 23 June 1995, in force since 1 Jan. 1996 (AS **1995** 4882; BBl **1994** III 516, V 607).

<sup>460</sup> Inserted by No I of the FA of 23 June 1995, in force since 1 Jan. 1996 (AS **1995** 4882; BBl **1994** III 516, V 607).

<sup>2</sup> In all cases, an action brought on grounds of lack of testamentary capacity, immorality or unlawfulness against a beneficiary acting in bad faith does not become time barred until 30 years have elapsed.

<sup>3</sup> Invalidity may be invoked as a defence at any time.

### Art. 522

B. Action in abatement  
1. Requirements  
1. In general

<sup>1</sup> Where the testator has exceeded his or her testamentary freedom, those heirs who do not receive the full value of their statutory entitlement may sue to have the disposition abated to the permitted amount.

<sup>2</sup> Clauses contained in testamentary dispositions relating to the entitlements of the statutory heirs are deemed merely to be instructions for dividing the estate unless it is evident from the disposition that the testator intended otherwise.

### Art. 523

2. Bequests in favour of heirs with a statutory entitlement

Where a testamentary disposition contains legacies in favour of several heirs with a statutory entitlement and the testator has exceeded his or her testamentary freedom, such legacies shall be abated among the co-heirs in proportion to the amounts by which they exceed each co-heir's statutory entitlement.

### Art. 524

3. Rights of creditors

<sup>1</sup> Where the testator has exceeded his or her testamentary freedom to the detriment of an heir and the latter fails to bring an action in abatement despite being instructed to do so by the bankruptcy administrators or by creditors holding unpaid debt certificates on succession, the administrators or creditors themselves may bring an action in abatement for the amount necessary to cover their claims within the same time limit that applies to the heir.

<sup>2</sup> The same right applies in the case of a disinheritance not contested by the person disinherited.

### Art. 525

II. Effect  
1. Of abatement in general

<sup>1</sup> Abatement is applied in equal proportion in respect of all named heirs and legatees unless it is evident from the disposition that the testator intended otherwise.

<sup>2</sup> Where the abatement applies to a legacy whose beneficiary is also the obligor of other legacies, subject to the same proviso such beneficiary may request that those other legacies be abated proportionately.

**Art. 526**

2. On specific legacies

Where a specific legacy that cannot be divided without loss of value is to be abated, the legatee may either claim it and pay the balance or claim the disposable amount in lieu of the object.

**Art. 527**

3. On dispositions inter vivos  
a. Cases

The following are subject to abatement in the same manner as testamentary dispositions:

1. advances against a person's share of an inheritance made in the form of wedding gifts, settlements or assignments of assets, to the extent these are not subject to hotchpot;
2. compensation payments in settlement of future rights of inheritance;
3. gifts that were freely revocable by the deceased or made in the five years prior to his or her death, with the exception of customary occasional gifts;
4. assets alienated by the deceased with the obvious intention of circumventing the limitations on his or her testamentary freedom.

**Art. 528**

b. Restitution

<sup>1</sup> A person acting in good faith has a duty of restitution only to the extent that he or she is still enriched by such transactions with the deceased at the time of succession.

<sup>2</sup> Where benefits conferred under a contract of succession are subject to abatement, the beneficiary is entitled to reclaim a proportionate amount of the counter-performance made to the testator.

**Art. 529**

4. On assurance claims

Where a life assurance claim maturing on the death of the deceased was established in favour of a third party by a disposition inter vivos or by a testamentary disposition or was transferred by the deceased during his or her lifetime to a third party without valuable consideration, such claim is subject to abatement at its redemption value.

**Art. 530**

5. On usufruct and annuities

If the testator has encumbered the estate with rights of usufruct and annuities such that their capitalised value over their probable duration exceeds the disposable part of the estate, the heirs are entitled either to seek proportionate abatement of such rights or to redeem them by surrendering the disposable part of the estate to the beneficiaries.

**Art. 531**<sup>461</sup>

6. On naming of remaindermen

The naming of a remainderman in respect of an heir entitled to a statutory entitlement is invalid as to that part of the estate; the provision on issue who are incapable of judgement is reserved.

**Art. 532**

III. Order of abatement

Abatement applies first to testamentary dispositions and thereafter to dispositions inter vivos in reverse chronological order until the statutory entitlement has been reconstituted.

**Art. 533**

IV. Prescription

<sup>1</sup> A claim in abatement prescribes one year after the date on which the heirs learned of the infringement of their rights and in any event after ten years have elapsed since the succession, in the case of testamentary disposition, or since the testator's death, in the case of other dispositions.

<sup>2</sup> If the declaration of the invalidity of a later disposition revives an earlier one, the limitation periods begin on the date on which invalidity was declared.

<sup>3</sup> The entitlement to abatement may be invoked as a defence at any time.

**Section Seven: Claims under Contracts of Succession****Art. 534**

A. Claims in respect of lifetime transfers

<sup>1</sup> If the testator transfers his or her property during his or her lifetime to the contractual heir, the latter may arrange for a public inventory to be taken.

<sup>2</sup> Where the testator has not transferred all his or her property or has acquired property since the transfer, except where otherwise provided the contract applies only to the property transferred.

<sup>3</sup> Where such transfer takes place during the testator's lifetime, except where otherwise provided all rights and obligations arising from the contract pass to the heirs of the named heir.

<sup>461</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

**Art. 535**

B. Hotchpot in the case of renunciation of inheritance  
I. Abatement

1 If the testator during his or her lifetime conferred benefits on a renouncing heir that exceed that heir's share of the estate, his or her co-heirs may request abatement.

2 However, such benefits are subject to abatement only to the extent they exceed the statutory entitlement of the renouncing heir.

3 Allowance is made for them according to the provisions governing hotchpot.

**Art. 536**

II. Reimbursement

If as a result of abatement a renouncing heir is obliged to reimburse the estate, he or she has the choice of either taking the reimbursement upon himself or of placing the entire benefit into hotchpot and participating in the division as if he or she had never renounced.

**Division Two: Succession****Title Fifteen: Commencement of Succession****Art. 537**

A. Requirements for the deceased

1 Succession commences on the death of the deceased.

2 Insofar as dispositions and divisions made during deceased's lifetime are relevant under law of succession, they are taken into account according to the condition of the estate as at the time of his or her death.

**Art. 538**

B. Place where succession commences<sup>462</sup>

1 Succession commences in respect of the entire estate at the deceased's last domicile.

2 ...<sup>463</sup>

**Art. 539**

C. Requirements for the heirs  
I. Capacity  
1. Legal capacity

1 Every person is capable of being an heir and acquiring property by testamentary disposition unless by law he or she is deemed incapable of inheritance.

2 Bequests with a designated purpose to groups of persons not constituting a legal entity are acquired by all such persons individually with

<sup>462</sup> Amended by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, in force since 1 Jan. 2001 (AS 2000 2355; BBl 1999 2829).

<sup>463</sup> Repealed by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan. 2001 (AS 2000 2355; BBl 1999 2829).

an obligation to use them as prescribed or, where this is not practical, give rise to a trust.

### Art. 540

2. Unworthiness  
to inherit  
a. Grounds

<sup>1</sup> A person is unworthy of inheriting or acquiring anything by a testamentary disposition if:

1. he or she wilfully and unlawfully caused or attempted to cause the death of the person now deceased;
2. he or she wilfully and unlawfully rendered the person now deceased permanently incapable of making a testamentary disposition;
3. by malice, coercion or threat he or she induced the person now deceased to make or revoke a testamentary disposition or prevented him or her from doing so;
4. he or she wilfully and unlawfully eliminated or invalidated a testamentary disposition in such a manner as to prevent the person now deceased from drawing up a new one.

<sup>2</sup> Unworthiness to inherit does not apply if the person now deceased has forgiven the person concerned.

### Art. 541

b. Effect on issue

<sup>1</sup> Unworthiness to inherit applies only to the person concerned.

<sup>2</sup> His or her issue inherit from the deceased as if the person unworthy to inherit were predeceased.

### Art. 542

II. Capacity to  
inherit on  
succession

1. As heir

<sup>1</sup> In order to inherit, an heir must be alive and capable of inheriting at the time of succession.

<sup>2</sup> If an heir dies after commencement of succession, his or her rights of inheritance in respect of the estate pass to his or her own heirs.

### Art. 543

2. As legatee

<sup>1</sup> A legatee surviving the testator and capable of inheriting acquires a claim to the legacy.

<sup>2</sup> If he or she dies before the testator, his or her legacy is extinguished in favour of the person who would have been obliged to deliver the legacy to him, unless some other intention is evident from the disposition.



**Art. 544**

3. Unborn child 1 A child is capable of inheriting from the moment of conception onwards, providing he or she is subsequently born alive.

<sup>1bis</sup> If it is required to protect the child's interests, the child protection authority shall establish a deputyship.<sup>464</sup>

2 If the child is stillborn, it is disregarded for inheritance purposes.<sup>465</sup>

**Art. 545**

4. Remaindermen 1 The testator may bequeath his or her estate or part thereof to a person not yet living when succession commences by designating such person a remainderman.

2 Where no provisional heir is named, the statutory heirs are deemed to be the provisional heirs.

**Art. 546**

D. Presumption of death  
I. Inheriting from persons presumed dead  
1. Devolution against security 1 Where a person has been declared presumed dead, before his or her heirs or legatees succeed to the estate, they must furnish security for the restitution of the property to those with a prevailing claim or to the missing person himself.

2 Such security shall be furnished for five years in the case of disappearance in life-threatening circumstances and for 15 years in the case of absence without sign of life, but never beyond the date on which the missing person would have become 100 years old.

3 The five-year period runs from the date on which the estate is transferred and the 15-year period from the last sign of life.

**Art. 547**

2. Annulment of presumption of death and restitution 1 If the person who is presumed dead returns or other parties assert prevailing claims to the estate, those put in possession of the estate must return it according to the rules governing possession.

2 Provided they acted in good faith, they are liable to parties with prevailing claims only during the period in which action may be brought for reclamation of the estate.

<sup>464</sup> Inserted by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>465</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

**Art. 548**

II. Succession  
rights of persons  
presumed dead

<sup>1</sup> If it is impossible to determine whether an heir is alive or dead when succession commences because he or she has disappeared, his or her share of the inheritance is placed under official administration.

<sup>2</sup> Those who would succeed to the missing heir's share if he or she were dead may request the court to declare the heir presumed dead one year after his or her disappearance in life-threatening circumstances or five years after the last sign of life and, once such declaration has been made, may apply for release of their shares of his or her inheritance.

<sup>3</sup> Such shares are released according to the provisions governing release to the heirs of persons presumed dead.

**Art. 549**

III. Correlation  
of the two cases

<sup>1</sup> If the heirs of the person presumed dead are already in possession of his or her property and an inheritance passes to him or her, his or her co-heirs may invoke this fact and request that such inheritance be released to them without need for a second declaration of presumed death.

<sup>2</sup> The heirs of the person presumed dead may likewise invoke a declaration of presumed death obtained by the co-heirs.

**Art. 550**

IV. Procedure *ex officio*

<sup>1</sup> Where the missing person's property or succession rights have been under official administration for ten years or more, or he or she would have reached the age of 100, at the request of the competent authority the declaration of presumed death is pronounced *ex officio*.

<sup>2</sup> If no rightful heirs come forward during the public notice period, the property of the person presumed dead passes to the state authority with right to succeed or, if he or she was never resident in Switzerland, to the canton of origin.

<sup>3</sup> The local authority or canton concerned has the same duty of restitution as those put in possession of the estate towards the person presumed dead and parties with prevailing claims.

## Title Sixteen: Effect of Succession

### Chapter One: Measures to Safeguard Succession

#### Art. 551

A. In general <sup>1</sup> The competent authority must of its own accord take all measures necessary to ensure proper succession.<sup>466</sup>

<sup>2</sup> In the cases envisaged by law, in particular, such measures include sealing the estate, drawing up the inventory, appointing the estate administrators and reading out the wills of the deceased.

<sup>3</sup> ...<sup>467</sup>

#### Art. 552

B. Sealing the estate The order to seal the estate is given whenever provided for by cantonal law.

#### Art. 553

C. Inventory <sup>1</sup> The order to draw up an inventory is given:

1. where an heir is under guardianship or is to be made a ward of court;
2. where an heir is permanently absent and without representation;
3. at the request of one of the heirs;
4. where an adult heir is or is to be made subject to a general deputyship.<sup>468</sup>

<sup>2</sup> The inventory is drawn up in accordance with the provisions of cantonal law and normally must be completed within two months of the death of the deceased.

<sup>3</sup> Cantonal legislation may require that an inventory be drawn up in other cases.

#### Art. 554

D. Estate administrators <sup>1</sup> Estate administrators are appointed:

- I. In general
1. where such an appointment is in the best interests of an heir who is permanently absent and without representation;

<sup>466</sup> Amended by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, in force since 1 Jan. 2001 (AS **2000** 2355; BBl **1999** 2829).

<sup>467</sup> Repealed by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan. 2001 (AS **2000** 2355; BBl **1999** 2829).

<sup>468</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

2. where none of the claimants may adequately establish his or her succession rights or the existence of an heir is uncertain;
3. where not all heirs are known;
4. in special cases provided for by law.

<sup>2</sup> Where the deceased had named an executor, administration of the estate is entrusted to him or her.

<sup>3</sup> Where the deceased was subject to a deputyship that covers asset management, the deputy is responsible for administering the estate unless other instructions apply.<sup>469</sup>

### Art. 555

II. In the case of unknown heirs

<sup>1</sup> If the authority is uncertain as to whether the deceased is survived by heirs or whether it is aware of all the heirs, the authority must by appropriate public means call on all persons with succession rights to come forward and claim them within one year.

<sup>2</sup> If no such person comes forward during this time and if no heirs are known to the authority, the estate passes to the state authority with right to succeed, subject to any action for recovery of inheritance.

### Art. 556

E. Probate proceedings  
I. Duty to submit the will

<sup>1</sup> If the deceased left a will, this must be submitted to the authority without delay even if it appears to be invalid.

<sup>2</sup> The public official by whom the will was recorded or with whom it was deposited or any other person who had custody of the will or found it among the personal effects of the deceased is personally responsible on learning of the testator's death for ensuring that the will is submitted to the authority.

<sup>3</sup> Once the will has been submitted, the authority must, where feasible after hearing all interested parties, either release the estate to the statutory heirs on a provisional basis or appoint estate administrators.

### Art. 557

II. Reading the will

<sup>1</sup> The testator's will must be opened and read out by the competent authority within one month of its submission.

<sup>2</sup> All heirs known to the authority are summoned to attend the reading.

<sup>3</sup> If the testator left more than one will, all are to be submitted to the authority and opened and read out by it.

<sup>469</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

**Art. 558**

III. Notification  
of interested  
parties

<sup>1</sup> At the estate's expense, all interested parties receive a copy of the provisions of the will as relate to them.

<sup>2</sup> Legatees of unknown whereabouts are informed by appropriate public notice.

**Art. 559**

IV. Release of  
the estate

<sup>1</sup> One month after notification of the interested parties, at the request of the named heirs the probate authority issues such persons with a certificate confirming them as heirs, subject to action of declaration of invalidity and for recovery of inheritance, providing their entitlement has not expressly been challenged by the statutory heirs or the legatees of an earlier will.

<sup>2</sup> At the same time the estate administrator will be instructed, where applicable, to release the estate into their possession.

**Chapter Two: Vesting of the Estate****Art. 560**

A. Vesting  
I. Heirs

<sup>1</sup> On the death of the deceased, the estate in its entirety vests by operation of law in the heirs.

<sup>2</sup> Subject to the statutory exceptions, the deceased's claims, rights of ownership, limited rights in rem and rights of possession automatically pass to the heirs and the debts of the deceased become the personal debts of the heirs.

<sup>3</sup> Vesting in the named heirs takes effect retroactively from the date on which succession commenced and the statutory heirs must relinquish the estate to them according to the rules governing possession.

**Art. 561<sup>470</sup>**

II. ...

**Art. 562**

III. Legatees  
1. Vesting

<sup>1</sup> The legatees have a personal claim against the obligors of their legacies or, where no-one is specifically named as such, against the legal or named heirs.

<sup>2</sup> Unless otherwise provided by testamentary disposition, the claim becomes due once the obligor has accepted the inheritance or is no longer able to disclaim it.

<sup>470</sup> Repealed by No I 2 of the FA of 5 Oct. 1984, with effect from 1 Jan. 1988 (AS 1986 122 153 Art. 1; BB1 1979 II 1191).

<sup>3</sup> If the heirs fail to fulfil their obligation, they may be sued for release of the bequeathed property or, where the legacy pertains to performance of some action, for damages.

### Art. 563

2. Object <sup>1</sup> Where the bequest to the legatee is a usufruct or annuity or other recurring benefit, unless otherwise stipulated, his or her claim is determined according to the provisions of property law and the Code of Obligations.

<sup>2</sup> If the legacy is a life assurance claim maturing on the death of the testator, the legatee is entitled to assert that claim directly.

### Art. 564

3. Relationship between creditors and legatees <sup>1</sup> The claims of the testator's creditors precede those of legatees.

<sup>2</sup> The claims of the heir's creditors rank equally with those of the testator's creditors, provided the heir acquired the inheritance without reservation.

### Art. 565

4. Abatement <sup>1</sup> If, after the legacies have been distributed, the heirs pay debts of the estate that were previously unknown to them, they are entitled to reimbursement from the legatees of an amount corresponding to the proportionate abatement of such legacies that the heirs could have claimed.

<sup>2</sup> However, the legatees may be held liable only in the amount by which they are enriched at the time such reimbursement is demanded.

### Art. 566

B. Disclaimer  
I. Declaration  
1. Right to renounce <sup>1</sup> The legal and named heirs are entitled to disclaim the inheritance passing to them.

<sup>2</sup> There is a presumption of a disclaimer if at the time of his or her death the deceased had been officially declared insolvent or was manifestly insolvent.

### Art. 567

2. Time limit  
a. In general <sup>1</sup> The time limit for a disclaimer is three months.

<sup>2</sup> For statutory heirs, this limit begins on the date on which they learned of the death, unless they can show that they did not learn of their succession rights until later, and for named heirs it begins on the date on which they received official notification of the testator's disposition.

**Art. 568**

b. In the case of  
an inventory

If an inventory has been drawn up as a precautionary measure, the disclaimer time limit for all heirs begins on the date on which the authority notified them that the inventory was complete.

**Art. 569**

3. Passing of  
right to disclaim

<sup>1</sup> If an heir dies before disclaiming or accepting an inheritance, the right to disclaim passes to his or her heirs.

<sup>2</sup> For such heirs, the disclaimer time limit begins on the date on which they learned that the inheritance passed to the deceased heir and ends no sooner than the date on which the time limit for disclaiming the inheritance from the deceased heir expires.

<sup>3</sup> Where such heirs disclaim the inheritance and it passes to other heirs who previously had no succession rights, the disclaimer time limit for the latter begins on the date on which they learned of the disclaimer.

**Art. 570**

4. Form

<sup>1</sup> An heir must declare his or her disclaimer orally or in writing to the competent authority.

<sup>2</sup> It must be unconditional and without reservation.

<sup>3</sup> The authority keeps an official record of disclaimers.

**Art. 571**

II. Forfeiture of  
right to disclaim

<sup>1</sup> If the heir fails to declare that he or she disclaims the inheritance within the relevant time limit, he or she acquires it without reservation.

<sup>2</sup> Where an heir has interfered in the affairs of the estate before expiry of the disclaimer time limit or has acted in a manner not conducive to administering the estate or maintaining the deceased's business activities, or where he or she has appropriated or concealed objects belonging to the estate, he or she is no longer entitled to disclaim the inheritance.

**Art. 572**

III. Disclaimer  
by one co-heir

<sup>1</sup> Where the deceased has not made a testamentary disposition and one of two or more heirs disclaims the inheritance, his or her share of the estate passes to the other heirs as if he or she had predeceased.

<sup>2</sup> Where the deceased has made testamentary disposition, any share of the estate disclaimed by a named heir passes to the testator's nearest statutory heirs, unless other intentions on the part of the testator are evident from the disposition.

**Art. 573**

IV. Disclaimer  
by all the nearest  
heirs

<sup>1</sup> Where the inheritance is disclaimed by all the nearest heirs, the estate is liquidated by the bankruptcy office.

1. In general

<sup>2</sup> If liquidation produces a surplus after payment of debts, this passes to those entitled to inherit as if they had not disclaimed it.

**Art. 574**

2. Entitlement of  
surviving spouse

If the deceased's issue have disclaimed the inheritance, the authority notifies the disclaimer to the surviving spouse, who is entitled to declare acceptance within one month.

**Art. 575**

3. Disclaimer in  
favour of  
subsequent heirs

<sup>1</sup> When disclaiming the inheritance, the heirs may request that it be offered to their subsequent heirs before the estate is liquidated.

<sup>2</sup> In this event, the authority informs the subsequent heirs that the preceding heirs have disclaimed, and if the former fail to declare their acceptance of the inheritance within one month, they are likewise deemed to have disclaimed it.

**Art. 576**

V. Extension of  
time limit

Where there is good cause, the competent authority may grant the legal and named heirs an extension of the time limit or set a new one.

**Art. 577**

VI. Disclaimer  
of a legacy

Where a legatee disclaims a legacy, it becomes void in favour of the obligor, unless other intentions on the part of the testator are evident from his or her disposition.

**Art. 578**

VII. Security for  
the heir's  
creditors

<sup>1</sup> Where an overindebted heir has disclaimed an inheritance in order to withhold it from his or her creditors, the latter or the bankruptcy administrators may challenge the disclaimer within six months unless their claims are secured.

<sup>2</sup> If their challenge is upheld, the inheritance is placed in official liquidation.

<sup>3</sup> Any surplus serves first to satisfy the challenging creditors and any balance remaining after redemption of the other debts passes to the heirs in whose favour the disclaimer was made.



**Art. 579**

VIII. Liability in  
the event of  
disclaimer

<sup>1</sup> Where the deceased was insolvent and his or her heirs disclaim the inheritance, they remain liable to his or her creditors to the extent that in the five years prior to his or her death they received property or assets from him or her which on division of the estate would have been subject to hotchpot.

<sup>2</sup> The endowment of newly-weds according to local custom and the costs of raising and educating children are not affected by such liability.

<sup>3</sup> Heirs acting in good faith are liable only to the extent they are still enriched.

**Chapter Three: Public Inventory****Art. 580**

A. Requirements

<sup>1</sup> Any heir entitled to disclaim his or her inheritance has the right to request a public inventory.

<sup>2</sup> The request must be made to the competent authority within one month in the same form as the disclaimer.

<sup>3</sup> A request made by one heir is also valid for the others.

**Art. 581**

B. Procedure  
I. Inventory

<sup>1</sup> The public inventory is drawn up by the competent authority in accordance with the provisions of cantonal law and consists of a list of all the assets and debts of the estate, together with an appraisal of the value of each item in the inventory.

<sup>2</sup> Any person able to provide information on the financial circumstances of the deceased is personally obliged to give the authority all the information it requires.

<sup>3</sup> In particular, the heirs must inform the authority of any debts of the deceased that are known to them.

**Art. 582**

II. Formal call to  
account

<sup>1</sup> In the course of drawing up the inventory, the authority shall make a formal call to account whereby appropriate public notices are issued calling on all creditors and debtors of the deceased, including creditors under a surety, to come forward and register their claims and debts within a specified time limit.

<sup>2</sup> Such notices must alert the creditors to the consequences of any failure to register.

<sup>3</sup> The time limit for registering must not be earlier than one month from the date of the first public notice.

**Art. 583**

III. Inclusion *ex officio*

<sup>1</sup> Claims and debts evident from the public registers or from the papers of the deceased are included *ex officio*.

<sup>2</sup> The debtors and creditors must be notified of any such inclusion.

**Art. 584**

IV. Result

<sup>1</sup> On expiry of the published time limit, the inventory is closed and made available for perusal by all interested parties for at least one month.

<sup>2</sup> The costs are borne by the estate and, where this is insufficient, by the heirs who requested the inventory.

**Art. 585**

C. Situation of the heirs during the inventory

I. Administration

<sup>1</sup> While the inventory is being drawn up, only the necessary administrative actions may be taken.

<sup>2</sup> Where the authority authorises an heir to continue the deceased's business activities, the co-heirs may request that security be furnished.

**Art. 586**

II. Debt enforcement, litigation, time limit

<sup>1</sup> While the inventory is being drawn up, no action may be taken to enforce the debts of the deceased.

<sup>2</sup> Limitation periods are suspended.

<sup>3</sup> Except in urgent matters, court proceedings may neither be commenced nor continued.

**Art. 587**

D. Effect  
I. Time limit for declaration of intention

<sup>1</sup> Once the inventory is closed, all the heirs are requested to declare their intentions with regard to acquiring the inheritance due to them.

<sup>2</sup> Where justified in the circumstances, the competent authority may set a further time limit for obtaining appraisals, settling disputed claims and the like.

**Art. 588**

II. Declaration of intention

<sup>1</sup> During the set time limit, an heir may disclaim his or her inheritance or request official liquidation or accept the inheritance either subject to public inventory or without reservation.

<sup>2</sup> Where an heir makes no declaration, he or she is deemed to have accepted the inheritance subject to public inventory.

### Art. 589

III. Effects of acceptance subject to public inventory  
1. Liability as per inventory

<sup>1</sup> Where an heir accepts the inheritance subject to public inventory, the debts of the deceased listed in the inventory and the assets pass to him or her.

<sup>2</sup> The acquisition of the inheritance with all attendant rights and obligations takes effect retroactively from the date on which the succession commenced.

<sup>3</sup> The heir is liable for debts listed in the inventory both with the inheritance and with his or her own assets.

### Art. 590

2. Liability beyond the inventory

<sup>1</sup> The heirs are not liable either personally or with the inheritance towards creditors of the estate whose claims were not included in the inventory because the creditors failed to register them in time.

<sup>2</sup> Where such failure to register claims in the inventory was through no fault of the creditor or his or her claims were not included in the inventory despite having been registered, the heir is liable to the extent he or she is enriched by the inheritance.

<sup>3</sup> In all cases, creditors may assert claims to the extent these are secured by a lien on the estate assets.

### Art. 591

E. Liability for debts subject to a surety

Any debts under a surety given by the deceased are listed separately in the inventory and may be asserted against an heir, even where he or she accepts the inheritance, only in the amount that would be allocated to the surety debt if all debts of the estate were to be redeemed under the rules governing bankruptcy.

### Art. 592

F. Acquisition by a state authority

Where an estate passes to a state authority, a formal call to account is made *ex officio* and the state authority is liable for the debts of the estate only in the amount of the assets it has inherited from the estate.

## Chapter Four: Official Liquidation

### Art. 593

A. Requirements  
I. At the request of an heir

<sup>1</sup> Rather than disclaim the inheritance or accept it subject to public inventory, each heir is entitled to request official liquidation.

<sup>2</sup> However, such request may not be granted if at least one co-heir accepts the inheritance.

<sup>3</sup> In the event of official liquidation, the heirs are not liable for the debts of the estate.

#### **Art. 594**

II. At the request of the deceased's creditors

<sup>1</sup> Where the deceased's creditors have good cause to fear that their claims will not be met and such claims are not satisfied or secured at their request, within three months of the death of the deceased or the reading of the will they may demand the official liquidation of the estate.

<sup>2</sup> Subject to the same conditions, legatees may request provisional measures by way of security.

#### **Art. 595**

B. Procedure  
I. Administration

<sup>1</sup> The official liquidation is carried out by the competent authority or by one or more estate administrators acting at the authority's behest.

<sup>2</sup> It begins with the taking of an inventory and the attendant formal call to account.

<sup>3</sup> The estate administrator is under the authority's supervision and the heirs may appeal to the authority against any measures taken or planned by the administrator.

#### **Art. 596**

II. Ordinary liquidation

<sup>1</sup> For the purpose of liquidation, any business activities of the deceased still in operation are brought to a close, his or her obligations are performed, his or her claims are called in, his or her legacies are distributed where possible, his or her rights and duties are determined at law, where necessary, and his or her assets are converted into cash.

<sup>2</sup> Land formerly belonging to the deceased is sold at public auction; it may be disposed of by private sale only with the consent of all the heirs.

<sup>3</sup> The heirs are entitled even during the liquidation process to request that some or all of the objects and monies that are not required for the liquidation be released into their possession.

#### **Art. 597**

III. Liquidation by the bankruptcy office

If the estate is overindebted, its liquidation is carried out by the bankruptcy office in accordance with the provisions governing bankruptcy.

## Chapter Five: Action for Recovery of Inheritance

### Art. 598

- A. Requirements <sup>1</sup> A person who believes that, as a legal or named heir, he or she has a better claim than the current possessor to an estate or a part thereof may assert his or her claim by bringing an action for recovery of inheritance.
- <sup>2</sup> ...<sup>471</sup>

### Art. 599

- B. Effect <sup>1</sup> If the claim is upheld, the possessor must relinquish the estate or the part thereof to the claimant in accordance with the rules governing possession.
- <sup>2</sup> The defendant cannot invoke adverse possession in respect of property belonging to the estate.

### Art. 600

- C. Time limit <sup>1</sup> The right to bring an action for recovery of inheritance against a defendant acting in good faith prescribes one year after the date on which the claimant learned that the property was possessed by the defendant and that he or she has a better claim to it, but in all cases ten years after the death of the deceased or the date on which the will was read.
- <sup>2</sup> The prescriptive period for the right to bring an action against a defendant acting in bad faith is always 30 years.

### Art. 601

- D. Action by a legatee The right of a legatee to bring an action prescribes ten years after notification of the testamentary disposition or from the subsequent date on which the legacy became due.

## Title Seventeen: Division of the Estate

### Chapter One: Community of Heirs prior to Division

#### Art. 602

- A. Effect of succession  
I. Community of heirs <sup>1</sup> Where several heirs inherit the estate, on succession and until such time as it is divided they form a community in respect of all rights and obligations of the estate.

<sup>471</sup> Repealed by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS 2010 1739; BBl 2006 7221).

<sup>2</sup> They become joint owners of the property belonging to the estate and have joint power of disposal over the rights of the estate, subject to contractual or statutory powers of representation and administration.

<sup>3</sup> At the request of one co-heir, the competent authority may appoint a representative of the community of heirs until the estate is divided.

### **Art. 603**

II. Liability of the heirs

<sup>1</sup> The heirs are jointly and severally liable for the debts of the deceased.

<sup>2</sup> The appropriate compensation due to children or grandchildren for contributions made to the household they shared with the deceased must be added to the debts of the estate unless this would render the estate overindebted.<sup>472</sup>

### **Art. 604**

B. Right to division

<sup>1</sup> Any heir may at any time request that the estate be divided unless he or she is under a contractual or statutory obligation to remain a member of the community of heirs.

<sup>2</sup> On application by an heir, the court may order a temporary deferral of the division of the estate or specific parts thereof where immediate division would substantially impair their value.

<sup>3</sup> Where one heir is insolvent, his or her co-heirs may apply for provisional measures to secure their own claims immediately upon succession.

### **Art. 605**

C. Deferral of division

<sup>1</sup> If on succession the rights of an unborn child need to be taken into consideration, the division of the estate must be deferred until the child is born.

<sup>2</sup> In the interim, the child's mother is entitled to enjoy the benefits of the joint estate to the extent required for her maintenance.

### **Art. 606**

D. Claims of household members

Heirs who were members of the household of and maintained by the deceased at the time of his or her death may demand that they be maintained for a further month at the estate's expense.

<sup>472</sup> Inserted by No I 1 of the FA of 6 Oct. 1972, in force since 15 Feb. 1973 (AS 1973 93; BBl 1970 I 805, 1971 I 737).

## Chapter Two: Method of Division

### Art. 607

#### A. In general

<sup>1</sup> Statutory heirs must divide the estate among themselves and with the named heirs according to the same principles.

<sup>2</sup> Except where provided otherwise, they are free to decide on the method of division.

<sup>3</sup> Co-heirs in possession of estate property or in debt to the deceased must provide precise information regarding such circumstances prior to the division.

### Art. 608

#### B. Instructions concerning the division

##### I. Testamentary disposition

<sup>1</sup> The testator is entitled by means of testamentary disposition to give his or her heirs instructions concerning the division and the formation of portions.

<sup>2</sup> Such instructions are binding on the heirs, subject to measures to balance out the portions in the event of an inequality not intended by the testator.

<sup>3</sup> Unless other intentions on the part of the testator are evident from his or her disposition, any bequest of a given part of the estate to one particular heir is deemed to be merely an instruction concerning the division rather than a specific legacy.

### Art. 609

#### II. Assistance from the authorities

<sup>1</sup> At the request of a creditor who has acquired or distrained an inheritance that has passed to an heir or who holds unpaid debt certificates against him or her, the authorities must assist in the division in place of that heir.

<sup>2</sup> Cantonal law may provide for official intervention in the division process in other cases.

### Art. 610

#### C. Performing the division

##### I. Equal rights of heirs

<sup>1</sup> Except where other provisions apply, all heirs have an equal right to the estate property.

<sup>2</sup> They must disclose to each other all circumstances concerning their relationship with the deceased insofar as these pertain to the just and equitable division of the estate.

<sup>3</sup> Each heir may request that the debts of the deceased be redeemed or secured prior to division of the estate.

**Art. 611**

II. Formation of lots

- 1 The heirs form as many portions or lots as there are heirs or stirpes.
- 2 If they are unable to reach agreement, at the request of one heir the competent authority must form the lots with due regard to local custom and the personal circumstances and wishes of the majority of the co-heirs.
- 3 The lots are distributed among the heirs either as agreed or by the drawing of lots.

**Art. 612**

III. Allocation and sale of specific objects

- 1 Where the value of an object belonging to the estate would be substantially diminished if such object were divided, it is allocated in its entirety to one of the heirs.
- 2 Where the heirs are unable to agree on the division or allocation of an object, it must be sold and the proceeds divided.
- 3 At the request of an heir, such sale must be carried out at auction and, in the absence of agreement among the heirs, the competent authority decides whether such auction is to be public or only among the heirs.

**Art. 612a**<sup>473</sup>

IV. Allocation of the home and household effects to the surviving spouse

- 1 Where the house or apartment in which the spouses lived or the household effects form part of the estate, the surviving spouse may request that such property be allocated to him or her against his or her portion.
- 2 Where justified in the circumstances, at the request of the surviving spouse or the other statutory heirs of the deceased, a usufruct or right of residence may be granted rather than ownership of the home.
- 3 The surviving spouse cannot claim such rights in respect of premises in which the deceased practised a profession or ran a business and which are required by one of his or her issue in order to continue the profession or business, subject to the provisions of agricultural law of succession.
- 4 The same provisions apply *mutatis mutandis* to registered partners.<sup>474</sup>

<sup>473</sup> Inserted by No 12 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBI **1979** II 1191).

<sup>474</sup> Inserted by Annex No. 8 of the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (AS **2005** 5685; BBI **2003** 1288).



**Art. 613**

D. Special items  
I. Items that  
belong together,  
family docu-  
ments

<sup>1</sup> Items which by their nature belong together must not be separated if one of the heirs objects to such separation.

<sup>2</sup> Family documents and items of special sentimental value to the family must not be sold if any of the heirs objects.

<sup>3</sup> If the heirs cannot reach agreement, the competent authority decides whether to sell such items or to allocate them, against the recipient's portion or otherwise, giving due regard to local custom and, in the absence of such custom, to the personal circumstances of the heirs.

**Art. 613a**<sup>475</sup>

I<sup>bis</sup> Agricultural  
inventory

Where the tenant of an agricultural enterprise dies and one of his or her heirs continues the lease on his or her own, on request he or she may have the entire inventory (livestock, machinery, supplies, etc.) allocated to him or her and charged to his or her portion at its utility value.

**Art. 614**

II. Claims of the  
deceased against  
his or her heirs

Claims of the deceased against an heir are charged to the latter's portion.

**Art. 615**

III. Pledged  
estate property

If as a result of the division an heir receives estate property that is pledged to secure the debts of the deceased, the debt to the pledgee is likewise transferred to him or her.

**Art. 616**<sup>476</sup>**Art. 617**<sup>477</sup>

IV. Land  
I. Method of  
allocation  
a. Imputed value

Land is charged to the heirs' portions at its market value as at the time of the division.

<sup>475</sup> Inserted by Art. 92 No 1 of the FA of 4 Oct. 1991 on Rural Land Rights, in force since 1 Jan. 1994 (AS 1993 1410; BBl 1988 III 953).

<sup>476</sup> Repealed by Art. 92 No 1 of the FA of 4 Oct 1991 on Rural Land Rights, with effect from 1 Jan. 1994 (AS 1993 1410; BBl 1988 III 953).

<sup>477</sup> Amended by Art. 92 No 1 of the FA of 4 Oct. 1991 on Rural Land Rights, in force since 1 Jan. 1994 (AS 1993 1410; BBl 1988 III 953).

**Art. 618**

b. Valuation procedure

<sup>1</sup> Where the heirs are unable to agree on the market value, it is estimated by an officially appointed expert.<sup>478</sup>

<sup>2</sup> ...<sup>479</sup>

**Art. 619**<sup>480</sup>

V. Agricultural businesses and land

The method of including and allocating agricultural enterprises and agricultural land is governed by the Federal Act of 4 October 1991<sup>481</sup> on Rural Land Rights.

**Art. 620–625**<sup>482</sup>**Chapter Three: Hotchpot****Art. 626**

A. Hotchpot duty of the heirs

<sup>1</sup> The statutory heirs are under a mutual obligation to place into hotchpot any property received from the deceased during his or her lifetime as advancements against their share of the estate.

<sup>2</sup> Unless the deceased expressly instructed otherwise, anything gifted or granted to his or her issue by way of dowry, endowment or assignment of assets, debt remission and the like is subject to hotchpot.

**Art. 627**

B. Hotchpot if heirs cease to be heirs

<sup>1</sup> If a person ceases to be an heir before or after succession, his or her duty of hotchpot passes to the heirs that replace him or her.

<sup>2</sup> The issue of an heir have a duty of hotchpot in respect of advancements made in his or her favour even if those advancements have not devolved on them.

<sup>478</sup> Amended by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, in force since 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).

<sup>479</sup> Repealed by No I 1 of the FA of 6 Oct. 1972, with effect from 15 Feb. 1994 (AS **1973** 93; BBl **1970** I 805, **1971** I 737).

<sup>480</sup> Amended by Art. 92 No 1 of the FA of 4 Oct. 1991 on Rural Land Rights, in force since 1 Jan. 1994 (AS **1993** 1410; BBl **1988** III 953).

<sup>481</sup> SR **211.412.11**

<sup>482</sup> Repealed by Art. 92 No 1 of the FA of 4 Oct 1991 on Rural Land Rights with effect from 1 Jan. 1994 (AS **1993** 1410; BBl **1988** III 953).

**Art. 628**

C. Calculation method  
I. In kind or by imputation of value

1 When placing property in hotchpot, the heirs may at their discretion do so either in kind or by imputing its value, even if the advancements made in their favour exceed the value of their share of the estate.

2 The above provisions are subject to any contrary instructions issued by the testator and to the co-heirs' right to abatement of the advancements.

**Art. 629**

II. Correlation with share of the estate

1 Where advancements to an heir exceed the value of his or her share of the estate, subject to claims in abatement, the surplus is exempt from hotchpot if it may be shown that the deceased intended to favour said heir by such advancements.

2 Exemption from hotchpot is presumed in the case of endowments in the usual order of magnitude made to the issue on their marriage.

**Art. 630**

III. Hotchpot value

1 Hotchpot is calculated according to the value of the advancements on succession or, where the advanced property has previously been sold, the sale proceeds obtained.

2 Any expenditure on and damage to the property and the natural produce derived therefrom must be allowed for among the heirs according to the rules governing possession.

**Art. 631**

D. Education costs

1 Unless it is shown that the deceased intended otherwise, sums expended by him or her on the upbringing and education of individual children are subject to hotchpot only insofar as they exceed the normal amounts.

2 Children still in education or who suffer from disabilities must be granted appropriate advance payments on division of the estate.<sup>483</sup>

**Art. 632**

E. Occasional gifts

Customary occasional gifts are not subject to hotchpot.

**Art. 633**<sup>484</sup>

<sup>483</sup> Amended by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

<sup>484</sup> Repealed by No I 1 of the FA of 6 Oct. 1972, with effect from 15 Feb. 1994 (AS **1973** 93; BBl **1970** I 805, **1971** I 737).

## Chapter Four: Completion and Effect of Division

### Art. 634

A. Agreement  
I. Contract of  
division

<sup>1</sup> The division of the estate becomes binding on the heirs once the lots have been formed and received or on conclusion of the contract of division.

<sup>2</sup> In order to be valid, the contract of division must be done in writing.

### Art. 635

II. Contracts  
regarding shares  
of the estate

<sup>1</sup> In order to be valid, contracts between heirs regarding assignment of shares of the estate must be done in writing.<sup>485</sup>

<sup>2</sup> If such contracts are concluded by an heir with third parties, they do not give the latter any right to participate in the division of the estate, but merely confer a claim on the share allocated to that heir as a result of the division.

### Art. 636

III. Contracts  
prior to succes-  
sion

<sup>1</sup> Contracts concluded without the involvement and authorisation of the testator between one heir and another or between an heir and a third party regarding an inheritance that has not yet devolved on the heir are not binding.

<sup>2</sup> Any performance rendered under such contracts may be reclaimed.

### Art. 637

B. Liability  
among co-heirs  
I. Warranty

<sup>1</sup> On completion of the division, the co-heirs are mutually liable for the estate property as if they were purchasers and vendors.

<sup>2</sup> They must mutually warrant the existence of claims allocated to them in the division and, except in the case of securities with a market price, are mutually liable as simple guarantors for the debtor's solvency in the amount at which such claims were brought into account.

<sup>3</sup> Claims under such warranty become statute-barred one year after the division or the subsequent date on which the claims fell due.

### Art. 638

II. Challenging  
the division

A contract of division may be challenged in accordance with the provisions governing challenge of contract in general.

<sup>485</sup> Amended by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS 1986 122 153 Art. 1; BBl 1979 II 1191).

C. Liability toward third parties  
I. Joint and several liability

### Art. 639

<sup>1</sup> Even after the division of the estate, the heirs remain jointly and severally liable with their entire property for the debts of the testator to his or her creditors, providing the latter have not expressly or tacitly agreed to a division or transfer of such debts.

<sup>2</sup> The joint and several liability of the co-heirs prescribes five years after the division or the subsequent date on which the debt claim fell due.

II. Recourse against co-heirs

### Art. 640

<sup>1</sup> If an heir has paid a debt owed by the deceased that was not allocated to him or her in the division, or if he or she has paid more of a debt than he or she has assumed, he or she has right of recourse against the co-heirs.

<sup>2</sup> Recourse is taken first against the person who assumed such debt in the division.

<sup>3</sup> In all other respects, the heirs must bear the debts in proportion to their shares in the estate, unless otherwise agreed.

## Part Four: Property Law

### Division One: Ownership

#### Title Eighteen: General Provisions

A. Nature of ownership  
I. In general<sup>486</sup>

### Art. 641

<sup>1</sup> The owner of an object is free to dispose of it as he or she sees fit within the limits of the law.

<sup>2</sup> He or she has the right to reclaim it from anyone withholding it from him or her and to protect it against any unwarranted interference.

II. Animals

### Art. 641<sup>a</sup><sup>487</sup>

<sup>1</sup> Animals are not objects.

<sup>2</sup> Where no special provisions exist for animals, they are subject to the provisions governing objects.

<sup>486</sup> Amended by No I of the FA of 4 Oct. 2002 (Article of Basic Principles: Animals), in force since 1 April 2003 (AS 2003 463; BBl 2002 4164 5806).

<sup>487</sup> Inserted by No I of the FA of 4 Oct. 2002 (Article of Basic Principles: Animals), in force since 1 April 2003 (AS 2003 463; BBl 2002 4164 5806).

B. Scope of ownership  
I. Constituent parts

### Art. 642

- <sup>1</sup> The owner of an object also has ownership of all its constituent parts.
- <sup>2</sup> A constituent part is anything which, according to local custom, is held to be an essential part of an object and which cannot be detached without destroying, damaging or altering it.

II. Natural fruits

### Art. 643

- <sup>1</sup> The owner of an object also has ownership of its natural fruits.
- <sup>2</sup> Natural fruits are the periodic produce and revenues customarily derived from an object used according to its purpose.
- <sup>3</sup> Prior to separation, the natural fruits are an integral part of the object.

III. Accessories  
1. Definition

### Art. 644

- <sup>1</sup> Any disposition affecting an object also applies to its accessories, unless an exception is made.
- <sup>2</sup> Accessories are those chattels which, according to local custom or the clear will of the main object's owner, permanently facilitate the management, use or preservation of the main object and are auxiliary thereto by virtue of having been joined to it, adapted to it or otherwise connected with it.
- <sup>3</sup> If an object is an accessory, it remains so regardless of temporary separation from the main object.

2. Exclusions

### Art. 645

Chattels do not qualify as accessories if they are intended for temporary use or consumption by the possessor of the main object, are not intrinsically related to it or are connected with it only for storage, sale or hire purposes.

C. Collective ownership  
I. Co-ownership  
1. Relationship among co-owners

### Art. 646

- <sup>1</sup> Co-ownership exists where several persons own a share in an object which is physically undivided.
- <sup>2</sup> Unless otherwise stipulated, they are co-owners in equal measure.
- <sup>3</sup> Each co-owner has the rights and obligations of ownership in respect of his or her share in the object, and said share may be alienated and pledged by him or her, or distrained by his or her creditors.

2. Use and administration rules

**Art. 647<sup>488</sup>**

<sup>1</sup> The co-owners may agree rules on use and administration that deviate from the statutory provisions and provide therein that the rules may be amended with the consent of the majority of all co-owners.<sup>489</sup>

<sup>1bis</sup> Any amendment to the provisions of the use and administration rules on the allocation of exclusive rights of use also requires the consent of the co-owners who are directly affected.<sup>490</sup>

<sup>2</sup> Such rules cannot annul or restrict the rights of each co-owner:

1. to request such measures as are necessary to preserve the object's value and serviceability and, where required, to have these ordered by a court;
2. to take, on his or her own initiative and at the expense of all co-owners, such measures as are urgently needed to safeguard the object against imminent or incremental damage.

3. Ordinary administration

**Art. 647<sup>a</sup>491**

<sup>1</sup> Each co-owner may attend to ordinary administration and in particular carry out repairs, sowing and harvesting, short-term custody and supervision, may conclude contracts for such purposes and may exercise the powers derived from such contracts and from rental, lease, work and service agreements, including the payment and acceptance of monies on behalf of all the co-owners.

<sup>2</sup> With the consent of the majority of the co-owners, the authority to carry out administration may be submitted to a different regime, subject to the statutory provisions governing necessary and urgent measures.

4. Major administrative acts

**Art. 647<sup>b</sup>492**

<sup>1</sup> By the consent of a majority of the co-owners together representing a majority share in the object, major administrative acts may be carried out, notably including changes in methods of cultivation or use, conclusion and termination of rental and lease agreements, participation

<sup>488</sup> Amended by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

<sup>489</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>490</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>491</sup> Inserted by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

<sup>492</sup> Inserted by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

in land improvements and the appointment of an administrator whose authority extends beyond ordinary administrative acts.

<sup>2</sup> The provisions governing necessary construction work are reserved.

**Art. 647<sup>c</sup>**<sup>493</sup>

5. Construction work  
a. Necessary work

Maintenance, reconstruction and renovation work necessary to preserve the object's value and serviceability may be carried out with the consent of the majority of co-owners where such work does not fall under the authority of each individual co-owner to take ordinary administrative steps.

**Art. 647<sup>d</sup>**<sup>494</sup>

b. Useful work

<sup>1</sup> Renovations and refurbishments aimed at enhancing the value or improving the object's profitability or serviceability require the approval of a majority of the co-owners together representing a majority share in the object.

<sup>2</sup> Alterations which permanently hinder or render unprofitable a co-owner's use or exploitation of the object for its existing purpose may not be carried out without the consent of that co-owner.

<sup>3</sup> Where an alteration would require a co-owner to bear unreasonable costs, in particular because they are disproportionate to the value of his or her share, the alteration may be carried out without his or her consent only if the other co-owners assume such part of his or her share of the costs as exceeds that which he or she may reasonably be expected to meet.

**Art. 647<sup>e</sup>**<sup>495</sup>

c. Works to improve appearance or convenience

<sup>1</sup> Building works serving merely to embellish the object, improve its appearance or make its use more comfortable or convenient may only be carried out with the consent of all the co-owners.

<sup>2</sup> If such works are commissioned with the consent of the majority of the co-owners who also represent a majority share in the object, they may be carried out even against the wishes of a dissenting co-owner providing they do not permanently impair the latter's right of use and enjoyment and the other co-owners compensate him or her for the merely temporary impairment and assume his or her share of the costs.

<sup>493</sup> Inserted by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993; BBl 1962 II 1461).

<sup>494</sup> Inserted by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993; BBl 1962 II 1461).

<sup>495</sup> Inserted by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993 ; BBl 1962 II 1461).



**Art. 648**<sup>496</sup>

6. Power of disposal over the object

1 Each co-owner is entitled to represent, use and exploit the object insofar as is compatible with the rights of the other co-owners.

2 The alienation or encumbrance of the object and the modification of its designated purpose require the consent of all co-owners, unless they have unanimously agreed some other arrangement.

3 Where mortgage rights or real burdens apply to co-ownership shares, the co-owners are not permitted to further encumber the object itself with such charges.

**Art. 649**<sup>497</sup>

7. Costs and expenses

1 Except where otherwise provided, the administrative costs, taxes and other expenses arising from co-ownership or in relation to the object in co-ownership are borne by the co-owners in proportion to their shares.

2 If a co-owner has borne more than his or her fair share of such costs, he or she is entitled to compensation from the others to an equivalent extent.

**Art. 649a**<sup>498</sup>

8. Binding nature of rules and noting in the land register<sup>499</sup>

The use and administration rules agreed by the co-owners, their administrative decisions and all relevant court judgments and orders are also binding on a co-owner's legal successor and on any person acquiring a right in rem to a co-ownership share.

2 They may be noted next to co-ownership shares of immovable property in the land register.<sup>500</sup>

**Art. 649b**<sup>501</sup>

9. Exclusion from collective ownership  
a. Co-owners

1 A co-owner may be excluded from the community of co-owners by court order if, as a result of his or her conduct or that of persons to whom he or she granted use of the object or for whom he or she is

<sup>496</sup> Amended by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

<sup>497</sup> Amended by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

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<sup>499</sup> Amended by No I of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

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<sup>501</sup> Inserted by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

responsible, his or her duties towards the other co-owners individually or collectively are so seriously violated that continuation of the community of co-owners becomes unreasonable.

<sup>2</sup> Where the community comprises only two co-owners, each has the right to sue the other; in other cases, unless otherwise agreed, legal action against one co-owner must be authorised by a majority of all the co-owners excluding the person to be sued.

<sup>3</sup> If the court rules in favour of excluding the defendant, it shall order him or her to alienate his or her share and, should he or she fail to do so within the allowed time limit, shall order it to be sold at public auction in accordance with the provisions governing the forced sale of land to the exclusion of the provisions governing dissolution of co-ownership.

**Art. 649<sup>c502</sup>**

b. Further entitled persons

The provisions governing exclusion of co-owners apply *mutatis mutandis* to usufructuaries and to owners of other rights in rem or personal rights of use entered under priority notice in the land register in respect of co-ownership shares.

**Art. 650<sup>503</sup>**

10. Dissolution  
a. Right to request division

<sup>1</sup> Every co-owner has the right to request the dissolution of the co-ownership unless this is excluded by an agreement, by division of the object into condominium units or by the dedication of the object to a permanent purpose.

<sup>2</sup> Dissolution may be excluded for a maximum of 50 years by means of an agreement which, where the object is land, is valid only if done as a public deed and which may be entered under priority notice in the land register.<sup>504</sup>

<sup>3</sup> Dissolution may not be requested at an inopportune time.

**Art. 651**

b. Form of partition

<sup>1</sup> Dissolution is effected by means of physical division, by private sale or sale at auction and division of the sale proceeds, or by transfer of the entire object to one or more co-owners who buy out the others.

<sup>502</sup> Inserted by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

<sup>503</sup> Amended by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

<sup>504</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>2</sup> If the co-owners are unable to agree on the method of dissolution, the court will order the physical division of the object or, where this is impossible without substantially diminishing its value, its sale at public auction or private auction among the co-owners.

<sup>3</sup> Physical division giving rise to unequal shares may entail monetary payments to balance out the shares.

#### **Art. 651a**<sup>505</sup>

c. Animals kept as pets

<sup>1</sup> In the event of disputes over ownership of animals kept as pets rather than for investment or commercial purposes, the court will award sole ownership to whichever party offers the better conditions of animal welfare in which to keep the animal.

<sup>2</sup> The court may order the person to whom ownership of the animal is awarded to provide appropriate compensation to the other party; the court determines the amount at its discretion.

<sup>3</sup> The court shall take all necessary provisional measures, in particular in relation to the animal's care in the interim.

#### **Art. 652**

II. Joint ownership  
1. Prerequisites

If several persons bound together into a community by legal provision or contract own an object by virtue of that community, they are joint owners and the rights of each joint owner attach to the whole object.

#### **Art. 653**

2. Effect

<sup>1</sup> The rights and obligations of the joint owners are determined by the rules governing their legal or contractual community.

<sup>2</sup> Unless otherwise provided, the unanimous decision of all the joint owners is required in order to exercise ownership rights and in particular to dispose of the object in any way.

<sup>3</sup> For the duration of the community, the right to divide the object or make dispositions relating to a fraction of it is excluded.

#### **Art. 654**

3. Dissolution

<sup>1</sup> Dissolution occurs when the object is alienated or the community is terminated.

<sup>2</sup> Unless otherwise provided, division of the object is effected according to the provisions governing co-ownership.

<sup>505</sup> Inserted by No I of the FA of 4 Oct. 2002 (Article of Basic Principles: Animals), in force since 1 April 2003 (AS 2003 463; BBl 2002 4164 5806).

III. Joint ownership of agricultural enterprises and land

**Art. 654a**<sup>506</sup>

The dissolution of joint ownership of agricultural enterprises and agricultural land is governed by the Federal Act of 4 October 1991<sup>507</sup> on Rural Land Rights.

**Title Nineteen: Land Ownership**

**Chapter One: Object, Acquisition and Loss of Land Ownership**

A. Subject matter  
I. Immovable property<sup>509</sup>

**Art. 655**<sup>508</sup>

<sup>1</sup> The object of land ownership is all immovable property.

<sup>2</sup> Within the meaning of this Code, immovable property includes:

1. parcels of land and the buildings thereon;
2. distinct and permanent rights recorded in the land register;
3. mines;
4. co-ownership shares in immovable property.

<sup>3</sup> An easement relating to immovable property may be recorded in the land register as an independent and permanent right if it:

1. is not created in favour of a benefited property nor exclusively for a specific person; and
2. is established for at least 30 years or for an unlimited period.<sup>510</sup>

**Art. 655a**<sup>511</sup>

II. Dependent property

<sup>1</sup> A parcel of land may be linked to another parcel of land such that the owner of the main parcel of land is also the owner of the attached parcel of land. The attached parcel shares the same legal destiny as the

<sup>506</sup> Inserted by Art. 92 No 1 of the FA of 4 Oct. 1991 on Rural Land Rights, in force since 1 Jan. 1994 (AS **1993** 1410; BBl **1988** III 953).

<sup>507</sup> SR **211.412.11**

<sup>508</sup> Amended by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

<sup>509</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>510</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>511</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

main parcel and may not be alienated, pledged or encumbered separately.

<sup>2</sup> If the parcels are linked for a permanent purpose, the statutory right of pre-emption of the co-owners and the right to demand dissolution may not be claimed.

### **Art. 656**

B. Acquisition  
I. Registration

<sup>1</sup> The acquisition of land ownership must be recorded in the land register.

<sup>2</sup> In the case of appropriation, inheritance, compulsory purchase, debt enforcement or court judgment, the acquirer becomes the owner even before registration in the land register but obtains the power of disposal over the immovable property only once he or she has been recorded as the owner in the land register.

### **Art. 657**

II. Types of acquisition  
1. Transfer

<sup>1</sup> In order to be binding, a contract to transfer land ownership must be executed as a public deed.

<sup>2</sup> Testamentary disposition and marital contracts require the forms prescribed by the law of succession and marital property law.

### **Art. 658**

2. Appropriation

<sup>1</sup> Immovable property recorded in the land register may be appropriated only if the register establishes that it has no owner.

<sup>2</sup> Appropriation of land not recorded in the land register is subject to the provisions governing ownerless objects.

### **Art. 659**

3. Formation of new land

<sup>1</sup> If new exploitable land is formed from previously ownerless land as a result of alluvion, filling or ground displacement, changes in the course or level of public waters or in some other manner, such land belongs to the canton in which it lies.

<sup>2</sup> The cantons are free to allocate such land to owners of adjoining land.

<sup>3</sup> If a person can show that parts of ground have become detached from his or her property, he or she is entitled to take them back within an appropriate period.

**Art. 660**

4. Ground displacement  
a. In general<sup>512</sup>

<sup>1</sup> Ground displacement from one parcel of land to another does not alter the boundaries of the parcels.

<sup>2</sup> Earth and other objects moving from one parcel to the other in the process are subject to the provisions governing driftage or the joining and mixing of chattels.

**Art. 660a**<sup>513</sup>

b. Constant ground displacement

<sup>1</sup> The general principle whereby ground displacement does not alter land boundaries does not apply to areas designated by the cantons as being in permanent danger of ground displacement.

<sup>2</sup> When designating such areas, due consideration shall be given to the characteristics of the land in question.

<sup>3</sup> Where a parcel of land forms part of such an area, this fact must be notified in an appropriate manner to the interested parties and recorded in the land register.

**Art. 660b**<sup>514</sup>

c. Redrawing of boundaries

<sup>1</sup> If a land boundary is rendered impractical by ground displacement, any affected landowner may request that it be redrawn.

<sup>2</sup> Any loss or gain in value shall be balanced out.

**Art. 661**

5. Adverse possession  
a. Ordinary adverse possession

Where a person has been wrongly recorded in the land register as the owner of immovable property, his or her ownership may no longer be challenged if he or she has been in possession of it in good faith, uninterruptedly and without challenge for ten years.

**Art. 662**

b. Extraordinary adverse possession

<sup>1</sup> Where a person has been in possession of immovable property not recorded in the land register uninterruptedly and without challenge for 30 years as if it were his or her property, he or she has the right to be registered as the owner.

<sup>512</sup> Amended by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), in force since 1 Jan. 1994 (AS **1993** 1404; BBl **1988** III 953).

<sup>513</sup> Inserted by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), in force since 1 Jan. 1994 (AS **1993** 1404; BBl **1988** III 953).

<sup>514</sup> Inserted by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), in force since 1 Jan. 1994 (AS **1993** 1404; BBl **1988** III 953).

<sup>2</sup> The same right applies on the same conditions to a person in possession of immovable property whose owner is not evident from the land register or who was declared dead or presumed dead at the beginning of the 30-year adverse possession period.

<sup>3</sup> However, such registration may be made only by court order on expiry of a publicly notified period for objections, provided no such objections have been raised or those raised have been dismissed.

### Art. 663

c. Time limits      The rules for computing, interrupting and suspending adverse possession time limits are determined *mutatis mutandis* by the provisions governing time limitation of debt claims.

### Art. 664

6. Ownerless and public objects      <sup>1</sup> Ownerless and public objects are subject to the sovereignty of the canton on whose territory they are situated.

<sup>2</sup> No rights of private ownership apply to public waters or to land not suitable for cultivation, such as rocks and scree, firn and glaciers, or to springs rising therefrom, unless proof to the contrary is produced.

<sup>3</sup> The cantons shall enact the provisions required to govern the appropriation of ownerless land, exploitation and common use of public objects such as roads, town and village squares, waterways and riverbeds.

### Art. 665

III. Right to registration      <sup>1</sup> By virtue of acquisition, the acquirer gains a personal claim against the owner to be recorded in the land register and, should the owner refuse, the right to have ownership awarded by court order.

<sup>2</sup> In the case of appropriation, inheritance, compulsory purchase, debt enforcement or court judgment, the acquirer may obtain such registration on his or her own initiative.

<sup>3</sup> Changes to land ownership occurring by operation of law as a result of marital community of property or the dissolution thereof shall be recorded in the land register at the request of either spouse.<sup>515</sup>

### Art. 666

C. Loss      <sup>1</sup> Land ownership is extinguished on deletion of the land register entry and on complete loss of the immovable property.

<sup>515</sup> Amended by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

<sup>2</sup> In the case of compulsory purchase, the time at which the loss occurs is determined according to federal and cantonal compulsory purchase law.

**Art. 666a**<sup>516</sup>

D. Judicial measures  
I. Where the owner cannot be found

<sup>1</sup> If the owner recorded in the land register cannot be identified, if his or her address is unknown or if the name or address of one or more of his or her heirs is unknown, the court may on application order the required measures.

<sup>2</sup> The court may in particular appoint a representative. On application, it shall stipulate the extent of the powers of representation. Unless it stipulates otherwise, such powers shall be limited to measures to maintain the property.

<sup>3</sup> The following may apply for measures to be ordered:

1. any person with a legitimate interest;
2. the land register at the location of the immovable property.

<sup>4</sup> The ordering of measures does not interrupt the period required to obtain extraordinary adverse possession.

**Art. 666b**<sup>517</sup>

II. In the absence of the required management bodies

If a legal entity or other rights holder that is recorded in the land register as the owner no longer has the required management bodies, and person with a legitimate interest or the land register at the location of the immovable property may apply to the court for the required measures relating to the immovable property to be ordered.

**Chapter Two:  
Substance and Limitation of Land Ownership**

**Art. 667**

A. Substance  
I. Scope

<sup>1</sup> Land ownership extends upwards into the air and downwards into the ground to the extent determined by the owner's legitimate interest in exercising his or her ownership rights.

<sup>2</sup> Within the limits prescribed by law, it includes all buildings and plants as well as springs.

<sup>516</sup> Inserted by No 11 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>517</sup> Inserted by No 11 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).



**Art. 668**

## II. Boundaries

## 1. Type of boundary

<sup>1</sup> Land boundaries are established by the land register plans and by boundary markings on the land itself.

<sup>2</sup> In the event of discrepancy between the existing land register plans and the boundary markings, the land register plans are presumed correct.

<sup>3</sup> The foregoing presumption does not apply to areas designated by the canton as being in permanent danger of ground displacement.<sup>518</sup>

**Art. 669**

## 2. Duty to establish boundaries

Every landowner is obliged, at the request of his or her neighbour, to co-operate in establishing the boundary where it is unclear, whether by amendment of the land register plans or by affixing boundary markers.

**Art. 670**

## 3. Co-ownership of boundary markers

Where boundaries are marked by features such as walls, hedges and fences, such features are presumed to be jointly owned by the two neighbouring landowners.

**Art. 671**

## III. Buildings on the parcel of land

## 1. Land and building materials

## a. Ownership

<sup>1</sup> Where a person uses materials belonging to another in building work on his or her own land or materials of his or her own on land belonging to another, such materials become an integral part of the parcel of land.

<sup>2</sup> However, where such materials are used against the will of their owner, the latter is entitled to demand that the materials be removed and returned to him or her at the landowner's expense to the extent this is possible without causing disproportionate damage.

<sup>3</sup> On the same condition, where the materials were used against the will of the landowner, the latter may demand that they be removed from his or her land at the expense of the builder.

**Art. 672**

## b. Compensation

<sup>1</sup> Where the materials are not removed from the land, the landowner must provide appropriate compensation for the cost of the materials.

<sup>2</sup> Where the landowner on whose land the building work was carried out acted in bad faith, the court may award full damages.

<sup>518</sup> Inserted by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), in force since 1 Jan. 1994 (AS 1993 1404; BBl 1988 III 953).

<sup>3</sup> Where the owner of the materials used in the building work acted in bad faith, the damages awarded may not exceed the minimum value of the building work to the landowner.

**Art. 673**

c. Assignment of land ownership

Where the value of the building plainly exceeds the value of the land, the party acting in good faith may request that ownership of both building and land be assigned to the owner of the materials in exchange for appropriate compensation.

**Art. 674**

2. Encroaching buildings

<sup>1</sup> Buildings and other structures encroaching from one parcel of land onto another remain part of the parcel from which they originate, providing their owner has a right in rem to their existence.

<sup>2</sup> The right to encroach on neighbouring land may be recorded as an easement in the land register.

<sup>3</sup> If an injured party fails to object in timely manner to an unauthorised encroachment, despite being aware of it, where justified in the circumstances the builder of the encroaching structure, provided he or she acted in good faith, may be granted ownership of the encroaching part thereof or of the land below it in exchange for appropriate compensation.

**Art. 675**

3. Building right

<sup>1</sup> Buildings and other structures that are dug into or built onto land belonging to another person or otherwise permanently connected with that parcel of land on or below its surface may have a separate owner provided their existence is recorded as an easement in the land register.

<sup>2</sup> The creation of rights to buildings in respect of individual storeys of a building is not permitted.

**Art. 676**

4. Pipes, cables, conduits

<sup>1</sup> Pipes, cables and conduits for water, gas, electricity and the like located outside the parcel of land which they serve are, except where otherwise regulated, the property of the utility plant from which they come or to which they lead.<sup>519</sup>

<sup>2</sup> Where the provisions of the law of neighbours do not apply, the encumbrance of parcels of land by rights in rem relating to such pipes,

<sup>519</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

cables and conduits belonging to another person is established by way of easement.

<sup>3</sup> If the pipe, cable or conduit is visible, the easement is created when the pipe, cable or conduit is laid. In other cases, it is created by entry in the land register.<sup>520</sup>

#### Art. 677

5. Movable structures

<sup>1</sup> Sheds, huts, shacks, cabins and the like retain their separate owner if they are constructed on land belonging to another person without the intention of becoming a permanent fixture.

<sup>2</sup> Their existence is not recorded in the land register.

#### Art. 678

IV. Plants grown on the parcel of land

<sup>1</sup> Where a person uses another person's plants on his or her own land or his or her own plants on another person's land, the same rights and obligations arise as for the use of building materials or for movable structures.

<sup>2</sup> An easement corresponding to a building right may be created in respect of individual plants and plantations for a minimum of ten and a maximum of 100 years.<sup>521</sup>

<sup>3</sup> The servient owner may request the termination of the easement before the end of the agreed duration in the event of the termination of a lease agreement concluded between him or her and the easement beneficiary concerning the use of the land. The court shall determine the financial consequences taking due account of all the circumstances.<sup>522</sup>

#### Art. 679

V. Landowner's liability  
1. Acts in excess of ownership rights<sup>523</sup>

<sup>1</sup> Where a person incurs or is at risk of damage because a landowner acts in excess of his or her ownership rights, he or she may sue for abatement of the damage or for protection against any imminent damage and for damages.

<sup>2</sup> Where a building or installation deprives a neighbouring parcel of land of certain properties, the aforementioned rights apply only if the

<sup>520</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBI **2007** 5283).

<sup>521</sup> Amended by No I of the FA of 20 June 2003, in force since 1 Jan. 2004 (AS **2003** 4121; BBI **2002** 4721).

<sup>522</sup> Inserted by No I of the FA of 20 June 2003, in force since 1 Jan. 2004 (AS **2003** 4121; BBI **2002** 4721).

<sup>523</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBI **2007** 5283).

regulations that applied at the time the building or installation was constructed were not complied with.<sup>524</sup>

**Art. 679a**<sup>525</sup>

2. Lawful management of the land

Where a landowner temporarily causes excessive and unavoidable disadvantages to a neighbour while managing his or her parcel of land lawfully, in particular by building and thus causes loss or damage, the neighbour may only claim damages from the landowner.

**Art. 680**

B. Limitations  
I. In general

<sup>1</sup> Statutory restrictions on ownership exist irrespective of whether they are recorded in the land register.

<sup>2</sup> Any lifting or modification thereof by agreement is invalid unless executed in the form of a public deed and recorded in the land register.

<sup>3</sup> Public law restrictions on ownership may not be revoked or modified.

**Art. 681**<sup>526</sup>

II. Restrictions on alienation; statutory right of pre-emption  
1. General principles

<sup>1</sup> Statutory rights of pre-emption may also be exercised in the case of compulsory sale at auction, but only at the auction itself and on the conditions that apply to a sale to the highest bidder; in other respects statutory rights of pre-emption may be exercised subject to the conditions that apply to contractual rights of pre-emption.

<sup>2</sup> The right of pre-emption becomes void if the land is sold to a person with a right of pre-emption of equal or higher rank.

<sup>3</sup> Statutory rights of pre-emption may neither be inherited nor assigned. They take precedence over contractual rights of pre-emption.

**Art. 681a**<sup>527</sup>

2. Exercise

<sup>1</sup> Where a purchase agreement is concluded, the vendor must notify persons with a right of pre-emption of the terms thereof.

<sup>524</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>525</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>526</sup> Amended by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), in force since 1 Jan. 1994 (AS **1993** 1404; BBl **1988** III 953).

<sup>527</sup> Inserted by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), in force since 1 Jan. 1994 (AS **1993** 1404; BBl **1988** III 953).

<sup>2</sup> If a person wishes to exercise his or her right of pre-emption, he or she must assert it within three months of learning of the conclusion and terms of the purchase agreement. Such a right may no longer be exercised once two years have elapsed since the entry of the new owner in the land register.

<sup>3</sup> During that time a person may exercise a right of pre-emption against any owner of the land.

**Art. 681<sup>b</sup>**<sup>528</sup>

3. Modification,  
waiver

<sup>1</sup> An agreement excluding or modifying a statutory right of pre-emption is valid only if executed in the form of a public deed. It may be entered under priority notice in the land register provided the right of pre-emption is held by the current owner of another parcel of land.

<sup>2</sup> The beneficiary may waive his or her statutory right of pre-emption in writing once the event that triggers it has occurred.

**Art. 682**<sup>529</sup>

4. In respect of  
co-ownership  
and building  
rights<sup>530</sup>

<sup>1</sup> Co-owners have a right of pre-emption against any person acquiring a share who is not a co-owner. If several co-owners exercise their right of pre-emption, the share is allocated to them in proportion to their existing shares.<sup>531</sup>

<sup>2</sup> The owner of a parcel of land encumbered with a distinct and permanent building right shall also have a right of pre-emption in respect of that right over anyone wishing to acquire it, and the holder of the right has a right of pre-emption in respect of the parcel of land it encumbers, providing the land is used in the exercise of his or her right.

<sup>3</sup> ...<sup>532</sup>

<sup>528</sup> Inserted by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), in force since 1 Jan. 1994 (AS **1993** 1404; BBl **1988** III 953).

<sup>529</sup> Amended by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

<sup>530</sup> Amended by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), in force since 1 Jan. 1994 (AS **1993** 1404; BBl **1988** III 953).

<sup>531</sup> Amended by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), in force since 1 Jan. 1994 (AS **1993** 1404; BBl **1988** III 953).

<sup>532</sup> Repealed by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), with effect from 1 Jan. 1994 (AS **1993** 1404; BBl **1988** III 953).

5. Right of pre-emption of farms and farmland

**Art. 682a**<sup>533</sup>

Rights of pre-emption of agricultural enterprises and agricultural land are also governed by the Federal Act of 4 October 1991<sup>534</sup> on Rural Land Rights.

**Art. 683**<sup>535</sup>

**Art. 684**

III. Law of neighbours

1. Excess detriment<sup>536</sup>

<sup>1</sup> In exercising their ownership rights, including in particular the right to run a business on his or her land, landowners are obliged to refrain from any excess detrimental to neighbouring properties.

<sup>2</sup> In particular all harmful effects that are not justified by the location and character of the land or by local custom such as air pollution emissions of noxious vapours, noise, vibrations, radiation or the deprivation of sunlight or daylight are prohibited.<sup>537</sup>

**Art. 685**

2. Excavation and construction  
a. Rule

<sup>1</sup> When carrying out excavation or construction work, the owner is not permitted to damage the adjoining properties by causing their terrain to shift, exposing it to the risk of shifting or by weakening existing structures.

<sup>2</sup> Buildings which contravene the provisions of the law of neighbours are subject to the provisions governing encroaching buildings.

**Art. 686**

b. Cantonal regulations

<sup>1</sup> The cantons may set minimum separation distances to be observed in excavation and construction works.

<sup>2</sup> They have the right to issue further building regulations.

<sup>533</sup> Inserted by Art. 92 No 1 of the FA of 4 Oct. 1991 on Rural Land Rights, in force since 1 Jan. 1994 (AS **1993** 1410; BBl **1988** III 953).

<sup>534</sup> SR **211.412.11**

<sup>535</sup> Repealed by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), with effect from 1 Jan. 1994 (AS **1993** 1404; BBl **1988** III 953).

<sup>536</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>537</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

**Art. 687**

3. Plants  
a. Rule

<sup>1</sup> Overhanging branches and roots encroaching beyond the boundary may be severed and kept by the neighbour if they are damaging his or her property and have not been removed within a reasonable time following his or her complaint in relation thereto.

<sup>2</sup> If a landowner tolerates branches overhanging cultivated or developed land, he or she is entitled to the fruit that grows on them.

<sup>3</sup> These provisions do not apply to adjoining parcels of woodland.

**Art. 688**

b. Cantonal regulations

The cantons are authorised to set minimum separation distances for plantations depending on the type of land and plants involved or to oblige the landowner to permit the overhanging branches or encroaching roots of fruit trees and to regulate or annul his or her right to take the fruit from such branches.

**Art. 689**

4. Flowing waters

<sup>1</sup> Every landowner is obliged to receive the waters flowing naturally from a higher-lying parcel of land, such as rain water, melting snow and water from unchannelled springs.

<sup>2</sup> No person may alter the natural course of flow to his or her neighbour's detriment.

<sup>3</sup> Water flowing to a lower-lying parcel of land and required by that property may be withheld only to the extent that such water is indispensable to the higher-lying parcel of land.

**Art. 690**

5. Drainage

<sup>1</sup> Where a higher-lying parcel of land is drained, the owner of lower-lying parcel of land is obliged to receive such water as previously flowed naturally onto his or her land without being entitled to compensation.

<sup>2</sup> If he or she suffers damage as a result of drainage channels, he or she may require the owner of the higher-lying parcel of land to continue such channels through the lower-lying parcel of land at the latter's expense.

**Art. 691**

6. Pipes, cables, conduits  
a. Duty to permit

<sup>1</sup> Every landowner is obliged to permit water conduits, drainage pipes, gas pipes and the like and subterranean or overhead cables to traverse his or her land in exchange for full compensation, to the extent that

such works would be impossible or prohibitively expensive if they did not traverse his or her land.<sup>538</sup>

<sup>2</sup> The right for pipes, cables and conduits to traverse an adjoining parcel of land may not be claimed on the basis of the law of neighbours in cases subject to compulsory purchase under cantonal or federal law.

<sup>3</sup> At the request of the dominant or the servient owner, such rights shall be recorded in the land register as an easement at the expense of the dominant owner. The right for pipes, cables and conduits to traverse an adjoining parcel of land may be cited in opposition to a person acquiring a parcel of land in good faith, even if it is not registered.<sup>539</sup>

### Art. 692

b. Safeguarding the interests of the servient landowner

<sup>1</sup> The servient owner is entitled to just and equitable consideration of his or her own interests.

<sup>2</sup> Where justified by extraordinary circumstances, he or she may request that the piece of the land above which overhead pipes, cables and conduits are to be routed together with a reasonable portion of the surrounding land be purchased from him or her at its full value.

### Art. 693

c. Change of circumstances

<sup>1</sup> If circumstances change, the servient owner may request that the route of the pipe, cable or conduit be altered in accordance with his or her interests.

<sup>2</sup> The costs of such re-routing are normally borne by the owner of the dominant property.

<sup>3</sup> However, where justified by special circumstances, an appropriate portion of the costs may be charged to the servient owner.

### Art. 694

7. Rights of way  
a. Necessary right of way

<sup>1</sup> Where a landowner does not have adequate access from his or her land to a public thoroughfare, he or she has the right to require his or her neighbours to grant him or her the necessary right of way in exchange for full compensation.

<sup>2</sup> This right is in the first place exercised against the neighbour who, in the light of existing ownership and access circumstances, may most

<sup>538</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>539</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).



reasonably be expected to grant such right of way, and secondly in respect of the neighbour for whom it is least damaging.

<sup>3</sup> When determining the route of a right of way, the interests of both parties must be taken into consideration.

### **Art. 695**

b. Other rights of way The cantons reserve the right to enact more detailed provisions which govern the landowner's right to enter neighbouring land for the purposes of managing his or her own land or carrying out repairs or building works and which regulate rights of way for the purpose of tillage, watering cattle, transit over fallow ground or in the dead season, transit for timber gathering, and the like.

### **Art. 696**

c. Notation in the land register <sup>1</sup> Rights of way established directly by law exist without need for registration.  
<sup>2</sup> However, if permanent they are noted in the land register.

### **Art. 697**

8. Enclosure <sup>1</sup> The costs of enclosing a parcel of land are borne by its owner, subject to the provisions governing co-ownership of boundary markers.  
<sup>2</sup> Cantonal law may enact provisions governing the duty to enclose and the manner of enclosure.

### **Art. 698**

9. Duty to maintain The costs of any structures required for the exercise of rights under the law of neighbours are borne by the landowners in proportion to their interests.

### **Art. 699**

IV. Right of access and to ward off danger  
1. Access <sup>1</sup> Any person has the right to enter woodlands and meadows and to gather wild berries, fungi and the like to the extent permitted by local custom except where the competent authority enacts specific limited prohibitions in the interests of conservation.  
<sup>2</sup> Cantonal law may enact more detailed regulations on access to land owned by others for the purposes of hunting and fishing.

### **Art. 700**

2. Retrieval of driftage and the like <sup>1</sup> If objects are carried onto another parcel of land by water, wind, avalanche or other force of nature or by chance event, or if animals such as livestock, swarms of bees, poultry and fish stray onto his or

her property, the landowner must grant the rightful owner access to his or her land to search for and retrieve them.

<sup>2</sup> The landowner is entitled to claim damages for any damage caused and to that end has a special lien as to such objects and animals.

### Art. 701

3. Trespass to ward off danger or damage

<sup>1</sup> If a person is able to ward off imminent damage or present danger from himself or herself or others only by trespassing on land belonging to another, the latter is obliged to tolerate such trespass to the extent that such danger or damage would be considerably greater than the detriment caused by the trespass.

<sup>2</sup> Appropriate compensation is owed for any resultant damage.

### Art. 702

V. Public law restrictions on ownership  
1. In general

The Confederation, cantons and communes reserve the right to impose restrictions on ownership that are in the public interest, and in particular that relate to building, fire and health regulations, forestry and road services, towpaths, erection of boundary markings and triangulation pillars, land improvements, fragmentation of landholdings, consolidation of agricultural land and building land, conservation of antiquities and natural monuments, preservation of areas of natural beauty and scenic vantage points and protection of mineral springs.

### Art. 703<sup>540</sup>

2. Land improvements

<sup>1</sup> Where it is possible to carry out land improvements, such as water-course modifications, drainage, irrigation, reforestation, path-building, land consolidation procedures and the like, only by collective endeavour and such endeavour has been approved by the majority of the landowners owning more than half of the land involved, the other landowners are obliged to participate. Landowners who choose not to participate in the decision-making process are deemed to consent. Participation is recorded in the land register.

<sup>2</sup> The cantons regulate the procedure. In particular, they must issue detailed rules on consolidation of landholdings.

<sup>3</sup> Cantonal legislation may further facilitate the realisation of such land improvements and may declare that the corresponding provisions also apply to building land and to areas designated as being in permanent danger of ground displacement.<sup>541</sup>

<sup>540</sup> Amended by Art. 121 of the Agriculture Act of 3 oct. 1951, in force since 1 Jan. 1954 (AS 1953 1073; BBl 1951 I 130).

<sup>541</sup> Amended by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), in force since 1 Jan. 1994 (AS 1993 1404; BBl 1988 III 953).

**Art. 704**

C. Rights to  
springs and wells  
I. Spring  
ownership and  
spring rights

1 Springs are an integral part of the land and their ownership may be acquired only through ownership of the land from which they rise.

2 Rights to spring water on land owned by others are established as easements by entry in the land register.

3 Groundwater is deemed equivalent to springs.

**Art. 705**

II. Diversion of  
springs

1 Cantonal law may regulate, restrict or prohibit the diversion of spring waters to safeguard the public interest.

2 In the event of conflict between cantons, the final decision rests with the Federal Council.

**Art. 706**

III. Cutting off  
springs  
1. Damages

1 Where springs and wells that enjoy considerable use or whose waters are collected for further use are cut off, diminished or contaminated by building works, installations or other measures to the detriment of their owners or rightful users, such persons are entitled to claim damages.

2 Where the damage was done neither intentionally nor through negligence, or the injured parties are themselves at fault, the court determines the amount and manner of compensation at its discretion.

**Art. 707**

2. Restoration

1 If springs and wells that are indispensable for the exploitation or habitation of a parcel of land or for the supply of drinking water are cut off or contaminated, those affected have the right to demand that the status quo ante be restored where at all possible.

2 In other cases restoration of the status quo ante may be demanded only where this is justified by special circumstances.

**Art. 708**

IV. Community  
of spring owners

1 Where springs located near to each other and belonging to different owners form a group rising from a common catchment basin, each of the owners may request that the springs be collectively captured and channelled to the rightful users in proportion to the existing volume of flow.

2 The costs of the common installations are borne by the rightful users in proportion to their respective interests.

3 If one user opposes the request, each user has the right to capture and divert his or her own spring in the normal manner, even if the volume

of flow of the other springs is thereby diminished, and is liable to pay compensation only to the extent that his or her own spring is augmented by the new works.

**Art. 709**

V. Use of  
springs

The cantons have the right to determine the extent to which privately owned springs, wells and streams may also be used by neighbours and other persons for drawing water, watering livestock and the like.

**Art. 710**

VI. Right to use  
an essential  
water source

<sup>1</sup> If a parcel of land lacks the water required for domestic and farming requirements and if such water cannot be obtained from anywhere else except at an entirely disproportionate cost and effort, the owner may request that a neighbour able to spare such water without suffering hardship allow him or her a share of the latter's spring or well to him or her in exchange for full compensation.

<sup>2</sup> When determining which water source is thus affected, the interests of the person required to supply the water are the primary consideration.

<sup>3</sup> Where circumstances change, a modification of the arrangement in place may be requested.

**Art. 711**

VII. Duty to  
cede  
1. Water sources

<sup>1</sup> Where landowners make no use of springs, wells or streams, or make very little use thereof in comparison with their potential utility, they may be required to cede them in exchange for full compensation for supplying drinking water, fire hydrants or other uses in the public interest.

<sup>2</sup> Such compensation may take the form of water supplied from the new installation.

**Art. 712**

2. Land

Owners of drinking water utilities have the right to expropriate the land surrounding their springs to the extent necessary to protect them from contamination.

**Chapter Three:<sup>542</sup> Condominium****Art. 712a**

A. Definition  
and object  
I. Definition

<sup>1</sup> Condominium is a form of co-ownership of immovable property that gives the co-owner the exclusive right to make sole use of specific parts of a building thereon and design the interior of such parts.

<sup>2</sup> Each condominium owner is free to manage, use and design the structure of his or her own parts of the building as he or she wishes but must not obstruct any other condominium owners in the exercise of their own rights or in any way damage the common parts of the building, fittings and installations or impair their functional effectiveness or appearance.

<sup>3</sup> Each condominium owner is obliged to maintain his or her parts of the building in the manner required to preserve the sound condition and good appearance of the building as a whole.

**Art. 712b**

II. Object

<sup>1</sup> The object of the exclusive right may be individual storeys or parts of a storey which must be self-contained with their own access and used either as dwellings or as self-contained units of rooms used for business or other purposes, although separate ancillary rooms are allowed.

<sup>2</sup> The condominium owner may not be granted an exclusive right to the following:

1. the land on which the building stands and the building right by virtue of which it is constructed;
2. the parts of the building that are vital to the soundness, structure and stability of the building as a whole or of the units of other condominium owners or that determine the outward form and appearance of the building;
3. the fittings and installations that also serve the other condominium owners in the use of their units.

<sup>3</sup> The deed of constitution or a subsequent agreement among the condominium owners executed in the same form may stipulate that other parts of the building are common property, failing which they are presumed to be the object of a exclusive right.

<sup>542</sup> Inserted by No II of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993; BBl 1962 II 1461).

**Art. 712c**

III. Power of disposal

<sup>1</sup> Condominium owners do not by law have first right of refusal in respect of a third party acquiring a share, but such right may be stipulated in the deed of constitution or by subsequent agreement and entered under priority notice in the land register.

<sup>2</sup> Similarly, it may be stipulated that the alienation, encumbrance with usufruct or right of residence or letting of a unit is valid only if the other co-owners do not object by resolution made within 14 days of receiving notice of such transaction.

<sup>3</sup> The objection is ineffective if made without good cause.<sup>543</sup>

**Art. 712d**

B. Creation and extinction  
I. Deed of constitution

<sup>1</sup> Condominium is constituted by entry in the land register.

<sup>2</sup> Such entry may be requested:

1. on the basis of an agreement between the condominium owners to constitute their shares as condominium;
2. on the basis of a declaration by the owner of the property or the holder of a distinct and permanent building right to form shares in co-ownership and to constitute the same as condominium.

<sup>3</sup> In order to be valid, the constitution of condominium must be executed in the form of a public deed or, where provided for in a testamentary disposition or in a contract of division of estate, in the form prescribed by the law of succession.

**Art. 712e**

II. Layout of the condominium units and shares in the property.<sup>544</sup>

<sup>1</sup> The deed of constitution must specify the manner in which the property is divided into condominium units and define the share that each unit represents of the value of the property or of the building right expressed as fractions with a common denominator.<sup>545</sup>

<sup>2</sup> Alteration of the size of a share requires the consent of all directly involved parties and the approval of the assembly of condominium owners; however, each condominium owner is entitled to seek rectification if his or her share has been defined incorrectly in error or is no

<sup>543</sup> Amended by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, in force since 1 Jan. 2011 (AS 2010 1739; BBl 2006 7221).

<sup>544</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>545</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

longer accurate owing to structural modifications to the building or its surroundings.

### **Art. 712f**

III. Extinction 1 Condominium is extinguished on the loss of the property or the building right and its deletion from the land register.

2 Such deletion may be requested in accordance with a termination agreement or by a single condominium owner holding all the shares, but it requires the consent of all persons with rights in rem to the individual units which cannot be transferred to the property as a whole without detriment.

3 Any condominium owner may request termination of the condominium where:

1. more than half the value of the building has been destroyed and reconstruction would impose an onerous burden on him; or
2. the building has been divided into condominium units for more than 50 years and can no longer be used in accordance with the regulations due to its poor structural condition.<sup>546</sup>

4 Condominium owners wishing to maintain the condominium may prevent such termination by buying out the others.<sup>547</sup>

### **Art. 712g**

C. Administration and use  
I. Applicable provisions

1 The provisions governing co-ownership regulate the authority to take administrative action and instruct construction work.

2 Except where such provisions are mandatory, they may be replaced by others set out in the deed of constitution or adopted by unanimous resolution of the assembly of condominium owners.

3 Moreover, each condominium owner is entitled to request that a set of rules governing administration and use be drawn up and noted in the land register, such rules being binding once accepted by resolution passed by a majority of the condominium owners who together represent more than one-half of the property and being subject to amendment by the same majority even if included in the deed of constitution.

4 Any amendment to the allocation of exclusive rights of use in accordance with the regulations shall also require the consent of the condominium owners directly affected.<sup>548</sup>

<sup>546</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBI **2007** 5283).

<sup>547</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBI **2007** 5283).

**Art. 712h**

II. Communal charges and costs  
1. Definition and distribution

<sup>1</sup> The condominium owners bear the charges in relation to the communal parts of the property and the costs of joint administration in proportion to the value of their shares.

<sup>2</sup> In particular, such charges and costs include:

1. regular maintenance, repairs and renovations of the communal parts of the parcel of land and the building and shared fittings and installations;
2. administration, including remuneration of the administrator;
3. public duties and taxes imposed collectively on the co-owners;
4. interest and capital repayments to lenders to whom the property is pledged or to whom the condominium owners are jointly and severally liable.

<sup>3</sup> Where specific parts of the building, fittings or installations are of little or no benefit to certain condominium owners, the allocation of shared costs must take this into account.

**Art. 712i**

2. Liability for cost contributions  
a. Statutory lien

<sup>1</sup> The community of condominium owners is entitled to establish a lien on each condominium owner's unit as security for his or her portion of the shared costs over the previous three years.

<sup>2</sup> Registration of the lien may be requested by the administrator or, where no administrator has been appointed, by any condominium owner so authorised by majority resolution or court order and by any person for whom the claim for shared costs has been distrained.

<sup>3</sup> In other respects, the provisions governing the establishment of a building contractor's lien apply *mutatis mutandis*.

**Art. 712k**

b. Special lien

The community of condominium owners has the same special lien that a lessor would have on the chattels located in the condominium owner's unit as security for shared costs over the previous three years.

**Art. 712l**

III. Community's capacity to act

<sup>1</sup> The community of condominium owners acquires under its own name the revenue derived from its administrative activities, including in particular contributions from the individual condominium owners and the resultant funds, such as the renovation fund.

<sup>548</sup> Inserted by No 11 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).



<sup>2</sup> The community of condominium owners may sue and collect debts in its own name and may be sued or subjected to debt enforcement proceedings.<sup>549</sup>

### **Art. 712m**

D. Organisation  
I. Assembly of condominium owners  
1. Competence and legal status

<sup>1</sup> In addition to those rights stipulated in other provisions, the assembly of condominium owners has the following rights in particular:

1. to decide on all administrative matters outside the administrator's remit;
2. to appoint the administrator and supervise his or her activities;
3. to elect a committee or person to whom it may delegate administrative matters, including in particular the tasks of advising the administrator, superintending his or her management activities, and reporting and making recommendations to the assembly on such matters;
4. to approve the budget, accounts and division of costs among the condominium owners each year;
5. to establish a renovation fund for maintenance and renovation;
6. to safeguard the building against fire and other risks and to take out the customary liability insurance and, furthermore, to require any condominium owner who has fitted his or her unit out at extraordinary expense to pay an additional premium unless he or she has arranged supplementary insurance for his or her own account.

<sup>2</sup> In the absence of any specific provisions in the law, the assembly of condominium owners and its delegates are subject to the provisions on governing bodies of associations and challenges to resolutions of associations.

### **Art. 712n**

2. Convening and chairing meetings

<sup>1</sup> The assembly of condominium owners is convened and chaired by the administrator, unless the assembly resolves otherwise.

<sup>2</sup> Minutes are taken of the assembly's resolutions and held in safe-keeping by the administrator or the chairman of the meeting.

### **Art. 712o**

3. Voting rights

<sup>1</sup> Where a unit is owned by more than one person, these persons together have only one vote, to be cast by one of their number as their representative.

<sup>549</sup> Amended by Annex No. 2 of the Civil Jurisdiction Act of 24 March 2000, in force since 1 Jan. 2001 (AS 2000 2355; BBl 1999 2829).

<sup>2</sup> Similarly, the owner and the usufructuary of a unit must agree on the exercise of their voting rights, failing which the usufructuary is deemed to hold the right to vote on all administrative matters with the exception of building work carried out for merely useful or decorative purposes or to enhance comfort or convenience.

**Art. 712p**

4. Quorum

<sup>1</sup> The assembly of condominium owners is quorate if one half of the condominium owners representing one half of the shares in condominium, and in any event at least two condominium owners, are present or represented.

<sup>2</sup> If the assembly is not quorate, a second meeting must be convened which may be held no earlier than ten days after the first.

<sup>3</sup> The second meeting is quorate if one third of the condominium owners, and in any event at least two condominium owners, are present or represented.

**Art. 712q**

II. Administrator

1. Appointment

<sup>1</sup> If the assembly of condominium owners fails to appoint an administrator, any condominium owner is entitled to request the court to appoint one.

<sup>2</sup> Other interested parties, such as the pledgee or insurer, have the same right to request court appointment of an administrator.

**Art. 712r**

2. Removal

<sup>1</sup> By resolution of the assembly of condominium owners, the administrator may be removed from his or her position at any time, subject to claims for compensation.

<sup>2</sup> If the assembly of condominium owners refuses to remove the administrator despite good cause to do so, any condominium owner may, within one month, request the court to remove him or her.

<sup>3</sup> A court-appointed administrator may not be removed prior to expiry of the period for which he or she was appointed.

**Art. 712s**

3. Duties

a. Implementation of provisions and resolutions concerning administration and use

<sup>1</sup> The administrator shall take all action required for collective administration in accordance with the relevant legal provisions, the rules and resolutions passed by the assembly of condominium owners and must of his or her own accord take all measures urgently needed to prevent or remedy damage to the property.

<sup>2</sup> He or she divides the communal costs and charges among the condominium owners, makes out the relevant invoices, collects contribu-

tions, manages the available funds and applies them as required by law.

<sup>3</sup> He or she ensures that the condominium owners exercise their exclusive rights and use the communal parts of the property and the communal fittings and installations in accordance with the relevant legal provisions, regulations and house rules.

#### **Art. 712t**

b. External representation

<sup>1</sup> The administrator shall represent the condominium owners both as a community and as individuals in all external dealings relating to communal administration within the scope of his or her statutory duties.

<sup>2</sup> Except in summary proceedings, the administrator must obtain the prior approval of the assembly of condominium owners to act as plaintiff or defendant in civil proceedings unless the matter is urgent, in which case such approval may be obtained retrospectively.

<sup>3</sup> Declarations, demands, judgments and court orders addressed to the community of condominium owners are deemed duly notified once they are served on the administrator at his or her domicile or at the place where the property is situated.

## **Title Twenty: Chattel Ownership**

### **Art. 713**

A. Object

Chattel ownership relates to movable physical objects and to forces of nature that may be the subject of legal rights and which do not form part of any immovable property.

### **Art. 714**

B. Forms of acquisition

I. Transfer

1. Delivery of possession

<sup>1</sup> Transfer of chattel ownership requires the delivery of possession to the acquirer.

<sup>2</sup> A person who in good faith receives possession of a chattel as owner will become its owner even if the transferor is not authorised to alienate it as soon his or her possession of it is protected according to the provisions governing possession.

### **Art. 715**

2. Reservation of ownership

a. In general

<sup>1</sup> Reservation of ownership in respect of a chattel transferred to the acquirer is only effective provided it is entered in the official register kept by the debt enforcement office at his or her current domicile.

<sup>2</sup> Reservation of ownership is not permitted in livestock trading.

b. Transactions involving payment by instalments

### Art. 716

An object transferred under reservation of ownership may be reclaimed by the owner only on condition that he or she reimburse any payments made for it by the acquirer after deduction of an appropriate rental charge and compensation for wear and tear.

3. Acquisition without possession

### Art. 717

<sup>1</sup> If as a result of a special legal relationship, the chattel remains in the transferor's possession, this transfer of ownership is null and void in relation third parties if the underlying intention was to disadvantage them or to circumvent the provisions governing the pledging of chattels.

<sup>2</sup> The court shall rules on this at its discretion.

II. Appropriation  
1. Ownerless chattels

### Art. 718

Ownership of an ownerless chattel is acquired by the act of taking it into possession with the intention of becoming its owner.

2. Escaped animals

### Art. 719

<sup>1</sup> Captured animals become ownerless if they regain their freedom and their owner fails to search for them immediately and persistently with a view to recapturing them.

<sup>2</sup> Domesticated animals become ownerless once they regress to a feral state and no longer return to their masters.

<sup>3</sup> Swarms of bees do not become ownerless by virtue of straying onto land belonging to others.

III. Found property  
1. Reporting, tracing  
a. In general<sup>550</sup>

### Art. 720

<sup>1</sup> A person finding a lost object must inform its owner and, if the latter is unknown, either report the find to the police or himself take appropriate steps to publicise the find and trace the owner.

<sup>2</sup> He or she has a duty to report the find to the police if the value of the object clearly exceeds ten francs.

<sup>3</sup> A person who finds an object in an occupied house or on premises used for public services or public transport must deposit it with the head of the household, the tenant or the supervisor.

<sup>550</sup> Amended by No I of the FA of 4 Oct. 2002 (Article of Basic Principles: Animals), in force since 1 April 2003 (AS 2003 463; BBl 2002 4164 5806).

**Art. 720a**<sup>551</sup>

## b. Animals

<sup>1</sup> A person who finds a lost animal must, subject to Art. 720 para. 3, inform the owner or, if the latter is unknown, report his or her find.

<sup>2</sup> The cantons designate the authority to which such finds must be reported.

**Art. 721**

## 2. Safekeeping and auction

<sup>1</sup> A find must be held in appropriate safekeeping.

<sup>2</sup> If it requires expensive maintenance or is susceptible to rapid deterioration, or if the police or a public body has held it for more than one year, it may be sold at public auction with the prior authorisation of the competent authority.

<sup>3</sup> The proceeds of sale at auction replace the object.

**Art. 722**

## 3. Acquisition of ownership, return

<sup>1</sup> A person who has discharged his or her duties as finder acquires ownership of the find if it has not been possible to trace the rightful owner within five years of the announcement or public notice being given of the find.

<sup>1bis</sup> In the case of animals kept as pets rather than for investment or commercial purposes, the period is two months.<sup>552</sup>

<sup>1ter</sup> If the finder puts the animal in a home with the intention of renouncing its ownership, on expiry of the two-month period the animal home is at liberty to dispose of the animal as it sees fit.<sup>553</sup>

<sup>2</sup> If the find is returned to its owner, the finder is entitled to compensation for all outlays and to a suitable finder's reward.

<sup>3</sup> In the case of a find made in an occupied house or on premises used for public services or public transport, the head of the household, tenant or supervisor is deemed to be the finder but is not entitled to any finder's reward.

**Art. 723**

## 4. Treasure trove

<sup>1</sup> If an object of value is found in circumstances indicating with certainty that it has lain buried or hidden so long that it will not be possible to trace its owner, it is treated as treasure trove.

<sup>551</sup> Inserted by No I of the FA of 4 Oct. 2002 (Article of Basic Principles: Animals), in force since 1 April 2003 (AS 2003 463; BBl 2002 4164 5806). Para. 2 comes into force on 1 April 2004.

<sup>552</sup> Inserted by No I of the FA of 4 Oct. 2002 (Article of Basic Principles: Animals), in force since 1 April 2003 (AS 2003 463; BBl 2002 4164 5806).

<sup>553</sup> Inserted by No I of the FA of 4 Oct. 2002 (Article of Basic Principles: Animals), in force since 1 April 2003 (AS 2003 463; BBl 2002 4164 5806).

<sup>2</sup> Subject to the provisions governing objects of scientific value, treasure trove belongs to the owner of the land or chattel where it was found.

<sup>3</sup> The finder is entitled to an appropriate finder's reward not exceeding one-half of the treasure's value.

#### **Art. 724**

5. Objects of scientific value

<sup>1</sup> Ownerless natural specimens and antiquities of scientific value are the property of the canton on whose territory they are found.<sup>554</sup>

<sup>1bis</sup> Such objects must not be alienated without the consent of the competent cantonal authorities. They may not be purchased in good faith or acquired through adverse possession. There is no time limit on the canton's right to recover them.<sup>555</sup>

<sup>2</sup> The owner of the land on which such objects are found is obliged to permit their excavation in exchange for compensation for the damage caused.

<sup>3</sup> The finder, and in the case of treasure trove also the owner is entitled to an appropriate finder's reward not exceeding one-half of the value of the find.

#### **Art. 725**

IV. Driftage

<sup>1</sup> If chattels are carried onto a person's property by water, wind, avalanche or other force of nature or by chance event, or if animals belonging to others stray onto his or her property, such a person has the rights and obligations of the finder of a lost object.

<sup>2</sup> If a swarm of bees flies into an occupied beehive belonging to another person, the owner of that hive acquires said swarm without obligation to compensate.

#### **Art. 726**

V. Processing

<sup>1</sup> If a person has processed or reworked an object that does not belong to him, the newly created object becomes the property of that person if the work is more valuable than the material, failing which it belongs to the original owner.

<sup>2</sup> Where the person doing such work did not act in good faith, the court may award the newly created object to the original owner even if his or her work is more valuable than the material.

<sup>3</sup> Claims for damages and unjust enrichment are reserved.

<sup>554</sup> Amended by Art. 32 No 1 of the Cultural Property Transfer Act of 20 June 2003, in force since 1 June 2005 (AS **2005** 1869; BBl **2002** 535).

<sup>555</sup> Inserted by Art. 32 No 1 of the Cultural Property Transfer Act of 20 June 2003, in force since 1 June 2005 (AS **2005** 1869; BBl **2002** 535).

**Art. 727**

VI. Joining and mixing chattels

<sup>1</sup> If chattels belonging to different owners are mixed or joined together such that they may no longer be separated without substantial damage or prohibitive labour and expense, those involved acquire joint ownership rights in the new object in proportion to the value of the constituent parts at the time that they were mixed or joined.

<sup>2</sup> If one chattel is mixed with or joined to another such that it acquires the character of a secondary component of the latter, the entire object belongs to the owner of the primary component.

<sup>3</sup> Claims for damages and unjust enrichment are reserved.

**Art. 728**

VII. Adverse possession

<sup>1</sup> If a person has possessed a chattel belonging to another person uninterrupted and without challenge for five years believing in good faith that he or she owns it, he or she becomes its owner by adverse possession.

<sup>1bis</sup> In the case of animals kept as pets rather than for investment or commercial purposes, the period is two months.<sup>556</sup>

<sup>1ter</sup> Subject to exceptions prescribed by law, the time limit for adverse possession in the case of objects of cultural heritage within the meaning of Art. 2 para. 1 of the Cultural Property Transfer Act of 20 June 2003<sup>557</sup> is 30 years.<sup>558</sup>

<sup>2</sup> Involuntary loss of possession does not interrupt adverse possession provided the possessor regains the chattel within one year or by means of legal action brought within the same time limit.

<sup>3</sup> The computation, interruption and suspension of adverse possession time limits are governed *mutatis mutandis* by the provisions on the time limitation of debts.

**Art. 729**

C. Loss

Even where possession has been lost, ownership of the chattel is not extinguished until the owner relinquishes his or her right or until another person subsequently acquires ownership.

<sup>556</sup> Inserted by No I of the FA of 4 Oct. 2002 (Article of Basic Principles: Animals), in force since 1 April 2003 (AS 2003 463; BBl 2002 4164 5806).

<sup>557</sup> SR 444.1

<sup>558</sup> Inserted by Art. 32 No 1 of the Cultural Property Transfer Act of 20 June 2003, in force since 1 June 2005 (AS 2005 1869; BBl 2002 535).

**Division Two: Limited Rights in rem**  
**Title Twenty-One: Easements and Real Burdens**  
**Chapter One: Easements**

**Art. 730**

A. Object

<sup>1</sup> A parcel of land may be encumbered in favour of another property such that the servient owner must permit the owner of the dominant property to exercise certain rights over it to or may not exercise certain of the rights attaching to his or her property for the benefit of the owner of the dominant property.

<sup>2</sup> An obligation to carry out certain acts may only be accessory to an easement. Any person acquiring the dominant or servient property is only bound by such an obligation if it is based on an entry in the land register.<sup>559</sup>

**Art. 731**

B. Creation and extinction

I. Creation

1. Registration

<sup>1</sup> An easement is created by entry in the land register.

<sup>2</sup> The provisions governing land ownership apply to the acquisition or registration of an easement, except where otherwise provided.

<sup>3</sup> Adverse possession of an easement is possible only in respect of parcels of land which may be possessed adversely.

**Art. 732<sup>560</sup>**

2. Legal transaction

<sup>1</sup> The legal transaction creating an easement is only valid if done as a public deed.

<sup>2</sup> If in the circumstances the exercise of the easement is limited to part of the dominant property and if the geographical location is not sufficiently identifiable in the certificate of legal title, it must be shown in a diagram in an extract of the plan for the land register.

**Art. 733**

3. Creation in favour of own property

The owner of a property may create an easement on a property in favour of another property which he or she also owns.

<sup>559</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>560</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).



**Art. 734**

- II. Extinction  
1. In general

An easement is extinguished with the deletion of its registration or the complete loss of either the servient or the dominant property.

**Art. 735**

2. Amalgamation

<sup>1</sup> If the beneficiary of an easement becomes the servient owner, he or she may have the easement deleted from the land register.

<sup>2</sup> If it is not deleted, the easement remains in place as a right in rem.

**Art. 736**

3. By court order

<sup>1</sup> If an easement is of no value to the dominant property, the servient owner may request its deletion.

<sup>2</sup> If the dominant property still derives a benefit from the easement but this is minor and disproportionate to the encumbrance, the easement may be partly or wholly cancelled in return for compensation.

**Art. 737**

- C. Nature  
I. Scope  
1. In general

<sup>1</sup> The beneficiary is entitled to take all measures necessary to preserve and exercise the easement.

<sup>2</sup> However, he or she is obliged to exercise his or her rights as benignly as possible.

<sup>3</sup> The servient owner must not do anything to obstruct the exercise of the easement or render it more difficult.

**Art. 738**

2. As defined by  
land register  
entry

<sup>1</sup> The land register entry for an easement defines the scope of the easement, provided it clearly indicates the attendant rights and duties.

<sup>2</sup> Within the limits of such entry, the scope of the easement may be inferred from the reason for its creation or from the fact that it has been exercised unchallenged and in good faith for some length of time.

**Art. 739**

3. If needs  
change

Additional encumbrances may not be imposed on the servient owner if the needs of the dominant property change.

**Art. 740**

4. Cantonal law  
and local custom

In the absence of any other specific arrangement in a given case, cantonal law and local custom shall govern rights of way, such as footpaths, bridle paths, carriageways, field paths, rights of transit in

the dead season or for carting wood, rights of pasture, of transit for watering cattle or for irrigation and similar rights.

**Art. 740a**<sup>561</sup>

5. In the case of two or more beneficiaries

<sup>1</sup> If two or more beneficiaries benefit from common fixtures based on the same easement and if no other agreement exists, the provisions applicable to co-owners apply by analogy.

<sup>2</sup> The right to leave the community by waiving the easement may be excluded for a maximum of 30 years by agreement in the form specified for the easement agreement. The agreement may be noted in the land register.

**Art. 741**

II. Duty of maintenance

<sup>1</sup> The beneficiary is responsible for maintaining any fixtures required for the exercise of an easement.

<sup>2</sup> If the fixture also serves the interests of the servient owner, both parties are responsible for its maintenance in proportion to their interests. An alternative arrangement is binding on the acquirer of the dominant and the acquirer of the servient property if there is proof thereof in the land register.<sup>562</sup>

**Art. 742**

III. Relocation of the encumbrance<sup>563</sup>

<sup>1</sup> If only part of a property is affected by the exercise of an easement, the servient owner is entitled, provided he or she can show a legitimate interest and bears the cost, to request that the right be transferred to another location which is no less suitable for the beneficiary.

<sup>2</sup> He or she is entitled to do so even if the easement is recorded in the land register as being in a specific location.

<sup>3</sup> ...<sup>564</sup>

<sup>561</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>562</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>563</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>564</sup> Repealed by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), with effect from 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

**Art. 743**<sup>565</sup>

IV. Partition of a property <sup>1</sup> If the dominant property is partitioned, the easement normally continues to exist in favour of each part of the dominant property.

<sup>2</sup> If according to the documentary evidence or the circumstances the exercise of the easement is limited to individual parts of the property, it must be deleted in respect of the other parts.

<sup>3</sup> The revision procedure is governed by the regulations on the deletion and amendment of land register entries.

**Art. 744**<sup>566</sup>**Chapter Two: Usufruct and other Personal Servitudes****Art. 745**

A. Usufruct  
I. Object <sup>1</sup> A usufruct may be held over chattels, immovable property, rights or assets.

<sup>2</sup> Unless otherwise provided, it confers complete enjoyment of the object on the usufructuary.

<sup>3</sup> A usufruct of immovable property may be limited to a specific part thereof.<sup>567</sup>

**Art. 746**

II. Establishment  
1. In general <sup>1</sup> A usufruct of chattels or debts is established by transfer to the acquirer and a usufruct of immovable property by entry in the land register.

<sup>2</sup> The provisions governing ownership apply to the acquisition of a usufruct of chattels and of immovable property as well as to entry in the land register, except where otherwise provided.

**Art. 747**<sup>568</sup>

2. ...

<sup>565</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>566</sup> Repealed by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), with effect from 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>567</sup> Inserted by No I of the FA of 20 June 2003, in force since 1 Jan. 2004 (AS **2003** 4121; BBl **2002** 4721).

<sup>568</sup> Repealed by No I 2 of the FA of 5 Oct. 1984, with effect from 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

**Art. 748**III. Extinction  
1. Grounds

<sup>1</sup> Usufruct is extinguished in the event of the complete loss of the object to which it applies and in the case of immovable property on deletion of the entry from the land register where the entry was required to establish the usufruct.

<sup>2</sup> Other grounds for extinction, such as the passage of time or the renunciation or death of the usufructuary, confer on the owner only a right to apply for the deletion of the entry.

<sup>3</sup> A statutory usufruct ends on cessation of its cause.

**Art. 749**

## 2. Duration

<sup>1</sup> Usufruct ceases with the death of the usufructuary and in the case of legal entities on their dissolution.

<sup>2</sup> In the case of legal entities, however, it may not last more than 100 years.

**Art. 750**3. Replacement  
on extinction of  
usufruct

<sup>1</sup> The owner of the object of a usufruct is not obliged to replace or restore the object if it has been destroyed.

<sup>2</sup> If it is replaced or restored the usufruct is restored with it.

<sup>3</sup> If an object that has been destroyed is replaced, as may be the case with compulsory purchase and insurance indemnities, the usufruct continues on the replacement object.

**Art. 751**4. Return  
a. Duty

When the usufruct ends, the person in possession of the object must return it to the owner.

**Art. 752**

## b. Liability

<sup>1</sup> The usufructuary is liable for complete loss or deterioration of the object, unless he or she shows that he or she was not at fault.

<sup>2</sup> He or she must replace any items which have been used up if such consumption is not intrinsic to the use of the object.

<sup>3</sup> He or she is not obliged to compensate for any depreciation caused by the proper use of the object.

**Art. 753**

## c. Costs

<sup>1</sup> If the usufructuary has of his or her own free will incurred costs or made improvements, on return of the object he or she may request

compensation in accordance with the provisions governing agency without authority.

<sup>2</sup> He or she is entitled to remove any fixtures he or she has installed for which the owner is not prepared to pay compensation; he or she is, however, obliged to restore the object to its previous condition.

#### **Art. 754**

5. Limitation of compensation rights

The owner's right to compensation for alterations or depreciation and the usufructuary's right to compensation for expenditure or to remove fixtures are limited to one year after the return of the object.

#### **Art. 755**

IV. Scope  
1. Rights of the usufructuary  
a. In general

<sup>1</sup> The usufructuary has the rights of possession, use and enjoyment of the object.

<sup>2</sup> He or she is responsible for looking after it.

<sup>3</sup> In the exercise of these rights, he or she must exercise reasonable care.

#### **Art. 756**

b. Natural fruits

<sup>1</sup> Natural fruits belong to the usufructuary if they have ripened during the period of the usufruct.

<sup>2</sup> The person who has cultivated the land is entitled to claim equitable compensation for his or her costs from the person who receives the ripe fruits, whereby this compensation should not exceed their value.

<sup>3</sup> Constituent parts of the usufruct other than fruits or produce belong to the owner.

#### **Art. 757**

c. Interest

Interest on usufructuary capital and other periodic returns accrue to the usufructuary from the day on which the usufruct begins until the day on which it ends, even if they mature at a later date.

#### **Art. 758**

d. Assignability

<sup>1</sup> Unless it is a strictly personal right, the exercise of the usufruct may be assigned to another person.

<sup>2</sup> The owner is entitled to assert his or her rights directly against such person.

**Art. 759**

2. Rights of the owner  
a. Supervision

The owner may object to any unlawful or inappropriate use of the object.

**Art. 760**

b. Security

<sup>1</sup> The owner is entitled to request security from the usufructuary providing he or she may show that his or her rights are jeopardised.

<sup>2</sup> He or she is entitled to request security without such showing and already before transfer where consumable objects or securities are the object of the usufruct.

<sup>3</sup> If securities are the object of the usufruct, their deposit constitutes sufficient security.

**Art. 761**

c. Security in the case of gifts and statutory usufruct

<sup>1</sup> A person who has transferred an object as a gift while reserving a personal right of usufruct may not be required to provide security.

<sup>2</sup> The obligation to provide security in the case of statutory usufruct is subject to the specific rules governing the legal relationship.

**Art. 762**

d. Consequence of failure to provide security

If the usufructuary fails to provide security within the reasonable time limit set for that purpose, or if he or she persists in using the object unlawfully despite the owner's objections, the court may dispossess him or her of the object until further notice and appoint a trustee.

**Art. 763**

3. Inventory

The owner and the usufructuary have the right at any time to request that a publicly notarised inventory of the objects subject to the usufruct be drawn up at their joint expense.

**Art. 764**

4. Costs  
a. Preservation of the object

<sup>1</sup> The usufructuary must preserve the object in its original condition and of his or her own accord carry out such repairs and renovations as constitute normal maintenance.

<sup>2</sup> If more substantial work or measures are necessary to protect the object, the usufructuary must inform the owner and allow such work to be carried out.

<sup>3</sup> If the owner does not attend to the matter, the usufructuary is authorised to take the necessary steps at the owner's expense.

**Art. 765**

b. Maintenance and administration

<sup>1</sup> The usufructuary must bear the costs of the normal maintenance and administration of the object, the interest on the attendant debt and taxes and other duties for the duration of his or her rights over the object.

<sup>2</sup> If the taxes and duties are payable by the owner, the usufructuary must compensate him or her to the same extent.

<sup>3</sup> All other charges are borne by the owner, but if the usufructuary does not advance the owner the necessary funds on request, he or she is entitled to dispose of parts of the usufruct for this purpose.

**Art. 766**

c. Duty to pay interest on usufruct of assets

In the case of a usufruct of assets, the usufructuary must pay interest on the debts but, where justified in the circumstances, is entitled on request to be released from that obligation by redemption of the debt so that afterwards the usufruct is confined to the remainder of the assets.

**Art. 767**

d. Insurance

<sup>1</sup> The usufructuary must insure the object in favour of the owner against fire and other risks to the extent such insurance is required under the duty of care required by local custom.

<sup>2</sup> Where this is the case, and also where a usufruct is established on an already insured object, the usufructuary bears the costs of the insurance for the duration of the usufruct.

**Art. 768**

V. Special cases  
1. Land  
a. Fruits

<sup>1</sup> The usufructuary of immovable property must ensure that it is not exploited beyond the normal limits by the type of use to which it is put.

<sup>2</sup> To the extent that fruits are collected beyond such limits they belong to the owner.

**Art. 769**

b. Use

<sup>1</sup> The usufructuary must not change the intended use of the immovable property in a manner that is significantly detrimental to the owner.

<sup>2</sup> He or she must neither transform nor substantially modify the object.

<sup>3</sup> He or she may dig quarries, marl pits, peat cuttings and the like only after giving prior notice to the owner and on condition that the intended use of the immovable property is not substantially changed.

- Art. 770**
- c. Woodland
- <sup>1</sup> The usufructuary of woodland is entitled to farm it within the limits of a reasonable business plan.
  - <sup>2</sup> Both owner and usufructuary may require compliance with a plan which takes due account of their rights.
  - <sup>3</sup> Where there is large-scale loss of woodland caused by storm, snow, fire, insect infestation or other factors, either the exploitation must gradually be reduced or the business plan adapted to the changed circumstances; income realised from the clearing of timber must be invested at interest and serves as compensation for the loss of woodland.

- Art. 771**
- d. Mines
- The provisions governing the usufruct of woodland apply *mutatis mutandis* to the usufruct of objects, such as mines, whose use involves the extraction of substances from the earth.

- Art. 772**
2. Consumables and valued chattels
- <sup>1</sup> In the absence of an agreement to the contrary, the usufructuary becomes the owner of consumable objects but is liable to replace the value they had at the beginning of the usufruct.
  - <sup>2</sup> Where any other chattels which have been valued are transferred to the usufructuary he or she may, in the absence of an agreement to the contrary, freely dispose of them but is liable for their replacement if he or she exercises such right.
  - <sup>3</sup> Agricultural equipment, herds of animals, stores of goods and the like may be replaced with objects of the same kind and quality.

- Art. 773**
3. Claims  
a. Scope
- <sup>1</sup> A usufruct of debts entitles the usufructuary to retain the realised revenue.
  - <sup>2</sup> Notices of termination to the debtor and dispositions relating to securities subject to a usufruct must be made jointly by the creditor and the usufructuary; notices of termination by the debtor must be addressed to both.
  - <sup>3</sup> If a debt is at risk, the creditor and the usufructuary have a mutual right to request each other's consent to such measures as are required to ensure diligent administration.



**Art. 774**

b. Repayments  
and reinvestment

<sup>1</sup> If the debtor is not specifically authorised to repay either the creditor or the usufructuary, he or she must pay them jointly or deposit the amount.

<sup>2</sup> The benefit received, such as the repayment of the principal, if under the usufruct.

<sup>3</sup> Both creditor and usufructuary are entitled to a secure, interest-bearing reinvestment of the principal.

**Art. 775**

c. Right to  
assignment

<sup>1</sup> The usufructuary has the right to request the assignment of the debts and securities over which he or she has a usufruct within three months of the beginning thereof.

<sup>2</sup> Once assignment has been effected, he or she is liable to the former creditor for the value of the debts and securities as at the date of assignment and is required to provide security for that amount unless waived by the creditor.

<sup>3</sup> If the creditor has not waived his or her right to security, the assignment becomes effective only once security has been posted.

**Art. 776**

B. Right of  
residence  
I. In general

<sup>1</sup> The right of residence is the right to live in all or part of a building.

<sup>2</sup> It is neither transferable nor heritable.

<sup>3</sup> It is subject to the provisions governing usufruct unless the law provides otherwise.

**Art. 777**

II. Rights of the  
usufructuary

<sup>1</sup> The scope of the right of residence is generally tailored to the personal requirements of the usufructuary.

<sup>2</sup> However, unless the right is expressly restricted to the person of the holder, he or she may share the residence with his or her family and household.

<sup>3</sup> If the right of residence is limited to part of a building, the holder may use the fittings and installations intended for common use.

**Art. 778**

III. Maintenance  
costs

<sup>1</sup> If the right of residence is exclusive, the usufructuary bears the costs of ordinary maintenance.

<sup>2</sup> If the right of residence is exercised jointly with the owner, the latter bears the maintenance costs.

**Art. 779**

C. Building right  
I. Object and  
entry in the land  
register<sup>569</sup>

<sup>1</sup> Immovable property may be encumbered with an easement entitling a third party to erect or maintain a construction above or below ground on such land.

<sup>2</sup> Unless otherwise agreed, this right is transferable and heritable.

<sup>3</sup> If the building right has the character of a distinct and permanent right it may be recorded in the land register as immovable property.

**Art. 779a**<sup>570</sup>

II. Legal  
transaction

<sup>1</sup> The legal transaction creating a building right is only valid if done as a public deed.

<sup>2</sup> If the remuneration for the building right and any other contractual provisions should be noted in the land register, they are also only valid if done as a public deed.

**Art. 779b**<sup>571</sup>

III. Nature,  
scope and  
noting<sup>572</sup>

<sup>1</sup> Contractual provisions on the nature and scope of a building right, such as location, design, size and purpose of the buildings, as well as on the use of land which, although not built on, is used in the exercise of the building right, are binding on every new owner of the right and the servient property.

<sup>2</sup> Additional contractual provisions may be noted in the land register, if the parties so agree.<sup>573</sup>

**Art. 779c**<sup>574</sup>

IV. Consequenc-  
es of expiry  
1. Reversion

When the building right expires, any existing construction reverts to the landowner and becomes an integral part of his or her parcel of land.

<sup>569</sup> Amended by No I of the FA of 19 March 1965, in force since 1 July 1965 (AS 1965 445; BBl 1963 I 969).

<sup>570</sup> Inserted by No I of the FA of 19 March 1965 (AS 1965 445; BBl 1963 I 969). Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>571</sup> Inserted by No I of the FA of 19 March 1965, in force since 1 July 1965 (AS 1965 445; BBl 1963 I 969).

<sup>572</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>573</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>574</sup> Inserted by No I of the FA of 19 March 1965, in force since 1 July 1965 (AS 1965 445; BBl 1963 I 969).

**Art. 779<sup>d</sup>**<sup>575</sup>

2. Compensation
- 1 The landowner must pay the holder of the expired right adequate compensation for the buildings which have reverted to his or her ownership, but such compensation is subject to the outstanding claims of creditors to whom the building right was pledged as security and is not payable to the holder of the building right without their consent.
- 2 If the compensation has neither been paid nor secured, the holder of the expired right or a creditor to whom the building right was pledged as security may request that a mortgage right be registered in place of and with the same rank as the expired right as security for the compensation claim.
- 3 Such registration must be made within three months of expiry of the building right.

**Art. 779<sup>e</sup>**<sup>576</sup>**Art. 779<sup>f</sup>**<sup>577</sup>

- V. Premature reversion  
1. Prerequisites

If the holder of the building right grossly violates his or her right in rem or his or her contractual obligations, the owner is entitled to premature reversion by requesting that the building right with all rights and encumbrances be transferred back to him or her.

**Art. 779<sup>g</sup>**<sup>578</sup>

2. Exercising the right of reversion
- 1 The right of reversion may be exercised only provided adequate compensation is paid for the reverting buildings, the amount payable being susceptible to reduction if the holder of the building right is at fault.
- 2 The building right will not be transferred to the owner until the compensation has been paid or secured.

<sup>575</sup> Inserted by No I of the FA of 19 March 1965, in force since 1 July 1965 (AS **1965** 445; BBl **1963** I 969).

<sup>576</sup> Inserted by No I of the FA of 19 March 1965 (AS **1965** 445; BBl **1963** I 969). Repealed by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), with effect from 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>577</sup> Inserted by No I of the FA of 19 March 1965, in force since 1 July 1965 (AS **1965** 445; BBl **1963** I 969).

<sup>578</sup> Inserted by No I of the FA of 19 March 1965, in force since 1 July 1965 (AS **1965** 445; BBl **1963** I 969).

**Art. 779<sup>h</sup>**<sup>579</sup>

3. Other applicable cases

The provisions governing the exercise of the right of reversion apply to all rights reserved by the landowner to terminate or reclaim the building right prematurely in the event of breach of duty.

**Art. 779<sup>i</sup>**<sup>580</sup>

VI. Liability for remuneration for the right

1. Right to establish a lien

<sup>1</sup> Provided the building right is recorded in the land register, the landowner is entitled to establish a lien thereon against each current holder as security for up to three annual payments.

<sup>2</sup> Where the remuneration does not consist of equal annual payments, the landowner is entitled to record a statutory lien for an amount aggregating three annual payments.

**Art. 779<sup>k</sup>**<sup>581</sup>

2. Registration

<sup>1</sup> The lien may be recorded at any time during the existence of the building right and is exempt from deletion in compulsory sale proceedings.

<sup>2</sup> The provisions governing recording of a building contractor's lien apply *mutatis mutandis*.

**Art. 779<sup>l</sup>**<sup>582</sup>

VII. Maximum duration

<sup>1</sup> A building right may be established as a distinct right for a maximum of 100 years.

<sup>2</sup> It may be prolonged at any time for a further period of up to 100 years in the same form as that required for its establishment, but any obligation to do so stipulated in advance is not binding.

**Art. 780**

D. Right of access to water sources

<sup>1</sup> The right of access to a water source on a parcel of land owned by another encumbers such land with a servitude permitting the drawing and channelling-off of water.

<sup>2</sup> Unless otherwise agreed, the right is transferable and heritable.

<sup>3</sup> If the right of access to water is distinct and permanent, it may be recorded in the land register as immovable property.

<sup>579</sup> Inserted by No I of the FA of 19 March 1965, in force since 1 July 1965 (AS 1965 445; BBl 1963 I 969).

<sup>580</sup> Inserted by section I of the FA of 19 March 1965, in force since 1 July 1965 (AS 1965 445; BBl 1963 I 969).

<sup>581</sup> Inserted by section I of the FA of 19 March 1965, in force since 1 July 1965 (AS 1965 445; BBl 1963 I 969).

<sup>582</sup> Inserted by section I of the FA of 19 March 1965, in force since 1 July 1965 (AS 1965 445; BBl 1963 I 969).

- Art. 781**
- E. Other servitudes
- <sup>1</sup> An owner may establish other servitudes on his or her property in favour of any person or group if such servitudes meet a particular need, such as rights of access for shooting practice or rights of way.
- <sup>2</sup> Unless otherwise agreed, such servitudes are non-transferable and their nature and scope is based on the beneficiaries' normal needs.
- <sup>3</sup> In other respects they are subject to the provisions governing easements.

- Art. 781a**<sup>583</sup>
- F. Judicial measures
- The beneficiaries of an easement recorded in the land register are subject by analogy to the provisions on judicial measures in the event that the owner cannot be found or in the absence of the required management bodies of a legal entity.

### Chapter Three: Real Burdens

- Art. 782**
- A. Object
- <sup>1</sup> A real burden obliges an owner of immovable property to fulfil an obligation to a beneficiary for which he or she is liable solely with the immovable property.
- <sup>2</sup> The current owner of another property may be designated as the beneficiary.
- <sup>3</sup> Other than in the case of public law real burdens, a real burden may have as its object only one obligation, which is determined either by the nature of the servient property or the economic needs of the benefited property.<sup>584</sup>

- Art. 783**
- B. Establishment and extinction
- I. Establishment
1. Registration and form of acquisition
- <sup>1</sup> A real burden is established by recording in the land register.
- <sup>2</sup> The entry must stipulate a total value for the real burden denominated in Swiss currency which, in the case of periodic payments and in the absence of any agreement to the contrary, shall equal twenty times the annual payment.

<sup>583</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBI **2007** 5283).

<sup>584</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBI **2007** 5283).

<sup>3</sup> The provisions governing land ownership apply to the acquisition or registration of real burdens, unless otherwise provided.

**Art. 784**<sup>585</sup>

2. Public law  
real burdens

The establishment of public law real burdens and their effect in relation to third parties acting in good faith is governed by analogy by the provisions of cantonal law on statutory liens.

**Art. 785**<sup>586</sup>

**Art. 786**

II. Extinction  
1. In general

<sup>1</sup> A real burden is extinguished on deletion of the entry or on the complete loss of the servient property.

<sup>2</sup> In the case of redemption, replacement or other causes of extinction, the burdened owner acquires a right against the beneficiary for the deletion of the entry.

**Art. 787**

2. Redemption  
a. By the creditor

<sup>1</sup> The creditor may request redemption of the real burden by agreement and also:<sup>587</sup>

- 1.<sup>588</sup> if the servient property has been divided and the creditor does not accept the transfer of the debt to the divided parts;
2. if the owner reduces the value of the land without providing other security by way of replacement;
3. if the debtor is in arrears for three years' worth of performance.

<sup>2</sup> If the creditor requests redemption due to the division of the property, the he or she must give one year's notice of termination within one month of the transfer becoming legally binding.<sup>589</sup>

<sup>585</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>586</sup> Repealed by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), with effect from 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>587</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>588</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>589</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

**Art. 788**

- b. By the debtor
- <sup>1</sup> The debtor may request redemption of the real burden by agreement, and also:
1. if the beneficiary fails to abide by the agreement establishing the real burden;
  2. if the real burden has been in existence for thirty years, even where a longer duration or a charge in perpetuity was agreed.
- <sup>2</sup> If the debtor wishes to redeem the charge after thirty years, he or she must in every case give notice of termination one year in advance.
- <sup>3</sup> The real burden may not be redeemed in such manner if it is linked with a perpetual easement.

**Art. 789**

- c. Redemption sum
- The redemption sum is equal to the amount recorded in the land register as the total value of the real burden, unless its real value is shown to be less.

**Art. 790**

3. Prescription
- <sup>1</sup> A real burden is not subject to prescription.
- <sup>2</sup> Each individual obligation is subject to prescription from the time it becomes the obligor's personal debt.

**Art. 791**

- C. Scope  
I. Creditor's rights
- <sup>1</sup> The real burden creditor has no personal claim against the debtor, but only the right to satisfaction from the servient property.
- <sup>2</sup> However, three years after it is due, each individual obligation becomes a personal obligation for which the property is no longer liable.

**Art. 792**

- II. Debt liability
- <sup>1</sup> If the land changes ownership, the new owner automatically becomes the obligor under the real burden.
- <sup>2</sup> If the land is divided, the owners of the divided parts become debtors under the real burden. The debt is apportioned over the divided parts of the property in accordance with the provisions on mortgage contracts.<sup>590</sup>

<sup>590</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBI **2007** 5283).

## Title Twenty-Two: Mortgages

### Chapter One: General Provisions

#### Art. 793

- A. Requirements  
I. Types
- <sup>1</sup> A mortgage may be created on immovable property in the form of a mortgage contract or a mortgage certificate.<sup>591</sup>
- <sup>2</sup> No other types of mortgage are permitted.

#### Art. 794

- II. Form of the debt  
1. Amount
- <sup>1</sup> Whenever a mortgage is created, a specific amount denominated in Swiss currency must be indicated as the debt.
- <sup>2</sup> If the amount of the debt is unspecified, a maximum amount must be indicated up to which the property is liable for all claims of the creditor.

#### Art. 795

2. Interest
- <sup>1</sup> The interest payable may be set at any level at the parties' discretion within the legal limits imposed to prevent abusive interest rates.
- <sup>2</sup> Cantonal law may provide for a maximum permissible interest rate for debts secured by mortgages.

#### Art. 796

- III. Immovable property  
1. Property subject to a charge
- <sup>1</sup> A mortgage may be created only on immovable property recorded in the land register.
- <sup>2</sup> The cantons may prohibit or enact special provisions to regulate the creation of mortgages over publicly owned land or over common land and pastures owned by corporations, and over any associated rights of use.

#### Art. 797

2. Specification  
a. In the case of a single property
- <sup>1</sup> Where a mortgage is created, the immovable property that it encumbers must be clearly specified.
- <sup>2</sup> Parts of a property may not be made subject to a mortgage unless the division of the property has been recorded in the land register.

<sup>591</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).



**Art. 798**

b. In the case of more than one property

<sup>1</sup> A mortgage right may be created on two or more properties for a single debt provided the properties are all owned by the same person or by debtors who are jointly and severally liable.

<sup>2</sup> In all other cases where more than one property is made subject to a mortgage as security for a single debt, each of the properties shall be encumbered for a specified portion of the total debt.

<sup>3</sup> Unless otherwise agreed, the total amount secured by the mortgage is divided in proportion to the values of the properties.

**Art. 798a**<sup>592</sup>

3. Agricultural properties

The Federal Act of 4 October 1991<sup>593</sup> on Rural Land Rights applies to the establishment of mortgages over agricultural properties.

**Art. 799**

B. Creation and extinction

I. Creation

1. Registration

<sup>1</sup> Subject to exceptions provided by law, a mortgage is created by its recording in the land register.

<sup>2</sup> A legal transaction creating a mortgage is valid only if done as a public deed.<sup>594</sup>

**Art. 800**

2. In the case of joint ownership

<sup>1</sup> In the case of joint ownership of a property, each joint owner may create a mortgage over his or her share.

<sup>2</sup> In the case of collective ownership, the property may be made subject to a mortgage only as a whole and in the name of all co-owners.

**Art. 801**

II. Extinction

<sup>1</sup> A mortgage is extinguished on deletion of the entry or the complete loss of the property.

<sup>2</sup> Extinction as a result of compulsory purchase is governed by federal and cantonal compulsory purchase law.

<sup>592</sup> Inserted by Art. 92 No 1 of the FA of 4 Oct. 1991 on Rural Land Rights, in force since 1 Jan. 1994 (AS **1993** 1410; BBl **1988** III 953).

<sup>593</sup> SR **211.412.11**

<sup>594</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

III. Charges on consolidated land  
1. Transfer of liens

### Art. 802

<sup>1</sup> In the case of land consolidation procedures carried out with the assistance or under the supervision of the public authorities, the mortgage rights assigned are transferred with the same ranking to the land allotted by way of replacement.

<sup>2</sup> Where one parcel of land replaces several parcels which are subject to a mortgage as security for different debts, or not all of which are subject to a mortgage, the liens will be applied to the single parcel of land and their ranking preserved wherever possible.

2. Redemption by the debtor

### Art. 803

The debtor is entitled to redeem liens on parcels of land involved in a land consolidation procedure by giving three months' notice expiring on the date on which such consolidation takes effect.

3. Monetary compensation

### Art. 804

<sup>1</sup> Where monetary compensation is received in connection with the consolidation of parcels of land subject to mortgages, such funds are distributed among the creditors according to their rank or, if of equal rank, in proportion to the size of their claims.

<sup>2</sup> Such compensation must not be paid to the debtor without the creditors' consent if it exceeds one-twentieth of the secured debt, or if the new parcel of land no longer provides sufficient security.

C. Effect  
I. Extent of security

### Art. 805

<sup>1</sup> A mortgage right encumbers the entire property including all its constituent parts and accessories.

<sup>2</sup> If accessories, such as machines or hotel furnishings, are expressly listed in the mortgage agreement and noted as such in the land register, they are treated accordingly unless it is shown that the law precludes their qualification as accessories.

<sup>3</sup> Rights of third parties to the accessories are reserved.

II. Rent

### Art. 806

<sup>1</sup> If the mortgaged property is let, the mortgage covers the rent claims which accrue between the date on which foreclosure proceedings are commenced or the date on which the debtor is declared bankrupt and the date of realisation.

<sup>2</sup> Tenants and lessees are bound by the mortgage only once they have been informed of the enforcement proceedings or the bankruptcy has been published.

<sup>3</sup> Transactions by the property owner involving claims for unmatured rent and any actions of distraint by other creditors are invalid in respect of any mortgage creditor who initiated foreclosure proceedings before the rent claims matured.

### Art. 807

III. Prescription Claims for which a mortgage has been recorded in the land register are not subject to prescription.

### Art. 808

IV. Safeguarding powers <sup>1</sup> If the owner reduces the value of the mortgaged property, the creditor may request that the court prohibit any further detrimental action.

1. In the event of a reduction in value

a. Court order and action by the creditor

<sup>2</sup> The creditor may be authorised by the court to take appropriate measures and may do so even without authorisation if there is risk in delay.

<sup>3</sup> He or she may request compensation for the costs of such measures from the owner and shall acquire a lien on the property for the corresponding amount. This lien does not require to be recorded in the land register and takes precedence over all other registered encumbrances.<sup>595</sup>

<sup>4</sup> If the amount of the lien exceeds 1000 francs and the lien is not recorded in the land register within four months of completion of the measures, it may not cited in opposition to third parties who rely on the land register in good faith.<sup>596</sup>

### Art. 809

b. Security, restoration, redemption

<sup>1</sup> If the property has depreciated, the creditor has the right to request that the debtor secure his or her debts or restore the property to its previous state.

<sup>2</sup> He or she may also demand security in the case of imminent depreciation.

<sup>3</sup> If the debtor does not comply within the time limit set by the court, the creditor may request redemption of such portion of the debt as is appropriate to compensate for the reduced degree of security.

<sup>595</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBI **2007** 5283).

<sup>596</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBI **2007** 5283).

**Art. 810**

2. Depreciation without owner's fault

<sup>1</sup> In the event of depreciation without fault on the owner's part, the creditor has a right to security or redemption only if the owner is indemnified for the loss.

<sup>2</sup> However, the creditor is entitled to take measures to prevent or eliminate the depreciation. He or she shall acquire a lien on the property for his or her costs which does not render the owner personally liable. This lien does not require to be recorded in the land register and takes precedence over all other registered encumbrances.<sup>597</sup>

<sup>3</sup> If the amount of the lien exceeds 1000 francs and the lien is not recorded in the land register within four months of completion of the measures, it may not be cited in opposition to third parties who rely on the land register in good faith.<sup>598</sup>

**Art. 811**

3. Disposal of minor portions of the property

If a part of the property worth less than one-twentieth of the secured debt is disposed of, the creditor may not refuse to release this portion from liability under the lien provided a proportionate repayment of the debt is made or the rest of the property provides him or her with sufficient security.

**Art. 812**

V. Further encumbrances

<sup>1</sup> Any waiver by the owner of right to create further charges over the servient property is non-binding.

<sup>2</sup> If, after the mortgage right has been created, the immovable property is encumbered with an easement or a real burden without the mortgage creditor's consent, the mortgage right takes precedence over the later encumbrances, which will be deleted if, in the event of enforcement proceedings, their existence is prejudicial to the mortgage creditor.

<sup>3</sup> However, the beneficiary of the easement or real burden has a claim for payment of the value of his or her right out of the enforcement proceeds, such claim taking precedence over the beneficiaries of encumbrances subsequently recorded in the land register.

<sup>597</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>598</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

**Art. 813**

- VI. Rank
1. Effect of rank
- 1 A mortgage is confined to the rank indicated in the entry.
  - 2 Mortgage rights may be established in a second or any lower rank provided the amount taking precedence is specified in the entry.

**Art. 814**

2. Ranking
- 1 If mortgage rights of different rank are created on an immovable property, any deletion does not entitle the beneficiaries of lower-ranking mortgage to advance in rank.
  - 2 The owner may create another mortgage in place of one which has been deleted.
  - 3 An agreement providing for mortgage creditors to advance in rank only has in rem effect where it is recorded as a priority notice in the land register.

**Art. 815**

3. Vacant ranks
- If a subordinate mortgage right is created and no higher-ranking mortgage exists, or if the debtor has not yet made use of an existing higher-ranking right to create a mortgage, or if a precedent claim is worth less than the amount recorded in the land register, in the event of foreclosure, the proceeds are distributed among the actual mortgage creditors according to their rank and irrespective of vacant ranks.

**Art. 816**

- VII. Foreclosure
1. Mode
- 1 In the event of default on the part of the debtor, the creditor has the right to payment out of the proceeds of the sale of the property.
  - 2 Any agreement stipulating that the property subject to the mortgage will become the property of the creditor in the event of default on the part of the debtor is invalid.
  - 3 Where several properties are made subject to a mortgage as security for a single claim, foreclosure proceedings must be brought simultaneously against all such properties, while individual properties are sold only if deemed necessary by the debt enforcement office.

**Art. 817**

2. Distribution of the proceeds
- 1 The proceeds from the sale of the property are distributed among the mortgage creditors according to their rank.
  - 2 Creditors of the same rank are entitled to equal satisfaction.

**Art. 818**

3. Extent of security

<sup>1</sup> A mortgage right secures the creditor:

1. for the principal;
2. for the costs of debt enforcement and default interest;
- 3.<sup>599</sup> for three years' accrued annual interest due on the date of the application for foreclosure or the debtor is declared bankrupt, plus the interest due since the last maturity date; in the case of a mortgage certificate only the interest actually due is secured by the mortgage.

<sup>2</sup> The interest rate originally agreed must not exceed five per cent to the detriment of subordinate mortgage creditors.

**Art. 819**<sup>600</sup>

4. Security for maintenance costs

<sup>1</sup> If a creditor has incurred expenses necessary for the maintenance of the property, in particular by paying insurance premiums owed by the owner, such expenses are secured by a lien over the property. This lien does not require to be recorded in the land register and takes precedence over all other registered encumbrances.

<sup>2</sup> If the amount of the lien exceeds 1000 francs and the lien is not recorded in the land register within four months of the compensatory act being carried out, it may not be cited in opposition to third parties who rely on the land register in good faith.

**Art. 820**

VIII. Lien in the case of land improvements  
1. Precedence

<sup>1</sup> If a rural property increases in value due to improvements carried out with the help of the public authorities, the owner may record a lien in the land register as security for his or her share of the costs which takes precedence over all other registered encumbrances on the property.

<sup>2</sup> If such land improvement is made without state subsidy, the owner may enter the lien for a maximum of two-thirds of his or her costs.

**Art. 821**

2. Extinction of debt and lien

<sup>1</sup> If a land improvement is made without state subsidy, the debt in relation to the charge must be repaid in annual payments of at least five per cent of the registered amount of the lien.

<sup>599</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>600</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>2</sup> The lien is extinguished for the claim and for each annual payment three years after maturity, and any lower-ranking mortgage creditors advance in rank.

### Art. 822

IX. Entitlement to insurers' payments

<sup>1</sup> A payment under insurance policy may be made to the owner of the insured property only with the consent of all the charge creditors.

<sup>2</sup> However, it may be made to the owner for the purposes of restoring the property subject to the charge provided adequate security is furnished.

<sup>3</sup> In other respects, the cantonal provisions governing fire insurance are reserved.

### Art. 823<sup>601</sup>

X. Untraceable creditor

Where the name or place of residence of the creditor is unknown, the court may, at the request of the debtor or other interested parties, order the necessary measures in cases where the law requires that a creditor take personal action as a matter of urgency.

## Chapter Two: The Mortgage Contract

### Art. 824

A. Purpose and nature

<sup>1</sup> A mortgage contract may secure any kind of debt, be it current, future or contingent.

<sup>2</sup> The mortgaged property need not be owned by the debtor.

### Art. 825

B. Establishment and extinction  
I. Establishment

<sup>1</sup> A mortgage contract is created in a specific rank even if the secured amount is indeterminate or variable, and it retains such rank notwithstanding any fluctuations in the secured amount.

<sup>2</sup> The creditor may request that the land registrar provide him or her with an extract concerning the mortgage contract. Such an extract has only evidential status and does not constitute a negotiable instrument.

<sup>3</sup> In lieu of such evidence, a certificate of registration may be appended to the mortgage contract deed.

<sup>601</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBI **2007** 5283).

**Art. 826**

II. Extinction  
1. Right to have  
entry deleted

If the debt is extinguished, the owner of the mortgaged property may request the creditor to authorise the deletion of the entry from the land register.

**Art. 827**

2. Position of  
owner

<sup>1</sup> If the property owner is not the debtor of the secured debt, he or she may redeem the mortgage on the same conditions as the debtor may repay the debt.

<sup>2</sup> If he or she satisfies the creditor, the claim passes to him or her.

**Art. 828**

3. Unilateral  
redemption  
a. Conditions  
and procedure

<sup>1</sup> Where a property is mortgaged for more than its value in respect of debts for which the acquirer is not personally liable, and providing no debt enforcement proceedings are pending, cantonal law may authorise the acquirer to redeem the mortgage rights either by paying the purchase price to the creditors or, where the property was acquired without payment, the amount at which he or she values the property.

<sup>2</sup> He or she must give the creditors six months' notice in writing of his or her intention to redeem the mortgage.

<sup>3</sup> The redemption amount is distributed among the creditors according to their rank.

**Art. 829**

b. Public auction

<sup>1</sup> Within one month of the acquirer's notification, the creditors are entitled to request that the mortgaged property be sold at public auction provided that they advance the costs, such auction to be announced publicly and held within one month of the date on which it was requested.

<sup>2</sup> If a higher price than the one offered is obtained at auction, the mortgage is redeemed at that higher price.

<sup>3</sup> The costs of the public auction are borne by the acquirer if a higher price is obtained, or otherwise by the creditor who requested the auction.

**Art. 830**

c. Official  
valuation

Cantonal law may provide that the redemption amount be determined by an official valuation rather than by sale at public auction.



**Art. 831**

4. Termination      Where the owner of the mortgaged property is not also the debtor, notice given by the creditor to terminate his or her claim is binding on the owner only if it is served on both him or her and the debtor.

**Art. 832**

- C. Effect  
I. Ownership and liability  
1. Alienation
- 1 The alienation of a mortgaged property does not affect liability under the mortgage contract and of the debtor unless otherwise agreed.
- 2 However, if the new owner has assumed liability for the secured debt, the previous debtor is discharged unless the creditor notifies him or her in writing within one year that he or she intends to retain him or her as debtor.

**Art. 833**

2. Division
- 1 If part of a mortgaged property or one of two or more mortgaged properties belonging to the same owner is alienated or if the mortgaged property is divided, unless otherwise agreed, liability under the mortgage will be reallocated in proportion to the value of the different parts.
- 2 If the creditor does not wish to accept such reallocation, within one month of its becoming final he or she may request repayment of his or her debt within one year.
- 3 Where the new owners have assumed liability for the debts secured by their properties, the previous debtor is discharged unless the creditor notifies him or her in writing within one year that he or she intends to retain him or her as debtor.

**Art. 834**

3. Notice of assumption of debt
- 1 If the new owner assumes the debt, the land registrar notifies the creditor accordingly.
- 2 The one-year time limit for the creditor's declaration runs as of such notice.

**Art. 835**

- II. Assignment of a debt
- The assignment of a debt secured by a mortgage contract is valid without entry in the land register.

**Art. 836**<sup>602</sup>

D. Statutory mortgage right  
I. Under cantonal law

<sup>1</sup> Where cantonal law grants the creditor the right to a lien in respect of debts that are directly related to the servient property, the lien is created when it is recorded in the land register.

<sup>2</sup> Where statutory liens amounting to over 1000 francs are created under cantonal law without being recorded in the land register and if they are not recorded in the land register within four months of the underlying debt becoming due, or at the latest within two years of the debt arising, on expiry of the period allowed for registration they may no longer be cited in opposition to third parties who rely on the land register in good faith.

<sup>3</sup> More restrictive regulations under cantonal law are reserved.

**Art. 837**<sup>603</sup>

II. With entry  
1. Cases in point

<sup>1</sup> The right to establish a statutory mortgage right applies to:

1. the vendor's claim to the sale price;
2. the claims of co-heirs and other co-owners in undivided shares arising from the division of immovable property which belonged to the community;
3. the claims of tradesmen and building contractors who have supplied labour and materials, or labour alone, for construction or other works, for demolition work, scaffolding work or for securing the construction pit or similar on the property whether the debtor is the owner of the property, tradesman or building contractor, tenant or any other person with rights to the property.

<sup>2</sup> If a tenant or other person with rights to the property is liable for debts due to tradesmen or building contractors, the claim is valid only if the property owner has consented to the work being done.

<sup>3</sup> The beneficiary may not waive such statutory mortgage rights in advance.

**Art. 838**

2. Vendor, co-heirs and co-owners

A lien in favour of the vendor, co-heirs or co-owners in undivided shares must be registered within three months of transfer of ownership.

<sup>602</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>603</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

**Art. 839**<sup>604</sup>

3. Tradesmen  
and building  
contractors  
a. Registration

<sup>1</sup> A tradesman's or building contractor's lien may be recorded in the land register as of the date of his or her undertaking to perform work.

<sup>2</sup> Application for such entry must be made within four months of completion of the work.

<sup>3</sup> The lien is entered only if the claim has been acknowledged by the owner or confirmed in a court judgment and may not be requested if the owner provides the claimant with adequate security.

<sup>4</sup> If the property is indisputably administrative assets and if the owner's liability for the debt is not based on contractual obligations, the owner shall be liable to the tradesmen or building contractor for debts that are acknowledged or determined by a court in accordance with the provisions on a debt subject to a simple surety, provided a written claim for the debt making reference to the statutory surety was made against the owner no later than four months after completion of the work.

<sup>5</sup> If there is a dispute as to whether immovable property constitutes administrative assets, the tradesman or building contractor may apply for the provisional recording of the lien in the land register no later than four months after completion of the work.

<sup>6</sup> If it is held in a court judgment that the immovable property constitutes administrative assets, the provisional recording of the lien must be deleted. It shall be replaced by the statutory surety provided the requirements of paragraph 4 are met. The deadline is met with the provisional recording of the lien.

**Art. 840**

b. Rank

If more than one statutory building contractor's lien is recorded in the land register, such liens confer an equal entitlement to satisfaction from the mortgaged property even if the entries were made on different dates.

**Art. 841**

c. Privileged  
claim

<sup>1</sup> Where the claims of tradesmen and building contractors are not wholly satisfied by foreclosure, the shortfall must be compensated for by the higher-ranking creditors out of such portion of the proceeds as exceeds the land value, provided it is apparent to such creditors that their liens have encumbered the property to the detriment of the tradesmen and building contractors.

<sup>604</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBI **2007** 5283).

<sup>2</sup> If the higher-ranking creditor alienates his or her mortgage security, he or she must compensate the tradesmen and building contractors for any sum of which they are deprived by such alienation.

<sup>3</sup> Once an interested party has had the beginning of the work noted in the land register, until the time limit for registration has expired, liens may only be registered in the form of mortgage contracts.

### Chapter Three:<sup>605</sup> Mortgage Certificates

#### Art. 842

A. Mortgage certificate

I. Purpose; Relationship with the debt arising from the basic relationship

<sup>1</sup> A mortgage certificate gives rise to a personal debt secured by a mortgage.

<sup>2</sup> In the absence of an agreement to the contrary, the mortgage certificate, where applicable, co-exists with the debt to be secured that arises from the basic relationship between the creditor and the debtor

<sup>3</sup> The debtor may raise the personal objections arising from the basic relationship against the creditor and his or her legal successors where they do not act in good faith.

#### Art. 843

II. Form

The mortgage certificate takes the form of either a register mortgage certificate or a mortgage certificate on paper.

#### Art. 844

III. Position of owner

<sup>1</sup> The owner of a mortgaged property who is not also the debtor under the mortgage certificate is subject to the provisions governing mortgage contracts.

<sup>2</sup> In the case of a mortgage certificate, the owner of the mortgaged property may raise the same objections as the debtor.

#### Art. 845

IV. Sale. Division

The consequences of the sale and the division of the property are governed by the provisions on mortgage contracts.

<sup>605</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

**Art. 846**

V. Mortgage certificate debt and ancillary agreements  
1. In general

1 The mortgage certificate debt must neither relate to the basic relationship nor include conditions or considerations in return.

2 The mortgage certificate may include debt-related ancillary agreements on the rate of interest, repayment instalments and discharge as well as other ancillary provisions relating to the mortgage certificate debt. A reference to a separate agreement is permitted.

**Art. 847**

2. Notice

1 The mortgage certificate may be discharged by the creditor or the debtor at six months notice at the end of any month unless otherwise agreed.

2 Any agreement may not allow the creditor a shorter period of notice than three months, unless the debtor defaults in making the repayments or paying the interest.

**Art. 848**

VI. Protection of persons acting in good faith

For any person relying on the land register in good faith, the details of the mortgage certificate debt and the lien accord with the entry.

**Art. 849**

VII. Objections by the debtor

1 The debtor may raise only such objections as arise from the entry in the land register or to which he or she is personally entitled with regard to the creditor or to document of title in the case of a mortgage certificate on paper.

2 Agreements including ancillary provisions on the mortgage certificate debt may only be cited in opposition to an acquirer of the mortgage certificate acting in good faith if they are referred to in the land register and on the document of title in the case of a mortgage certificate on paper.

**Art. 850**

VIII. Authorised person

On the issue of a mortgage certificate, a person may be granted a power of attorney. This person must make and receive payments, receive notices, consent to releases from liability under the mortgage and in general safeguard the rights of the creditors, debtor and owner with all due care and impartiality

2 The name of the authorised person must be recorded in the land register and on the document of title.

3 If the power of attorney lapses and the persons involved are unable to agree, the court shall make the necessary arrangements.

IX. Place of payment

### Art. 851

<sup>1</sup> The debtor must make all payments at the domicile of the creditor unless otherwise agreed.

<sup>2</sup> If the creditor's domicile is unknown or has changed to the detriment of the debtor, the latter may discharge his or her obligation by depositing payment with the competent authority at his or her own domicile or at the creditor's former domicile

X. Changes in the legal relationship

### Art. 852

<sup>1</sup> Where the legal relationship changes to the advantage of the debtor, in particular through the repayment of the debt, the debtor may request the creditor to agree to an amendment being recorded in the land register.

<sup>2</sup> In the case of a mortgage certificate on paper, the land register shall note the amendment on the document of title.

<sup>3</sup> In the absence of such an entry or the note on the document of title, the effect of the change in the legal relationship has no effect on an acquirer of the mortgage certificate acting in good faith.

XI. Discharge

### Art. 853

If the mortgage certificate debt is discharged, the debtor may request the creditor:

1. to agree to transfer the register mortgage certificate into the name of the debtor; or
2. to hand over the document of title to the paper mortgage certificate without cancelling the same.

XII. Extinction  
1. In the absence of a creditor

### Art. 854

<sup>1</sup> If there is no longer a creditor, or if the creditor waives his or her lien, the debtor has the option of either having the entry deleted or allowing it to remain in the land register.

<sup>2</sup> The debtor also has the right to continue to use the mortgage certificate.

2. Deletion

### Art. 855

A mortgage certificate on paper may not be deleted from the land register before the document of title has been cancelled or declared void by the court.

**Art. 856**XIII. Public call  
to creditors

<sup>1</sup> If the creditor under a mortgage certificate has not come forward for ten years and if no demand has been made for interest during that period, the owner of the mortgaged property may ask the court to make a public call for the creditor to come forward within six months

<sup>2</sup> If the creditor fails to come forward within this period and if an investigation concludes that there is a high probability that a valid claim no longer exists, the court shall:

1. in the case of a register mortgage certificate, delete the lien from the land register; or
2. cancel the mortgage certificate on paper and delete the lien from the land register.

**Art. 857**B. Register  
mortgage  
certificate

<sup>1</sup> A register mortgage certificate is created when it is recorded in the land register.

I. Establishment

<sup>2</sup> It is recorded in the name of the creditor or of the landowner.

**Art. 858**

II. Transfer

<sup>1</sup> The transfer of a register mortgage certificate is achieved by recording the new creditor in the land register based on a written declaration from the previous creditor.

<sup>2</sup> Payments by the debtor only have a discharging effect if they are made to the person who at the time of payment is recorded as the creditor in the land register.

**Art. 859**III. Pledging,  
distrain and  
usufruct

<sup>1</sup> The pledging of the register mortgage certificate is achieved by recording the creditor of a charge on chattels in the land register based on a written declaration from the creditor recorded in the land register.

<sup>2</sup> A distraint order is executed by recording the restriction on power of disposal in the land register.

<sup>3</sup> The usufruct is created by its recording in the land register.

**Art. 860**C. Mortgage  
certificate on  
paper

<sup>1</sup> The creation of a mortgage certificate on paper always requires an entry in the land register and a document of title

I. Creation

1. Registration

<sup>2</sup> The bearer or a specific person, in particular the landowner, may be named as the creditor under the paper mortgage certificate.

<sup>3</sup> The mortgage certificate shall take effect on registration even if the document of title has not yet been issued.

### Art. 861

2. Document of title

<sup>1</sup> The mortgage certificate on paper is issued by the land register issued.

<sup>2</sup> It must be signed by the land registrar in order to be valid. Other requirements as to form shall be imposed by the Federal Council.

<sup>3</sup> It may be delivered to the creditor or his or her authorised agent only with the express consent of the debtor and of the owner of the servient property.

### Art. 862

II. Protection of persons acting in good faith

<sup>1</sup> For any person relying on the land register in good faith, the rights stated in the document of title duly issued as a mortgage certificate on paper apply.

<sup>2</sup> If the wording of the document of title does not correspond to the entry or if there is no entry, the land register is authoritative.

<sup>3</sup> A person who has acquired a document of title in good faith is entitled to damages in accordance with the provisions governing the land register.

### Art. 863

III. Creditor's rights  
1. Claims

<sup>1</sup> A claim arising from a mortgage certificate may not be alienated, pledged or otherwise asserted unless the claimant is in possession of the document.

<sup>2</sup> This does not apply to the assertion of a claim in cases where the document of title has been cancelled or not yet issued

### Art. 864

2. Assignment

<sup>1</sup> The assignment of a mortgage certificate debt requires the delivery of the document of title to the assignee.

<sup>2</sup> If the title is in the names of a person, the title must also be endorsed and the name of the assignee given.

### Art. 865

IV. Cancellation

<sup>1</sup> Where a document of title has been lost or destroyed without the intention of repaying the debt, the creditor may request the court to cancel the document of title and order the debtor to make payment or that a new document of title be issued for as yet unmatured claims



<sup>2</sup> The cancellation is made in accordance with the provisions governing the cancellation of bearer securities but subject to a notice period of six months

<sup>3</sup> Likewise, the debtor may request that a lost certificate which has already been redeemed be cancelled.

### **Art. 866–874**

*Repealed*

## **Chapter Four: Issue of Bonds secured by a Mortgage Right**

### **Art. 875**

A. Bond issues  
secured by a lien

Registered or bearer bonds may be secured by a mortgage:

1. by issuing a mortgage contract or a mortgage certificate for the entire series and appointing an agent for the creditors and the borrower;
2. by establishing a mortgage right for the entire bond issue in favour of the issuer and establishing a mortgage on that debt in favour of the bond holders.

### **Art. 876–883<sup>606</sup>**

## **Title Twenty-Three: Charges on Chattels**

### **Chapter One: Pledges of Chattels and Special Liens**

#### **Art. 884**

A. Pledges  
I. Establishment  
1. Possession by  
pledgee

<sup>1</sup> Except where otherwise provided by law, chattels may be pledged only by the transfer of possession of the pledged chattel to the pledgee.

<sup>2</sup> Any person who in good faith takes a chattel in pledge acquires a general lien over it, provided that third parties do not have rights over the chattel as a result of prior possession, even if the pledger had no authority to alienate it.

<sup>3</sup> The general lien is not established as long as the pledger retains exclusive possession of the chattel.

<sup>606</sup> Repealed by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), with effect from 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

**Art. 885**

2. Pledge of livestock

<sup>1</sup> A general lien on livestock to secure the claims of lending institutions and co-operatives authorised to carry out such transactions by the competent authority of the canton in which they have their seat may be established without transfer of possession by entry in a public register and notification to the debt enforcement office.

<sup>2</sup> The Federal Council regulates the keeping of the register.<sup>607</sup>

<sup>3</sup> The cantons may levy fees for entries in the register and the associated administration; they determine the register districts and the responsible officials.<sup>608</sup>

**Art. 886**

3. Subordinate pledge

A subordinate pledge is established by notifying the pledgee in writing and instructing him or her to deliver the pledged chattel to the subordinate pledgee after his or her claim has been satisfied.

**Art. 887**

4. Further pledge by pledgee

The pledgee may only give the pledged chattel in further pledge with the pledgor's consent.

**Art. 888**

II. Extinction  
1. Loss of possession

<sup>1</sup> The general lien is extinguished once the pledgee no longer possesses the pledged chattel and is unable to demand its return from third parties.

<sup>2</sup> The effects of the lien are suspended as long as the pledgor has exclusive possession of the pledged chattel with the pledgee's consent.

**Art. 889**

2. Return

<sup>1</sup> The pledgee must return the pledged chattel to the entitled party where the pledge is extinguished due to payment of the debt or for some other reason.

<sup>2</sup> He or she is not obliged to return the pledged chattel, in whole or in part, until his or her claim has been fully satisfied.

<sup>607</sup> Amended by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), in force since 1 Jan. 1994 (AS **1993** 1404; BBl **1988** III 953).

<sup>608</sup> Amended by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), in force since 1 Jan. 1994 (AS **1993** 1404; BBl **1988** III 953).

- Art. 890**
3. Liability of the pledgee
- 1 The pledgee is liable for the depreciation or loss of the pledged chattel, unless he or she shows that he or she is not at fault.
  - 2 If the pledgee has alienated the pledged chattel or given it in further pledge without authority, he or she is liable for any resulting damage.
- Art. 891**
- III. Effect
1. Rights of the pledgee
- 1 If the debtor is in default the creditor has the right to satisfy his or her claim from the proceeds of the pledge.
  - 2 The general lien provides the creditor with security for his or her claim, including contractual interest, debt enforcement costs and default interest.
- Art. 892**
2. Scope of the general lien
- 1 The general lien encumbers the pledged chattel including its accessories.
  - 2 Unless otherwise agreed, the pledgee must deliver the natural fruits of the pledged chattel to the owner once they are no longer a constituent part thereof.
  - 3 Fruits which are a constituent part of the pledged chattel at the time of its realisation are included in it.
- Art. 893**
3. Rank
- 1 Where there are several pledges on the same chattel, the pledgees are satisfied according to their rank.
  - 2 Rank is determined by the date on which the pledges were established.
- Art. 894**
4. Default agreements
- Any agreement stipulating that the pledged chattel will become the property of the pledgee in the event of default on the part of the debtor is invalid.
- Art. 895**
- B. Special lien
- I. Requirements
- 1 A creditor has the right to retain chattels and securities which have come into his or her possession with the debtor's consent until his or her claim has been satisfied, providing such claim is due and intrinsically connected with the retained objects.
  - 2 Between persons engaged in commerce, an intrinsic connection exists where both the claim and the retained objects relate to their commercial dealings.

<sup>3</sup> The creditor has a special lien provided that third parties do not have rights as a result of prior possession, even if the chattel which he or she has received in good faith does not belong to the debtor.

**Art. 896**

- II. Exceptions
- <sup>1</sup> No special lien may be asserted over chattels which by their nature are not realisable.
- <sup>2</sup> Equally, no special lien may be asserted where to do so would be incompatible with an obligation assumed by the creditor or with instructions issued by the debtor prior to or upon transfer of the chattel or with public policy.

**Art. 897**

- III. In the event of insolvency
- <sup>1</sup> In the event of the debtor's insolvency, the creditor has a special lien even if his or her claim is not yet due.
- <sup>2</sup> If the insolvency did not occur or become known to the creditor until after transfer of the chattel, the special lien may be exercised even if incompatible with a prior obligation or with a special instruction issued by the debtor.

**Art. 898**

- IV. Effect
- <sup>1</sup> If the debtor is in default and fails to provide sufficient security, the creditor is entitled to realise the retained object in the same manner as a pledged chattel after notifying the debtor.
- <sup>2</sup> Where retained registered securities are to be realised, the debt enforcement or bankruptcy official must take the necessary steps on the debtor's behalf.

**Chapter Two: Liens on Debts and Other Rights**

**Art. 899**

- A. In general
- <sup>1</sup> Debts or other rights may be pledged provided they are assignable.
- <sup>2</sup> Unless otherwise provided, a general lien on debts and other rights is regulated by the provisions governing the pledging of chattels.

**Art. 900**

- B. Establishment
- I. In the case of ordinary claims
- <sup>1</sup> In order to pledge a debt not evidenced in writing or for which only a borrower's note exists, the pledge agreement must be executed in writing and, where applicable, the borrower's note transferred.
- <sup>2</sup> The pledgee and the pledger may inform the debtor of the pledge.

<sup>3</sup> In order to pledge other rights, a written pledge agreement must be drawn up and any form required for the transfer must be observed.

### Art. 901

II. In the case of securities 1 In the case of bearer securities, delivery of the certificate to the pledgee is sufficient to establish the pledge.

2 In the case of other securities, the certificate must be delivered and either endorsed or accompanied by a declaration of assignment.

<sup>3</sup> The pledging of intermediated securities is governed exclusively by the Intermediated Securities Act of 3 October 2008<sup>609,610</sup>

### Art. 902

III. In the case of documents of title to goods 1 Where there are documents of title to goods, the goods may be pledged by pledging the documents.

2 Where a special warrant exists in addition to a document of title to goods, pledging the warrant is sufficient to pledge the goods, provided notice of the pledge including the amount of the debt and the maturity date is entered on the document of title.

### Art. 903

IV. Subordinate pledge A subordinate pledge of a debt is valid only if the prior ranking pledgee is notified in writing of the subordinate pledge by the creditor or by the subordinate pledgee.

### Art. 904

C. Effect  
I. Extent of security 1 Unless otherwise agreed, a pledge of interest-bearing debts or other debts conferring periodic subsidiary benefits, such as dividends, is limited to the current debt and the creditor is not entitled to payments which have already fallen due.

2 However, where such subsidiary rights are evidenced by separate documents, unless otherwise agreed, they are also covered by pledged to the extent that the pledge has been validly established.

<sup>609</sup> SR 957.1

<sup>610</sup> Inserted by Annex No 1 of the Intermediated Securities Act of 3 Oct. 2008, in force since 1 Jan. 2010 (AS 2009 3577; BBl 2006 9315).

**Art. 905**

II. Representation of pledged shares and capital contributions to limited liability companies<sup>611</sup>

<sup>1</sup> Pledged shares are represented at general meetings of shareholders by the shareholder rather than the pledgee.

<sup>2</sup> Pledged capital contributions to a limited liability company are represented in the members' general meeting by the member rather than the pledgee.<sup>612</sup>

**Art. 906**

III. Administration and payment

<sup>1</sup> If diligent administration so requires, the creditor may give notice to terminate the pledged claim and collect the debt and the pledgee is entitled to request that such procedures be carried out.

<sup>2</sup> Once notified of the pledge, the debtor may make payment to either the creditor or the pledgee, but only with the other party's consent.

<sup>3</sup> Where no such consent is forthcoming, he or she must deposit the amount due.

**Chapter Three: Pawnbroking****Art. 907**

A. Pawnbrokers  
I. Licensing

<sup>1</sup> Any person wishing to operate as a pawnbroker requires a licence from the cantonal government.

<sup>2</sup> Cantonal law may provide that such licences are granted only to cantonal or communal bodies and charitable organisations.

<sup>3</sup> The cantons may levy fees from pawnbrokers.

**Art. 908**

II. Duration of licence

<sup>1</sup> A licence is granted to private pawnbrokers for a specific period only, but may be renewed.

<sup>2</sup> A licence may be revoked at any time if the pawnbroker fails to comply with the provisions applicable to his or her business.

<sup>611</sup> Inserted by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>612</sup> Inserted by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 909**

B. Pawning  
I. Establishment

A chattel is pawned by delivering it to the pawnbroker against receipt.

**Art. 910**

II. Effect  
1. Sale of  
pawned chattel

<sup>1</sup> If the pawned chattel is not redeemed by the redemption deadline, the pawnbroker may sell it at public auction after making a prior call for redemption.

<sup>2</sup> The pawnbroker has no claim against the pledger.

**Art. 911**

2. Right to  
surplus

<sup>1</sup> If the auction proceeds exceed the pawned amount, the pledger is entitled to the surplus.

<sup>2</sup> Several claims against the same pledger may be treated as a single claim for the purpose of calculating the surplus.

<sup>3</sup> The claim to the surplus prescribes five years after the sale of the pawned chattel.

**Art. 912**

III. Redemption  
of the pawned  
chattel  
1. Right of  
redemption

<sup>1</sup> Provided it has not yet been sold, the pledger may redeem the pawned chattel against return of the receipt.

<sup>2</sup> If the pledger is unable to present the receipt, he or she is entitled to redeem the pawned chattel after the redemption deadline provided he or she establishes his or her entitlement.

<sup>3</sup> As of six months after the redemption deadline, the pledger also has such right even where the pawnbroker has expressly reserved the right to release the pawned chattel only against return of the receipt.

**Art. 913**

2. Pawnbroker's  
rights

<sup>1</sup> On redemption the pawnbroker is entitled to charge interest for the full current month.

<sup>2</sup> If the pawnbroker has expressly reserved the right to return the pawned chattel to any bearer of the pawn receipt, he or she may do so as long as he or she does not know and could not reasonably be expected to know that the bearer acquired the receipt unlawfully.

**Art. 914**

C. Purchase with  
right of repur-  
chase

Commercial purchases with right of repurchase are deemed equivalent to pawnbroking.

**Art. 915**

D. Rules governing pawnbroking

- <sup>1</sup> Cantonal law may issue further regulations governing pawnbroking.  
<sup>2</sup> ...<sup>613</sup>

**Chapter Four: ...****Art. 916–918<sup>614</sup>**

**Division Three: Possession and the Land Register**  
**Title Twenty-Four: Possession**

**Art. 919**

A. Definition and types  
 I. Definition

- <sup>1</sup> Effective control over a thing constitutes possession of it.  
<sup>2</sup> In the case of easements and real burdens, effective exercise of the right constitutes possession.

**Art. 920**

II. Direct and derivative possession

- <sup>1</sup> Where the possessor transfers an object to a third party in order to confer on him or her a limited right in rem or a personal right, both are considered to have possession.  
<sup>2</sup> The owner of the object has direct possession and any other possessor has derivative possession.

**Art. 921**

III. Temporary interruption

Possession is not lost if the exercise of effective control is impeded or interrupted by occurrences of a temporary nature.

**Art. 922**

B. Transfer  
 I. Among parties present in person

- <sup>1</sup> Possession is transferred by the delivery of the object itself or of the means by which the recipient may gain effective control of it.  
<sup>2</sup> Transfer is complete once the transferee is able to exercise effective control over the object with the consent of the prior possessor.

<sup>613</sup> Repealed by Section II 21 of the FA of 15 Dec. 1989 on the Approval of Cantonal Decrees by the Confederation, with effect from 1 Feb. 1991 (AS 1991 362; BBl 1988 II 1333).

<sup>614</sup> Repealed by Art. 52 No. 2 of the Mortgage Bond Act of 25 June 1930, with effect from 1 Feb. 1931 (BS 2 747; BBl 1925 III 527).



**Art. 923**

II. Among absent persons Transfer among persons who are absent is completed on delivery of the object to the transferee or his or her representative.

**Art. 924**

III. Without physical transfer <sup>1</sup> Possession of an object may be acquired without physical delivery if a third party or the transferor himself retains possession of it in terms of a special legal relationship.

<sup>2</sup> The transfer is not binding on the third party who retains possession of the object until he or she has been notified thereof by the transferor.

<sup>3</sup> The third party is entitled to refuse delivery to the acquirer for the same reasons for which he or she could have refused delivery to the transferor.

**Art. 925**

IV. In the case of documents of title to goods <sup>1</sup> Delivery of documents of title to goods which have been consigned to a carrier or a warehouse is equivalent to the delivery of the goods themselves.

<sup>2</sup> However, where a bona fide acquirer of the document of title to goods is in conflict with a bona fide acquirer of the goods, the latter has priority.

**Art. 926**

C. Legal remedies  
I. Protection of possession  
1. Defence against interference <sup>1</sup> A possessor has the right to use force in self-defence against any unlawful interference.

<sup>2</sup> If he or she has been dispossessed of an object by force or by clandestine means, he or she has the right to recover it immediately by expelling the trespasser from the property or, in the case of a chattel, by taking it from a person caught in the act and pursued immediately.

<sup>3</sup> In doing so, he or she must abstain from all force not justified by the circumstances.

**Art. 927**

2. Action for restitution <sup>1</sup> A person who wrongfully dispossesses another of an object is obliged to return it, even if he or she claims a better right to it.

<sup>2</sup> If the defendant may immediately show a better right entitling him or her to reclaim the object from the claimant, he or she may refuse to return it.

<sup>3</sup> The claim is for restitution of the object plus damages.

**Art. 928**

3. Action for  
trespass

<sup>1</sup> A possessor disturbed by trespass may bring an action against the trespasser even if the latter claims to be in the right.

<sup>2</sup> The claim is for cessation of trespass, prohibition of further trespass and damages.

**Art. 929**

4. Admissibility  
and prescription

<sup>1</sup> An action for restitution or trespass lies only provided the possessor sues for restitution of the object or for cessation of trespass immediately upon becoming aware of the interference in his or her rights and the identity of the trespasser.

<sup>2</sup> The action prescribes one year after the date of the trespass or dispossession even if the claimant did not become aware of the interference in his or her rights and the identity of the trespasser until a later date.

**Art. 930**

II. Remedies  
1. Presumption  
of ownership

<sup>1</sup> The possessor of a chattel is presumed to be its owner.

<sup>2</sup> Each previous possessor is presumed to have been the owner of the chattel while it was in his or her possession.

**Art. 931**

2. Presumption  
of indirect  
ownership

<sup>1</sup> The possessor of a chattel who does not purport to be its owner may invoke the presumption that the person from whom he or she received it in good faith is the owner.

<sup>2</sup> Where a person possessing a chattel invokes a limited right in rem or a personal right, the existence of such a right is presumed, but such presumption cannot be invoked against the person from whom the possessor received the chattel.

**Art. 932**

3. Action against  
the possessor

The possessor of a chattel may invoke the presumption of his or her better right in any action brought against him, subject to the provisions governing wrongful dispossession or trespass.

**Art. 933**

4. Power of  
disposal and  
right of restitu-  
tion  
a. Entrusted  
objects

A person who takes possession of a chattel in good faith in order to become its owner or to acquire a limited right in rem is protected therein even if the chattel was entrusted to the transferor without any authority to effect the transfer.

**Art. 934**

b. Stolen or lost  
chattels

<sup>1</sup> A possessor whose chattel has been stolen or lost, or who has otherwise been dispossessed of it against his or her will, may reclaim it from any possessor within a period of five years. Article 722 is reserved.<sup>615</sup>

<sup>1bis</sup> The right to recover an object of cultural heritage as defined by Article 2 paragraph 1 of the Cultural Property Transfer Act of 20 June 2003<sup>616</sup>, possession of which has been lost against the owner's will, prescribes one year after the owner becomes aware of where and by whom such object is being held, but at the latest 30 years after the loss.<sup>617</sup>

<sup>2</sup> If a chattel has been sold at public auction, or on the market, or by a merchant dealing in goods of the same kind, it may be reclaimed from the first and any subsequent bona fide purchaser only against reimbursement of the price paid.

<sup>3</sup> In other respects, restitution is subject to the provisions governing possession in good faith.

**Art. 935**

c. Cash and  
bearer securities

Cash and bearer securities cannot be reclaimed from a recipient in good faith even if the possessor was dispossessed of them against his or her will.

**Art. 936**

d. Bad faith

<sup>1</sup> A person who has not acquired a chattel in good faith may be required by the previous possessor to return it at any time.

<sup>2</sup> However, if the previous possessor likewise did not acquire the chattel in good faith, he or she cannot reclaim the chattel from any subsequent possessor.

**Art. 937**

5. Presumption  
of title to land

<sup>1</sup> In respect of land recorded in the land register, only the person registered may invoke presumption of title and bring an action for recovery of possession.

<sup>2</sup> However, a person who exercises effective control over the land may bring an action for wrongful dispossession or trespass.

<sup>615</sup> Amended by No I of the FA of 4 Oct. 2002 (Article of Basic Principles: Animals), in force since 1 April 2003 (AS **2003** 463; BBl **2002** 4164 5086).

<sup>616</sup> SR **444.1**

<sup>617</sup> Inserted by Art. 32 No 1 of the Federal Act on Transfer of Cultural Heritage of 20 June 2003, in force since 1 June 2005 (AS **2005** 1869; BBl **2002** 535).

III. Liability  
 1. Possessor in good faith  
 a. Use

### Art. 938

<sup>1</sup> A person possessing an object in good faith is not liable to its rightful owner for the consequences of using it in accordance with his or her presumed right.

<sup>2</sup> He or she is not obliged to replace what has been lost or damaged.

b. Indemnity

### Art. 939

<sup>1</sup> Where the rightful owner requests restitution of an object, the possessor in good faith may request indemnification for any necessary or useful expenditure incurred and may refuse to surrender the object until such indemnification is forthcoming.

<sup>2</sup> He or she has no right to indemnification of other expenditure, but where none is proffered, he or she may remove anything for which he or she has incurred cost, provided this may be done without damaging the property.

<sup>3</sup> Any fruits collected by a possessor are set off against his or her claim for indemnification.

2. Possession in bad faith

### Art. 940

<sup>1</sup> A person possessing an object in bad faith must return it to the rightful owner and compensate him or her for any damage resulting from such wrongful possession, including any fruits he or she collected or failed to collect.

<sup>2</sup> He or she may claim indemnification only of such expenditure as the rightful owner would also have had to incur.

<sup>3</sup> As long as a possessor does not know to whom he or she must surrender the object, he or she is only liable for damage for which he or she is at fault.

IV. Adverse possession

### Art. 941

A possessor fulfilling the requirements of adverse possession may count his or her predecessor's period of possession as part of his or her own provided his or her predecessor's possession also qualified as adverse possession.

## Titel Twenty-Five: The Land Register

### Art. 942

- A. Organisation
- I. Constituent parts
1. In general
- 1 The land register is kept as a record of property rights.
- 2 It consists of the main register, the plans, property directories, supporting documents and property descriptions appended to the main register, and the journal.
- 3 The land register may be kept on paper or electronically.<sup>618</sup>
- 4 Where the land register is kept electronically, legal effect attaches to such data as are properly stored in the system and legible in letters and figures or displayed on plans by means of the technical capabilities of the devices and equipment used by the land register.<sup>619</sup>

### Art. 943<sup>620</sup>

2. Registered data
- a. Object
- 1 The following are recorded in the land register as immovable property:
1. parcels of land and the buildings thereon;
  2. distinct and permanent rights recorded in the land register;
  3. mines;
  4. co-ownership shares in immovable property.
- 2 The Federal Council issues detailed regulations governing the prerequisites for and method of registration of distinct and permanent rights, mines and co-ownership shares in immovable property.

### Art. 944

- b. Exceptions
- 1 Immovable property which is not privately owned and is in public use will be recorded in the land register only if rights in rem attaching to such property are to be registered or if cantonal law provides for its registration.
- 2 If registered immovable property is transformed into property that is not subject to registration, it is deleted from the land register.
- 3 ...<sup>621</sup>

<sup>618</sup> Inserted by Annex I of the FA of 19 Dec. 2003 on Electronic Signatures, in force since 1 Jan. 2005 (AS **2004** 5085; BBl **2001** 5679).

<sup>619</sup> Inserted by Annex I of the FA of 19 Dec. 2003 on Electronic Signatures, in force since 1 Jan. 2005 (AS **2004** 5085; BBl **2001** 5679).

<sup>620</sup> Amended by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

<sup>621</sup> Repealed by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immoveable Property Law) and the Code of Obligations (Sale of Immoveable Property), with effect from 1 Jan. 1994 (AS **1993** 1404; BBl **1988** III 953).

**Art. 945**

3. Registers  
a. Main Register

<sup>1</sup> Each item of immovable property has its own folio and number in the main register.

<sup>2</sup> The procedure to be followed in the event of the division or consolidation of immovable property is determined by Federal Council ordinance.

**Art. 946**

b. Folio

<sup>1</sup> The following data is entered in separate sections on each folio:

1. ownership;
2. the easements and real burdens established in favour of or encumbering the property;
3. the liens with which it is encumbered.

<sup>2</sup> Accessories may be noted on the folio at the owner's request and, once noted, may be deleted only with the consent of all such interested parties as are evident from the land register.

**Art. 947**

c. Joint folio

<sup>1</sup> Two or more parcels of land may be entered on one folio with the owner's consent, regardless of whether they are contiguous.

<sup>2</sup> The entries on such folio are valid for all the land in question with the exception of easements.

<sup>3</sup> The owner may at any time request that entries for individual parcels of land be removed from a joint folio, all rights being reserved.

**Art. 948**

d. Journal,  
supporting  
documents

<sup>1</sup> Applications for entry in the land register are recorded without delay in the journal in chronological order indicating the applicant and the object of his or her request.

<sup>2</sup> Supporting documents are duly classified and archived.

<sup>3</sup> In cantons where the land registrar is authorised to draw up public deeds, the supporting documents may be replaced by an official record whose entries constitute public deeds.

**Art. 949**

4. Implementing  
ordinances  
a. In general<sup>622</sup>

<sup>1</sup> The Federal Council prescribes the land register forms, issues the necessary regulations and regulates at its discretion the keeping of auxiliary registers.

<sup>2</sup> The cantons may establish special provisions governing the registration of rights in rem on land under cantonal law, but such provisions become valid only when approved by the Confederation.

**Art. 949<sup>a</sup>**<sup>623</sup>

b. For electronic  
registers

<sup>1</sup> A canton wishing to keep the land register electronically must obtain the approval of the Federal Department of Justice and Police.

<sup>2</sup> The Federal Council regulates:

1. the authorisation procedure;
2. the scope and technical details of the electronic land register, particularly the procedure by which entries become effective;
3. whether and on what conditions electronic communication with the land register is permissible;
4. whether and on what conditions the public will be given access to unrestricted data recorded in the main register;
5. data access, the logging of retrieval requests and conditions for the withdrawal of user entitlements in the event of abuse;
6. data protection;
7. long-term data security and data archiving.

<sup>3</sup> The Federal Department of Justice and Police and the Federal Department of Defence, Civil Protection and Sport define data models and standard interfaces for the land register and official land surveys.

**Art. 949<sup>b</sup>**<sup>624</sup>

4a. ...

**Art. 949<sup>c</sup>**<sup>625</sup>

4b. ...

<sup>622</sup> Amended by No 1 of the FA of 19 Dec. 2003 on Electronic Signatures, in force since 1 Jan. 2005 (AS **2004** 5085; BBl **2001** 5679).

<sup>623</sup> Inserted by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land; AS **1993** 1404; BBl **1988** III 953). Amended by No 1 of the FA of 19 Dec. 2003 on Electronic Signatures, in force since 1 Jan. 2005 (AS **2004** 5085; BBl **2001** 5679).

<sup>624</sup> Not yet in force (AS **2018** 4017).

<sup>625</sup> Not yet in force (AS **2018** 4017).

**Art. 949**<sup>626</sup>

4c. Commissioning private individuals to use the electronic version of the land register

<sup>1</sup> The cantons which maintain the land register electronically may commission private individuals to:

1. ensure access to the data in the land register in the retrieval process;
2. ensure public access to the data of the main register which can be viewed without proof of interest;
3. to carry out electronic transactions with the land registry.

<sup>2</sup> The commissioned individuals are subject to the oversight of the cantons and of the Confederation.

**Art. 950**<sup>627</sup>

5. Official cadastral survey

<sup>1</sup> The entry for and description of each parcel of land in the register are based on the official cadastral survey, and in particular on a plan drawn for the land register.

<sup>2</sup> The Geoinformation Act of 5 October 2007<sup>628</sup> regulates the qualitative and technical requirements of the official cadastral survey.

**Art. 951**

II. Keeping the register

1. Districts

a. Allocation to districts

<sup>1</sup> For land register purposes the cantons are divided into districts.

<sup>2</sup> Immovable property is entered in the register for the district in which it is situated.

**Art. 952**

b. Land straddling more than one district

<sup>1</sup> Immovable property that lies in more than one district is entered in the register of each district, with reference being made to the register of the other districts.

<sup>2</sup> Entries which establish rights are to be made in the register of the district in which the largest part of the property is situated.

<sup>3</sup> Entries in this land register will be notified by the registrar to the other land registries.

<sup>626</sup> Inserted by No I 2 of the FA of 15 Dec. 2017 (Registration of Civil Status and Land Register), in force since 1 Jan. 2019 (AS **2018** 4017; BBl **2014** 3551).

<sup>627</sup> Amended by Annex No II of the FA of 5 Oct. 2007 on Geoinformation, in force since 1 July 2008 (AS **2008** 2793; BBl **2006** 7817).

<sup>628</sup> SR **510.62**



**Art. 953**

2. Land registries
- 1 The cantons are responsible for setting up the land registries, the demarcation of the districts, the appointment and remuneration of officials and supervision arrangements.
  - 2 The regulations issued by the cantons, save for those concerning the appointment and remuneration of officials, are subject to approval by the Confederation.<sup>629</sup>

**Art. 954**

3. Fees
- 1 The cantons may levy fees for entry in the land register and for the necessary surveys.
  - 2 No charge may be made for entries relating to land improvements or to land exchanges for the purpose of agricultural consolidation.

**Art. 955**

- III. Liability<sup>630</sup>
- 1 The cantons are liable for any losses arising from the maintenance of the land register.
  - 2 They have a right of recourse against the land register officials and employees and against the immediate supervisory bodies if they are at fault.
  - 3 They may require the officials and employees to provide security.

**Art. 956**<sup>631</sup>

- IV. Administrative supervision
- 1 The management of the land registries is subject to the administrative supervision of the cantons.
  - 2 The Confederation exercises the supervisory control.

**Art. 956a**<sup>632</sup>

- V. Legal protection
1. Right of appeal
    - 1 A ruling issued by the land registry may be contested before an authority designated by the canton; a ruling includes the unlawful refusal to carry out or delay in carrying out an official act.

<sup>629</sup> Amended by No II 21 of the FA of 15 Dec. 1989 on the Approval of Cantonal Decrees by the Confederation, in force since 1 Feb. 1991 (AS **1991** 362; BBl **1988** II 1333).

<sup>630</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>631</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>632</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>2</sup> The following persons are entitled to appeal:

1. any person who suffers particular prejudice due to a ruling issued by the land registry and who has a legitimate interest in its revocation or amendment;
2. the cantonal administrative supervisory authority it has a right of appeal under cantonal law;
3. the federal supervisory authority.

<sup>3</sup> No appeal may be brought against an entry, amendment or deletion of rights in rem or priority notices executed in the main register.

**Art. 956<sup>b633</sup>**

2. Appeal proceedings

<sup>1</sup> The period within which an appeal to the cantonal appellate authorities must be filed amounts to 30 days.

<sup>2</sup> Where the land registry refuses to carry out or delays in carrying out a specific official act, however, an appeal may be filed at any time.

**Art. 957<sup>634</sup>**

**Art. 958**

B. Registration  
I. Land register entries  
1. Ownership and rights in rem

The following rights to immovable property are recorded in the land register:

1. ownership;
2. easements and real burdens;
3. liens.

**Art. 959**

2. Priority notices  
a. Personal rights

<sup>1</sup> Personal rights may be entered under priority notice in the land register where such notices are expressly provided for by law, as is the case for a right of pre-emption, right of repurchase, right of purchase, usufructuary lease and tenancy.

<sup>2</sup> By virtue of being entered under priority notice, they may be invoked against any rights subsequently acquired.

<sup>633</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>634</sup> Repealed by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), with effect from 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

**Art. 960**

b. Restrictions on powers of disposal

<sup>1</sup> Restrictions on powers of disposal may be entered under priority notice for individual parcels of land if they result from:

1. an official order made to secure disputed or enforceable claims;
- 2.<sup>635</sup> a distraint order;
- 3.<sup>636</sup> a case in which entry under priority notice is envisaged by law, such as a remainderman's expectancy.

<sup>2</sup> On entry under priority notice, the restrictions on powers of disposal become effective against all subsequently acquired rights.

**Art. 961**

c. Provisional entries

<sup>1</sup> Provisional entries may be made in the land register:

1. in order to secure asserted rights in rem;
2. in the cases where the law permits the applicant to complete his or her application.

<sup>2</sup> They are made either with the consent of all interested parties or by court order and the right, provided it is later confirmed, becomes effective in rem as of the date of the provisional entry.

<sup>3</sup> The court rules on the application and, provided the applicant satisfies the court of his or her entitlement, approves the provisional entry, precisely specifying its nature, duration and effect and, where necessary, setting a time limit within which the applicant must bring an action to assert his or her rights.<sup>637</sup>

**Art. 961a**<sup>638</sup>

d. Entry of subordinate rights

A priority notice in the land register does not preclude the registration of a right with a subordinate rank.

<sup>635</sup> Amended by Annex No. 4 of the FA of 16 Dec. 1994, in force since 1 Jan. 1997 (AS **1995** 1227; BBl 1991 III 1).

<sup>636</sup> Amended by No I 4 of the Federal Act of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl 1996 I 1).

<sup>637</sup> Amended by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, in force since 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).

<sup>638</sup> Inserted by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), in force since 1 Jan. 1994 (AS **1993** 1404; BBl **1988** III 953).

**Art. 962**<sup>639</sup>

II. Noting  
1. Restrictions  
under public law

<sup>1</sup> The state authority or another public body must arrange for a public law restriction on ownership ordered in respect of a specific property that imposes a permanent restriction on use or power of disposal or duty relating to the property on the owner to be noted in the land register.

<sup>2</sup> Where the restriction on ownership ceases to apply, the state authority or the other public body must arrange for the note to be deleted from the land register. If the state authority or the other public body fails to act, the land register may delete the note *ex officio*.

<sup>3</sup> The Federal Council shall stipulate the areas of cantonal law in which restrictions on ownership must be noted in the land register. The cantons may provide for additional notes. They shall draw up a list of circumstances requiring a note, which must be passed on to the Confederation.

**Art. 962a**<sup>640</sup>

2. Of representa-  
tives

The following may be noted in the land register:

1. the statutory representative at his or her request or at the request of the competent authority;
2. the estate administrator, the representative of the heirs, the official liquidator and the executors at their request or at the request of the heirs or the competent authority;
3. the representative of an owner, charge creditor or easement beneficiary whose whereabouts are unknown at his or her request or at the request of the court;
4. the representative of a legal entity or other rights holder in the absence of the required management body at his or her request or at the request of the court;
5. the administrator of a condominium association at his or her request or at the request of the condominium owners meeting or of the court.

**Art. 963**

III. Require-  
ments for entry  
1. Applications  
a. For an entry

<sup>1</sup> Entries in the land register are based on a written declaration by the owner of the immovable property to which the entry relates.

<sup>639</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>640</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>2</sup> No declaration by the owner is required where the acquirer may rely on a provision of the law, a final court judgment or a document having effect equal to that of a court judgment.

<sup>3</sup> The officials authorised to execute public deeds may be instructed by the cantons to notify the transactions certified by such deeds for entry in the land register.

#### **Art. 964**

- b. For a deletion
- <sup>1</sup> Amendment or deletion of an entry in the land register requires an declaration in writing by the person whose entitlement results from the entry.
- <sup>2</sup> Such application may be made by signing the journal.

#### **Art. 965**

2. Authority
- a. Valid proof of authority
- <sup>1</sup> A disposition in the land register, such as an entry, amendment or deletion, may be made only on the basis of documents establishing the right to make such disposition and its legal basis.
- <sup>2</sup> Authority to request a disposition is established by proof that the applicant is the person entitled by virtue of the entry in the land register or has been duly vested with a power of attorney by said person.
- <sup>3</sup> The legal basis for the requested disposition is established by proof that the formal requirements have been observed.

#### **Art. 966**

- b. Completion of application
- <sup>1</sup> Where the documentation required for a disposition in the land register is not forthcoming, the application is rejected.
- <sup>2</sup> However, provided the legal basis is established and the application lacks only certain documents, a provisional entry may be made with the owner's consent or by court order.

#### **Art. 967**

- IV. Manner of entry
1. In general
- <sup>1</sup> The entries in the main register are made in the order in which applications are received or in which certifications and declarations are signed by the land registrar.
- <sup>2</sup> Interested parties will be provided on request with an extract of the entry.
- <sup>3</sup> The formal requirements for entries, deletions and extracts are regulated by the Federal Council.

**Art. 968**

2. For easements Easements are entered and deleted on the folios of both the dominant and servient properties.

**Art. 969**

- V. Duty to notify <sup>1</sup> The registrar must notify interested parties of all dispositions in the land register made without their knowledge; he or she shall, in particular, notify any acquisition of ownership by a third party to parties with rights of pre-emption which are entered under priority notice in the land register or to parties with rights which exist by law and are evident from the land register.<sup>641</sup>

<sup>2</sup> The time limit for challenging such dispositions begins on receipt of such notification.

**Art. 970**<sup>642</sup>

C. Public nature of land register  
I. Information and right of consultation

<sup>1</sup> Any person showing a legitimate interest is entitled to consult the land register or to be provided with an extract.

<sup>2</sup> A person is entitled to obtain the following information from the main register without showing a legitimate interest:

1. the name and description of the immovable property;
2. the name and identity of the owner;
3. the form of ownership and the date of acquisition.

<sup>3</sup> The Federal Council shall specify other particulars of easements, real burdens and notices in the register which may be made public without the need to show a legitimate interest. It shall pay due regard to the protection of personal privacy.

<sup>4</sup> An objection based on ignorance of a land register entry is inadmissible.

**Art. 970a**<sup>643</sup>

- II. Publication <sup>1</sup> The cantons may provide that all acquisitions of immovable property be published.

<sup>641</sup> Amended by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), in force since 1 Jan. 1994 (AS **1993** 1404; BBl **1988** III 953).

<sup>642</sup> Amended by Annex No 1 of the FA of 19 Dec 2003 on Electronic Signatures, in force since 1 Jan. 2005 (AS **2004** 5085; BBl **2001** 5679).

<sup>643</sup> Inserted by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land; AS **1993** 1404; BBl **1988** III 953). Amended by Annex No 1 of the FA of 19 Dec. 2003 on Electronic Signatures, in force since 1 Jan. 2005 (AS **2004** 5085; BBl **2001** 5679).

2 They may not publish the consideration involved in a division of estate, an advance against a person's share of an inheritance, a marital agreement or a liquidation of marital property.

### Art. 971

D. Effect  
I. Need for an entry

1 Where the establishment of a right in rem is subject to entry in the land register, such right has effect in rem only if it has been entered.

2 Within the limits of such entry, the scope of a right may be established by supporting documents or in some other manner.

### Art. 972

II. Effect of entry  
1. In general

1 Rights in rem are established and assigned their rank and date by virtue of being entered in the main register.

2 The entry has retroactive effect as of its recording in the journal, provided the supporting documents required by law are included with the application or, in the case of provisional entries, are submitted in good time.

3 In cantons where the registrar draws up public deeds by means of an entry in an official record of title, such a record constitutes entry in the journal.

### Art. 973

2. In relation to third parties acting in good faith

1 Any person who, relying in good faith on an entry in the land register, has acquired property or any other right in rem in reliance thereon, is protected in such acquisition.

2 This rule does not apply to boundaries of land in areas designated by the cantons as being in permanent danger of ground displacement.<sup>644</sup>

### Art. 974

3. In relation to third parties acting in bad faith

1 If the entry of a right in rem is unwarranted, a third party who is or ought to be aware thereof may not rely on the entry.

2 An entry is unwarranted if it is without legal basis or was made on the basis of an invalid transaction.

3 A person whose rights in rem are infringed by such an entry may invoke its defectiveness directly against the third party acting in bad faith.

<sup>644</sup> Inserted by No I of the FA of 4 Oct. 1991 on the Partial Revision of the Civil Code (Immovable Property Law) and of the Code of Obligations (Purchase of Land), in force since 1 Jan. 1994 (AS 1993 1404; BBl 1988 III 953).

**Art. 974a**<sup>645</sup>

E. Deletion and amendment of entries

I. Revision

1. On the division of property

<sup>1</sup> If a property is divided, the easements, priority notices and notes for each divided part must be revised.

<sup>2</sup> The owner of the property being divided must advise the land registry which entries to delete and which to transfer to the divided parts. If this is not done, the application must be rejected.

<sup>3</sup> Where an entry according to the supporting documents or the circumstances does not relate to a divided part, it must be deleted. The procedure is governed by the regulations on the deletion of an entry.

**Art. 974b**<sup>646</sup>

2. In the case of the consolidation of parcels of land

<sup>1</sup> Two or more parcels of land belonging to one owner may only be consolidated if no mortgage rights or real burdens have to be transferred from the individual parcels to the consolidated property or if the creditor consents.

<sup>2</sup> If easements, priority notices or notes encumbering the property must be recorded, they may be consolidated only if the beneficiaries consent or if their rights are not prejudiced due to the nature of the encumbrance.

<sup>3</sup> If easements, priority notices or notes benefiting the property real estate must be recorded, they may only be consolidated if the owner of the servient property consents or if the encumbrance is not increased by consolidation.

<sup>4</sup> The provisions on revision on the division of property apply by analogy.

**Art. 975**

II. Unwarranted entries<sup>647</sup>

<sup>1</sup> Where an entry of a right in rem is unwarranted or a correct entry has been deleted or modified in an unwarranted manner, any person whose rights in rem are thereby infringed may bring an action for deletion or amendment of the entry.

<sup>2</sup> Rights in rem acquired in good faith by third parties relying on the entry and claims for damages are reserved.

<sup>645</sup> Inserted by No 11 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>646</sup> Inserted by No 11 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>647</sup> Amended by No 11 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).



**Art. 976<sup>648</sup>**

III. Simplified  
deletion

1. Clearly  
insignificant  
entries

The land register may delete an entry *ex officio* if the entry:

1. is limited in time and has lost its legal significance as it has expired;
2. relates to a non-assignable or non-heritable right of a deceased person;
3. cannot affect the property due to the local situation;
4. relates to a property that no longer exists.

**Art. 976<sup>a</sup>649**

2. Other entries  
a. In general

<sup>1</sup> If an entry in all probability has no legal importance, in particular because according to the supporting documents or the circumstances it does not relate to the property, then any person encumbered may request its deletion.

<sup>2</sup> If the land registry regards the request as justified, it shall inform the beneficiary that it will delete the entry unless he or she files an objection with land registry within 30 days.

**Art. 976<sup>b</sup>650**

b. On objection

<sup>1</sup> If the beneficiary files an objection, the land registry shall reassess the request for deletion at the request of the encumbered person.

<sup>2</sup> If the land registry concludes that the request should be granted despite the objection, it shall notify the beneficiary that it will delete the entry from the main register unless the beneficiary brings a court action to declare that the entry is of legal significance.

**Art. 976<sup>c</sup>651**

3. Public  
revision  
procedure

<sup>1</sup> If conditions have changed in fact or law in a specific area and as a result a large number of easements, priority notices or notes have completely or largely lapsed or if the situation can no longer be de-

<sup>648</sup> Amended by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>649</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>650</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>651</sup> Inserted by No I 1 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

terminated, the authority designated by the canton may order a revision in this area.

<sup>2</sup> This order must be noted in the corresponding land register folios.

<sup>3</sup> The cantons shall regulate the details and the procedure. They may further simplify the revision procedure or issue regulations that deviate from federal law.

### **Art. 977**

IV. Corrections<sup>652</sup>

<sup>1</sup> Unless the interested parties consent in writing, the land registrar may correct the register only in accordance with a court order.

<sup>2</sup> Instead of correcting an unwarranted entry, the registrar may delete it and make a new one.

<sup>3</sup> The land registrar may correct typographical errors of his or her own accord in accordance with regulations to be issued by the Federal Council.

## **Final Title:**

### **Commencement and Implementing Provisions<sup>653</sup>**

#### **Chapter One: Application of Former and New Law<sup>654</sup>**

### **Art. 1**

A. General provisions  
I. General rule of non-retroactive effect

<sup>1</sup> When this Code comes into force, the legal effects of circumstances which occurred previously remain subject to those provisions of federal or cantonal law which were applicable when the circumstances occurred.

<sup>2</sup> Accordingly, the legally binding nature and consequences of acts which took place before the commencement hereof remain subject to the law which was applicable at the time.

<sup>3</sup> However, circumstances occurring after the commencement hereof are subject to the new law, unless this Code provides otherwise.

<sup>652</sup> Amended by No 11 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBl 2007 5283).

<sup>653</sup> Amended by No 14 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS 1999 1118; BBl 1996 11).

<sup>654</sup> Amended by No 14 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS 1999 1118; BBl 1996 11).

**Art. 2**

II. Retroactive effect  
1. Public policy and good morals

1 The provisions of this Code specifically enacted in the interests of public policy and good morals apply when it comes into force to all circumstances, unless this Code provides otherwise.

2 Accordingly, provisions of the previous law which under the new law are deemed to contravene public policy and good morals cease to apply when the new law comes into force.

**Art. 3**

2. Relationships defined by law

When this Code comes into force, legal relationships whose content is defined by law irrespective of the will of the parties concerned are subject to the new law, even if previously such relationships were valid.

**Art. 4**

3. Non-vested rights

The legal effects of circumstances which occurred while the previous law was still in force and which enjoy no protection under the new law are subject to the latter once it has come into force.

**Art. 5**

B. Law of persons  
I. Capacity to act

1 Capacity to act shall be assessed in all cases in accordance with the provisions of this Code.

2 However, any person who has the capacity to act under the previous law when this Code comes into force but who would not have the capacity to act under the new law will also be recognised as having the capacity to act when this Code comes into force.

**Art. 6**

II. Presumed death

1 The declaration of presumed death becomes subject to the new law when this Code comes into force.

2 When this Code comes into force, declarations of death or absence under the previous law have the same effects as a declaration of presumed death under the new law, but the consequences that have occurred under the previous law prior to this Code coming into force, such as succession or dissolution of marriage, remain valid.

3 Proceedings ongoing when the new law comes into force shall be restarted in accordance with the provisions of this Code, taking account of the time that has elapsed, or, if requested by the parties, concluded in accordance with the previous procedure, respecting the previous deadlines.

**Art. 6a**<sup>655</sup>

IIa. Central civil register database

<sup>1</sup> The Federal Council regulates the transition from the former procedure for keeping the civil register to the electronic civil register.

<sup>2</sup> The Confederation assumes the capital investment costs up to an amount of 5 million francs.

**Art. 6b**<sup>656</sup>

III. Legal entities  
1. In general<sup>657</sup>

<sup>1</sup> Associations of persons and institutions or foundations that had acquired legal personality under the previous law, retain their personality under the new law even where they would not acquire legal personality under the new law.

<sup>2</sup> Existing legal entities that require to be entered in the public register in accordance with this Code must register within five years of the commencement of the new law even if no provision was made for registration under the previous law and are no longer recognised as legal entities on expiry of this time limit.

<sup>2bis</sup> Religious foundations and family foundation that are not entered in the commercial register when the Amendment of 12 December 2014 (Art. 52 para. 2) comes into force continue to be recognised as legal entities. They must be entered in the commercial register within five years of the Amendment coming into force. The Federal Council shall take the special circumstances of religious foundations into account when determining the requirements for entry in the commercial register.<sup>658</sup>

<sup>3</sup> The status of the legal personality of all legal entities is determined by the new law as soon as this Code comes into force.

**Art. 6c**<sup>659</sup>

2. Accounting and auditors

The provisions of the Amendment of 16 December 2005<sup>660</sup> relating to accounting and auditors apply from first financial year that begins on or after the commencement of this Code.

<sup>655</sup> Inserted by No 1 of the FA of 5 Oct. 2001 (Electronic civil register), in force since 1 July 2004 (AS **2004** 2911; BBl **2001** 1639).

<sup>656</sup> Originally Art. 6a. Previously Art. 7.

<sup>657</sup> Amended by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS **2007** 4791; BBl **2002** 3148, **2004** 3969).

<sup>658</sup> Inserted by No 11 of the FA of 12 Dec. 2014 on the Implementation of the 2012 Revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS **2015** 1389; BBl **2014** 605).

<sup>659</sup> Inserted by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS **2007** 4791; BBl **2002** 3148, **2004** 3969).

<sup>660</sup> AS **2007** 4791; BBl **2002** 3148, **2004** 3969

**Art. 7<sup>661</sup>**

C. Family law  
I. Marriage

<sup>1</sup> The new law applies to marriage as soon as the Federal Act of 26 June 1998<sup>662</sup> has come into force.

<sup>2</sup> Marriages subject to grounds for annulment under the previous law may, once the new law has come into force, only be annulled under the new law. However the period that has lapsed before this date will be taken into account in determining time limits.

**Art. 7a<sup>663</sup>**

Ibis, Divorce  
1. Principle

<sup>1</sup> Divorce proceedings are governed by the new law as soon as the Federal Act of 26 June 1998<sup>664</sup> has come into force.

<sup>2</sup> Divorces that had taken full legal effect under the previous law remain valid; the new provisions on enforcement apply to periodic maintenance payments or lump sum settlement that are fixed as an alternative to maintenance or as a maintenance contribution.

<sup>3</sup> Any amendment of the divorce decree is carried out in accordance with the previous law with the exception of the provisions on children and procedural matters.

**Art. 7b<sup>665</sup>**

2. Pending  
divorce proceed-  
ings

<sup>1</sup> The new law applies to divorce proceedings that are pending on the commencement of the Federal Act of 26 June 1998<sup>666</sup> and which must be judged by a cantonal authority.

<sup>2</sup> New legal requests that are required due to the change in the applicable law are permitted; uncontested parts of the judgment remain binding, unless they are materially so closely connected with the requests that remain to be judged that it makes sense to reassess the entire case

<sup>3</sup> The Federal Supreme Court decides in accordance with the previous law in cases where the contested judgment was issued before the commencement of the Federal Act of 26 June 1998; this also applies if the case is referred back to the cantonal authority.

<sup>661</sup> Inserted by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS 1999 1118; BBl 1996 I 1).

<sup>662</sup> AS 1999 1118; BBl 1996 I 1

<sup>663</sup> Inserted by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS 1999 1118; BBl 1996 I 1).

<sup>664</sup> AS 1999 1118; BBl 1996 I 1

<sup>665</sup> Inserted by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS 1999 1118; BBl 1996 I 1).

<sup>666</sup> AS 1999 1118; BBl 1996 I 1

**Art. 7c<sup>667</sup>**

3. Period of separation for pending divorce proceedings

For divorce proceedings that are pending on commencement of the Amendment of 19 December 2003<sup>668</sup> and must be judged by a cantonal authority, the period of separation under the new law applies.

**Art. 7d<sup>669</sup>**

4. Occupational pension

<sup>1</sup> The new law on occupational pensions on divorce applies as soon as the amendment of 19 June 2015 comes into force.

<sup>2</sup> The new law applies to divorce cases pending before a cantonal court at the time when the amendment of 19 June 2015 comes into force.

<sup>3</sup> When the contested decision was made before the amendment of 19 June 2015 came into force, the Federal Supreme Court shall decide under previous law; this also applies when a case is referred back to the cantonal court.

**Art. 7e<sup>670</sup>**

5. Conversion of existing pensions

<sup>1</sup> If on divorce under the previous law the court, when deciding on the equitable division of pensions, has awarded compensation to the entitled spouse in the form of a pension that terminates on the death of the liable or the entitled spouse, the entitled spouse may, within one year of the amendment of 19 June 2015 coming into force, demand that he or she be granted a life-long pension in accordance with Article 124a instead, should the liable spouse draw an old-age pension or an invalidity pension after the commencement of the statutory pension age.

<sup>2</sup> In the case of decisions made abroad, jurisdiction is determined by Article 64 of the Federal Act of 18 December 1987<sup>671</sup> on International Private Law.

<sup>3</sup> Any pension payments already made under previous law are considered part of the pension awarded.

<sup>667</sup> Inserted by No I of the FA of 19 Dec. 2003 (Period of Separation under Divorce Law), in force since 1 June 2004 (AS **2004** 2161; BBl **2003** 3927 5825).

<sup>668</sup> AS **2004** 2161

<sup>669</sup> Inserted by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>670</sup> Inserted by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>671</sup> SR **291**

- Art. 8**<sup>672</sup>
- Iter. Effects the marriage in general  
1. Principle
- For the effects of the marriage in general, the new law applies as soon as the Federal Act of 5 October 1984 has come into force.
- Art. 8a**<sup>673</sup>
2. Surname
- A spouse who changed his or her name on marriage before the amendment to this Code of 30 September 2011 came into force may declare to the civil registrar at any time that he or she wishes to use his or her name before marriage again.
- Art. 8b**<sup>674</sup>
3. Citizenship
- A Swiss woman who married under the previous law may within one year of the new law coming into force declare to the competent authority of her former canton of origin that she wishes to retain the citizenship that she held as a single woman.
- Art. 9**<sup>675</sup>
- II. Marital property law applicable to marriages contracted before 1 January 1912<sup>676</sup>
- The legal effects on marital property of marriages contracted before 1 January 1912 are governed by the provisions of the Civil Code on the application of the previous and new law that came into force on that day.
- Art. 9a**<sup>677</sup>
- Ib. Marital property law applicable to marriages contracted after 1 January 1912<sup>678</sup>
1. In general
- 1 The new law applies to marriages that exist when the Federal Act of 5 October 1984 comes into force, unless otherwise provided.  
2 The legal effects on marital property of marriages that were dissolved before the Federal Act of 5 October 1984 came into force are governed by the previous law.

<sup>672</sup> Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** I 1).

<sup>673</sup> Inserted by No I 2 of the FA of 5 Oct. 1984 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191). Amended by No I of the FA of 30 Sept. 2011 (Name and Citizenship), in force since 1 Jan. 2013 (AS **2012** 2569; BBl **2009** 7573 7581).

<sup>674</sup> Inserted by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

<sup>675</sup> Amended by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

<sup>676</sup> For the application of the transitional law, see also the previous provisions of the Sixth Title at the end of the Civil Code.

<sup>677</sup> Inserted by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

<sup>678</sup> See the provisions applicable until 31 Dec. 1987 at the end of this text.

**Art. 9b<sup>679</sup>**

2. Change from a union of property to participation in acquired property  
 a. Change to the bodies of assets

<sup>1</sup> Spouses who have hitherto been subject to a union of property regime are now subject to the regulations on participation in acquired property in relation to each other and to third parties.

<sup>2</sup> The assets of each spouse become his or her own property or acquisitions in accordance with the regulations on participation in acquired property; separate property in terms of a marital agreement becomes personal assets.

<sup>3</sup> The wife reclaims the property she brought into the marriage that became her husband's property or makes a claim for compensation.

**Art. 9c<sup>680</sup>**

b. Preferential right

In the event of the husband's bankruptcy and the distraint of his assets, the previous provisions on the wife's right to compensation in respect of property that she has brought into the marriage and which is no longer available continue to apply for ten years after the new law comes into force.

**Art. 9d<sup>681</sup>**

c. Division of marital property under the new law

<sup>1</sup> After the new law comes into force, the division of marital property between the spouses is governed for the entire duration of the previous and the new statutory marital property regime by the regulations on participation in acquired property, unless the spouses have completed the division of marital property in accordance with the provisions on union of property at the time when the new law comes into force.

<sup>2</sup> Before the new law comes into force, either spouse may give written notice to the other that the current marital property regime of union of property must be dissolved in accordance with the previous law.

<sup>3</sup> If the marital property regime is dissolved because an action filed before the new law comes into force is upheld, the division of marital property is governed by the previous law.

**Art. 9e<sup>682</sup>**

3. Retention of the union of property regime

<sup>1</sup> Spouses subject to the statutory marital property regime of union of property who have not changed this marital property regime by mari-

679 Inserted by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS 1986 122 153 Art. 1; BBl 1979 II 1191).

680 Inserted by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS 1986 122 153 Art. 1; BBl 1979 II 1191).

681 Inserted by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS 1986 122 153 Art. 1; BBl 1979 II 1191).

682 Inserted by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS 1986 122 153 Art. 1; BBl 1979 II 1191).



tal agreement may by one year at the latest after the new law comes into force elect to retain the union of property regime by filing a joint written declaration with the marital property register office at their domicile; the marital property register office shall maintain a register of such declarations that anyone may inspect.

<sup>2</sup> The marital property regime may only be cited in opposition to a third party if that third party is or should be aware of it.

<sup>3</sup> The new regulations on the separation of property apply in future to the spouses' separate property.

**Art. 9<sup>683</sup>**

4. Retention of separation of property by operation of law or by court order

In the case of a separation of property established by operation of the law or by court order, the spouses are subject to the new provisions on the separation of property.

**Art. 10<sup>684</sup>**

5. Marital agreement  
a. In general

<sup>1</sup> If the spouses have entered into a marital agreement in accordance with the Civil Code, this marital agreement continues to apply and their entire marital property regime continues to be governed by the previous law, subject to the reservation of the provisions of this Title on separate property, legal effect on third parties and the contractual separation of property.

<sup>2</sup> The new regulations on the separation of property apply in future to the spouses' separate property.

<sup>3</sup> Agreements on participation in a surplus or deficit in the case of a union of property regime must not adversely affect the statutory inheritance entitlements of children who are not the common issue of the spouses or those of the issue of such children.

**Art. 10a<sup>685</sup>**

b. Legal effect in relation to third parties

<sup>1</sup> The marital property regime may only be cited in opposition to a third party if that third party is or should be aware of it.

<sup>2</sup> If the marital property agreement has no legal effect in relation to third parties, the provisions on participation in acquired property apply from now on in relation to such parties.

<sup>683</sup> Inserted by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

<sup>684</sup> Amended by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

<sup>685</sup> Inserted by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

**Art. 10b**<sup>686</sup>

c. Application of  
the new law

<sup>1</sup> Spouses subject to a union of property regime who have changed this marital property regime by marital agreement may by one year at the latest after the new law comes into force elect to make their legal rights subject to the new statutory marital property regime of participation in acquired property by filing of a joint written declaration with marital property register office at their domicile.

<sup>2</sup> In this event, contractual participation in the surplus shall in future apply to the total amount of the surplus of both spouses, unless a marital property agreement provides otherwise.

**Art. 10c**<sup>687</sup>

d. Contractual  
separation of  
property  
according to  
previous law

If the spouses agreed to a separation of property under the previous law, they are subject in future to the new provisions on the separation of property.

**Art. 10d**<sup>688</sup>

e. Marital  
agreements  
concluded with a  
view to the new  
law coming into  
force

Marital agreements concluded before the Federal Act of 5 October 1984 comes into force but which are intended to take effect only under the new law do not require the approval of the child protection authority.

**Art. 10e**<sup>689</sup>

f. Register of  
marital property

<sup>1</sup> After the Federal Act of 5 October 1984 comes into force, no further entries will be made in the register of marital property.

<sup>2</sup> The right to inspect the register continues to apply.

**Art. 11**<sup>690</sup>

6. Repayment of  
debts in the case  
of separation of  
assets under the  
law of marital  
property

If a separation of assets under the law of marital property in connection with the new law coming into force causes serious difficulties for a spouse who is liable to pay debts or the replace property that is due, he or she may request additional time to pay; the debt must be secured if this is justified by the circumstances.

<sup>686</sup> Inserted by No 12 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS 1986 122 153 Art. 1; BBl 1979 II 1191).

<sup>687</sup> Inserted by No 12 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS 1986 122 153 Art. 1; BBl 1979 II 1191).

<sup>688</sup> Inserted by No 12 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS 1986 122 153 Art. 1; BBl 1979 II 1191).

<sup>689</sup> Inserted by No 12 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS 1986 122 153 Art. 1; BBl 1979 II 1191).

<sup>690</sup> Amended by No 12 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS 1986 122 153 Art. 1; BBl 1979 II 1191).

**Art. 11a**<sup>691</sup>

7. Protection of creditors

If the marital property rights change when the Federal Act of 5 October 1984 comes into force, the provisions on the protection the creditors in the event of a change in the marital property regime govern liability.

**Art. 12**<sup>692</sup>

III. The parent-child relationship in general

<sup>1</sup> As soon as this Code comes into force, the establishment and effects of the parent-child relationship are governed by the new law; the surname and the citizenship acquired under previous law are retained.

<sup>2</sup> Children who are subject to parental authority by operation of the new law but who are under guardianship when the new law comes into force must be placed under parental authority no later than one year after that date unless the contrary was ordered under the provisions on the withdrawal of parental authority.

<sup>3</sup> A transfer or withdrawal of parental authority officially ordered under the previous law remains effective after the new law comes into force.

<sup>4</sup> When the Amendment of 21 June 2013 comes into force, if parental responsibility is assigned to only one parent, the other parent may within one year of this Amendment coming into force request the competent authority to order joint parental responsibility. Article 298b applies *mutatis mutandis*.<sup>693</sup>

<sup>5</sup> A parent whose parental responsibility is revoked on divorce may file a request with the competent court only if the divorce was decreed less than five years before the Amendment of 21 June 2013 comes into force.<sup>694</sup>

**Art. 12a**<sup>695</sup>III<sup>bis</sup>. Adoption  
1. Continuation of the previous law

<sup>1</sup> An adoption pronounced before the new provisions of the Federal Act of 30 June 1972 on the Amendment of the Swiss Civil Code come into force continues to be governed by the law that came into force on

<sup>691</sup> Inserted by No I 2 of the FA of 5 Oct. 1984, in force since 1 Jan. 1988 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

<sup>692</sup> Amended by No I 2 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>693</sup> Inserted by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>694</sup> Inserted by No I of the FA of 21 June 2013 (Parental Responsibility), in force since 1 July 2014 (AS **2014** 357; BBl **2011** 9077).

<sup>695</sup> Inserted by No I 3 of the FA of 30 June 1972, in force since 1 April 1973 (AS **1972** 2819; BBl **1971** I 1200).

1 January 1912<sup>696</sup>; consents validly given in accordance with this law remain effective in every case.

<sup>2</sup> Persons who are not yet 20 years old when the Federal Act of 7 October 1994 comes into force may still be adopted in accordance with the provisions on minority after attaining majority provided the application is filed within two years of the Federal Act coming into force and of their 20<sup>th</sup> birthday.<sup>697</sup>

**Art. 12<sup>b</sup>**<sup>698</sup>

2. Pending proceedings

The new law applies to adoption procedures pending at the time the amendment of 17 June 2016 comes into force.

**Art. 12<sup>c</sup>**<sup>699</sup>

3. Application of the new law

The provisions of the amendment of 17 June 2016 on the confidentiality of adoption information, on information about the biological parents and their direct descendants and on the possibility of arranging contact between the biological parents and the child also apply to adoptions which are granted prior to the amendment coming into force or which are pending at the time it comes into force.

**Art. 12<sup>c</sup><sup>bis</sup>**<sup>700</sup>

**Art. 12<sup>d</sup>**<sup>701</sup>

III<sup>ter</sup>. Contesting a declaration of legitimacy

The contesting of a declaration of legitimacy made under the previous law is governed by analogy by the provisions of the new laws on the contesting of recognition following the parents' marriage.

<sup>696</sup> Art. 465 Civil Code in the version of 1 Jan. 1912:

<sup>1</sup> An adoptive child and his or her issue have the same rights of succession in respect of the adoptive parents as the issue of their marriage.

<sup>2</sup> Adoptive parents and their blood relatives have no rights of succession in respect of an adoptive child.

<sup>697</sup> Inserted by No I of the FA of 7 Oct. 1994, in force since 1 Jan. 1996 (AS **1995** 1126; BBl **1993** I 1169).

<sup>698</sup> Inserted by No I 3 of the FA of 30 June 1972 (AS **1972** 2819; BBl **1971** I 1200). Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

<sup>699</sup> Inserted by No I 3 of the FA of 30 June 1972 (AS **1972** 2819; BBl **1971** I 1200). Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

<sup>700</sup> Inserted by Annex No. 2 of the FA of 22 June 2001 on the Hague Convention on Adoption and on Measures to Protect Children in International Adoption Cases (AS **2002** 3988; BBl **1999** 5795). Repealed by No I of the FA of 17 June 2016 (Adoption), with effect from 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

<sup>701</sup> Inserted by No I I of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

**Art. 13**<sup>702</sup>

IV. Paternity  
actions  
1. Pending  
actions

1 Actions pending when the new law comes into force are judged in accordance with the new law.

2 The effects until the new law comes into force are determined by the previous law.

**Art. 13a**<sup>703</sup>

2. New actions

1 If a pecuniary obligation on the father's part is established by court decision or by contract before the new law comes into force, and if the child has not yet reached the age of ten when the new law comes into force, the child may within two years bring an action under the provisions of the new law to have the parent-child relationship declared.

2 If the Defendant proves that he or she is not the father or is less likely to be the father than another person, the right to claim future maintenance lapses.

**Art. 13b**<sup>704</sup>

IV<sup>bis</sup>. Time limit  
for declaring or  
challenging the  
parent-child  
relationship

Any person who attains majority due to the Federal Act of 7 October 1994 coming into force may in any case file an action within one year to declare or challenge the parent-child relationship.

**Art. 13c**<sup>705</sup>

IV<sup>ter</sup>. Mainte-  
nance contribu-  
tions  
1. Existing  
maintenance  
titles

The child may apply for the revision of any maintenance payments set in an approved maintenance agreement or in a decision before the amendment of 20 March 2015 came into force. If they were set at the same time as maintenance payments to one of the parents, payments shall only be revised if there has been a substantial change in circumstances.

**Art. 13c<sup>bis</sup>** <sup>706</sup>

2. Pending  
proceedings

1 The new legislation applies to proceedings that are pending at the time of the amendment of 20 March 2015 coming into force.

<sup>702</sup> Amended by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>703</sup> Inserted by No I 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS **1977** 237; BBl **1974** II 1).

<sup>704</sup> Inserted by No I of the FA of 7 Oct. 1994, in force since 1 Jan. 1996 (AS **1995** 1126; BBl **1993** I 1169).

<sup>705</sup> Inserted by No I of the FA of 7 Oct. 1994 (AS **1995** 1126; BBl **1993** I 1169). Amended by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS **2015** 4299; BBl **2014** 529).

<sup>706</sup> Inserted by No I of the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan. 2017 (AS **2015** 4299; BBl **2014** 529).

<sup>2</sup> When the contested decision was made before the amendment of 20 March 2015 came into force, the Federal Supreme Court shall decide under the previous law; this also applies when a case is referred back to the cantonal court.

**Art. 13<sup>d707</sup>**

IV<sup>quater</sup>. Name of the child

<sup>1</sup> If after the amendment to this Code of 30 September 2011 comes into force the parents on the basis of a declaration under Article 8a of this Title no longer have the same surname, they may declare within one year of the new law coming into force that their children will take the surname before marriage of the parent who made the declaration.

<sup>2</sup> If the parental responsibility of a child of parents who are not married to each other is transferred to both parents or the father alone before the amendment to this Code of 30 September 2011 comes into force, the declaration provided for in Article 270a paragraphs 2 and 3 may be made within one year of the new law coming into force.

<sup>3</sup> In accordance with Article 270b, this shall be subject to the child's consent.

**Art. 14<sup>708</sup>**

V. Adult protection  
1. Existing measures

<sup>1</sup> The new law governs adult protection as soon as the Amendment of 19 December 2008<sup>709</sup> comes into force.

<sup>2</sup> Persons who have been made wards of court under the previous law shall be made subject to a general deputyship under the new law. The adult protection authority shall adapt to the new law as soon as possible. Unless the authority has decided otherwise in the case of extended parental responsibility, parents are exempt from the obligation to prepare an inventory, report and file accounts regularly and to obtain consent for certain transactions.

<sup>3</sup> Other measures ordered under the previous law cease to apply three years after the Amendment of 19 December 2008 comes into force unless the adult protection authority transforms them into a measure under the new law.

<sup>4</sup> Where a doctor based on Article 397b paragraph 2 in its version of 1 January 1981<sup>710</sup> ordered the care-related detention of a mentally ill person, this measure shall continue to apply. The relevant institution shall notify the adult protection authority six months at the latest after the new law comes into force whether it regarded the requirements for

<sup>707</sup> Inserted by No I of the FA of 30 Sept. 2011 (Name and Citizenship), in force since 1 Jan. 2013 (AS **2012** 2569; BBl **2009** 7573 7581).

<sup>708</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>709</sup> AS **2011** 725

<sup>710</sup> AS **1980** 31

hospitalisation to be met. The adult protection authority shall carry out the required enquiries in accordance with the provisions on regular review and if applicable confirm the hospitalisation decision.

**Art. 14a**<sup>711</sup>

2. Pending proceedings

<sup>1</sup> Pending proceedings shall be continued by the new competent authority after the Amendment of 19 December 2008<sup>712</sup> comes into force.

<sup>2</sup> The new procedural law applies.

<sup>3</sup> The authority shall decide whether and to what extent the previous proceedings require to be amended.

**Art. 15**

D. Succession law  
I. Heirs and succession

<sup>1</sup> The succession rights and the related and inseparable effects on marital property under cantonal law of the death of a father, a mother or a spouse are determined, provided the deceased dies before this Code comes into force, by the previous law.

<sup>2</sup> The foregoing applies both to heirs and to succession.

**Art. 16**

II. Testamentary dispositions

<sup>1</sup> The making or revocation of a testamentary disposition carried out before this Code comes into force, if done by a person subsequently deceased who had testamentary capacity under the law that applied at the time, may not be contested on the grounds that the deceased died following the commencement of the new law and would not have had testamentary capacity under its provisions.

<sup>2</sup> A testamentary disposition may not be contested due to a formal defect if it complies with the provisions on form that applied when it was made or at the time of death.

<sup>3</sup> The contesting of a disposition on the grounds that the testator exceeded his or her testamentary freedom or due to the nature of the disposition is governed in the case of all testamentary dispositions by the provisions of the new law if the deceased died after the commencement of this Code.

<sup>711</sup> Inserted by No II of the FA of 6 Oct. 1978 (AS 1980 31; BBl 1977 III 1). Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>712</sup> AS 2011 725

**Art. 17**

E. Property law  
I. Rights in rem  
in general

<sup>1</sup> Rights in rem existing when this Code comes into force continue to be recognised under the new law subject to the reservation of the regulations on the land register.

<sup>2</sup> However, the scope of rights of ownership and restricted rights in rem is subject to the new law after this Code comes into force unless the Code provides otherwise.

<sup>3</sup> Rights that can no longer be created under the new law remain subject to the previous law.

**Art. 18**

II. Right to entry  
in the land  
register

<sup>1</sup> Rights to create a right in rem that were established before this Code comes into force are recognised as valid provided they correspond to the form required by the former or the new law.

<sup>2</sup> The ordinance on maintaining the land register determines what documentary proof is required for the registration of such rights.

<sup>3</sup> The scope of a right in rem established before this Code comes into force by a legal transaction remains recognised under the new law, provided it is compatible with the same.

**Art. 19**

III. Adverse  
possession

<sup>1</sup> Adverse possession is governed by the new law after this Code comes into force.

<sup>2</sup> If however adverse possession recognised under the new law has begun under the previous law, the time that elapsed before this Code comes into force is taken into account in the calculating the period of adverse possession.

**Art. 20**<sup>713</sup>

IV. Special  
rights of  
ownership

1. Trees on  
another person's  
land

<sup>1</sup> Existing rights of ownership in relation to trees on another person's land continue to be recognised under cantonal law.

<sup>2</sup> The cantons shall have the power to limit or revoke these conditions.

**Art. 20**<sup>bis 714</sup>

2. Condominium  
a. Original

Condominium governed by the former cantonal law is subject to the new provisions of this Code even if the storeys or parts of storeys are not divided into self-contained dwellings or business units.

<sup>713</sup> Amended by No IV of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993; BBl 1962 II 1461).

<sup>714</sup> Inserted by No IV of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993; BBl 1962 II 1461).



**Art. 20<sup>ter</sup>** 715

b. Converted 1 The cantons may also make condominium recorded in the land register in forms that accord with the law that came into force on 1 January 1912 subject to the new regulations on condominium.

2 The new law becomes effective when the corresponding amendment is made to the entries in the land register.

**Art. 20<sup>quater</sup>** 716

c. Correction of the land registers In order to make the converted condominium subject to the new regulations and to register existing condominium, the cantons may order the correction of the land registers and issue special procedural regulations for this purpose.

**Art. 21**

V. Easements 1 The easements created before this Code comes into force remain valid following the introduction of the land register even if not registered, but until registered may not be enforced against third parties acting in good faith.

2 Obligations ancillary to easements that were established before the amendment of 11 December 2009<sup>717</sup> came into force and which are based solely on land register supporting documents may continue to be cited in opposition to third parties who rely on the land register in good faith.<sup>718</sup>

**Art. 22**

VI. Mortgage rights 1 Documents of title existing when this Code comes into force remain in force without having to be adapted to the new law.

1. Recognition of the existing document of title 2 The cantons have the right to require new versions of existing documents of title to be drawn up on the basis of the new law within specific time limits.

**Art. 23**

2. Creation of liens 1 After this Code comes into force, new mortgage rights may only be created in the forms recognised herein.

715 Inserted by No IV of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

716 Inserted by No IV of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

717 AS **2011** 4637

718 Inserted by No I 2 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>2</sup> Until the introduction of the land register, the previous cantonal legal forms for their creation remain valid.

### Art. 24

3. Repayment of securities

<sup>1</sup> The repayment and modification the title, release from liability under a lien and suchlike are subject to the new provisions following the commencement of the new law.

<sup>2</sup> However, until the introduction of the land register, the forms are governed by cantonal law.

### Art. 25

4. Extent of liability under the lien

<sup>1</sup> In the case of all mortgage rights, the extent of liability under the lien is determined by the new law.

<sup>2</sup> However, if by virtue of a special agreement the creditor has validly received certain objects with the property pledged, the lien continues to apply to these objects even if they could not be pledged under the new law.

### Art. 26

5. Rights and obligations from the mortgage  
a. In general

<sup>1</sup> The rights and obligations of the creditor and of the debtor in relation to the contractual effect of liens existing when this Code comes into force are governed by the previous law.

<sup>2</sup> In relation to effects that arise by operation of the law which cannot be modified contractually, the new law also applies to existing liens.

<sup>3</sup> If the lien applies to two or more parcels of land, liability under the lien continues to be governed by the previous law.

### Art. 27

b. Rights to security

The rights of the lien creditor during the existing legal relationship, such as rights to security, and the rights of the debtor are governed by the new law in relation to all liens from the time at which this Code comes into force.

### Art. 28

c. Termination, transfer

For liens existing when this Code comes into force, the termination of the secured debts and the transfer the document of title are governed by the previous law, subject to the reservation of the mandatory provisions of the new law.

**Art. 29**

6. Ranking
- 1 Until the introduction of the land register, the ranking of liens is governed by the previous law.
  - 2 Following the introduction of the land register, the ranking of creditors is governed by the land register law contained in this Code.

**Art. 30**

7. Ranking positions
- 1 In relation to a fixed ranking position or the right of a creditor to claim a vacant position or an advancement in ranking, the new law applies on the introduction of the land register and in every case from five years after this Code comes into force, subject to the reservation of creditors' existing special claims.
  - 2 The cantons may enact further transitional provisions.<sup>719</sup>

**Art. 31 and 32**<sup>720</sup>

8. ...

**Art. 33**

9. Equal status of previous forms of lien with those under the new law
- 1 The cantonal implementing legislation may stipulate that in general or in a specific legal relationship a form of mortgage under the previous law shall be regarded as equivalent to a form of mortgage under the new law.
  - 2 If this occurs, the provisions of this Code also apply to such cantonal liens from the date on which the Code comes into force.
  - 3 ...<sup>721</sup>

**Art. 33a**<sup>722</sup>

10. Continued application of previous law to existing forms of lien
- 1 Land charge certificates and mortgage certificates issued in series remain recorded in the land register.
  - 2 They remain governed by the provisions of the previous law.
  - 3 Cantonal law may provide for the conversion of land charge certificates created under federal law or earlier law into forms of lien under the current law. Conversion may also involve the introduction of

<sup>719</sup> Amended by No II 21 of the FA of 15 Dec. 1989 on the Approval of Cantonal Legislation by the Confederation, in force since 1 Feb. 1991 (AS **1991** 362; BBl **1988** II 1333).

<sup>720</sup> Repealed by No I 2 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), with effect from 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>721</sup> Repealed by No II 21 of the FA of 15 Dec. 1989 on the Approval of Cantonal Legislation by the Confederation (AS **1991** 362; BBl **1988** II 1333).

<sup>722</sup> Inserted by No I 2 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

personal liability for the owner of the mortgaged property for minor sums.

**Art. 33<sup>b723</sup>**

11. Conversion  
the form of the  
mortgage  
certificate

The landowner and the mortgage certificate creditors may jointly request in writing that a mortgage certificate on paper recorded before the amendment of 11 December 2009<sup>724</sup> comes into force be converted into a register mortgage certificate.

**Art. 34**

VII. Charges on  
chattels  
1. Provisions on  
form

<sup>1</sup> From the date on which the Code comes into force, charges on chattels may only be created in the forms provided for herein.

<sup>2</sup> Where a charge on chattels has been created in another form before this time, it is extinguished after a period of six months which begins to run if the debt is due for payment from the date on which the new law comes into force and in other cases from the date on which it becomes due for payment or when termination is permitted.

**Art. 35**

2. Effect

<sup>1</sup> The effects of the charge on chattels, the rights and obligations of the pledgee, of the pledger and of the pledge debtor are governed from the date on which this Code comes into force by the new law, even if the charge was created before that date.

<sup>2</sup> An agreement stipulating that the pledged chattel will become the property of the pledgee in the event of default on the part of the debtor that is concluded before this Code comes into force ceases to be valid from that date.

**Art. 36**

VIII. Special lien

<sup>1</sup> A special lien under this Code also extends to objects that were subject to the power of disposal of the creditor before this Code comes into force.

<sup>2</sup> It may also be exercised by the creditors in respect of claims that originated before this date.

<sup>3</sup> The effect of special liens originating at an earlier date is subject to the provisions of this Code.

<sup>723</sup> Inserted by No 12 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>724</sup> AS **2011** 4637

**Art. 37**

IX. Possession When this Code comes into force, possession becomes subject to the new law.

**Art. 38**

X. Land register  
1. Establishment of the land register  
1 After consulting the cantons, the Federal Council shall draw up a plan for the introduction of the land register. It may delegate this responsibility to the competent department or office.<sup>725</sup>

2 ...<sup>726</sup>

**Art. 39**<sup>727</sup>

2. Official cadastral survey  
a. ...

**Art. 40**

b. Relation to the land register  
1 As a general rule, the surveying should precede the establishment of the land register.

2 With consent of the Confederation, however, the land register may be established beforehand if adequate descriptions of the properties are available.

**Art. 41**

c. Time schedule  
1 ...<sup>728</sup>

2 The surveying and the introduction of the land register may be carried out successively for the individual districts of a canton.

**Art. 42**<sup>729</sup>**Art. 43**

3. Registration of rights in rem  
a. Procedure  
1 On the introduction of the land register, rights in rem that already exist shall be recorded in the register.

<sup>725</sup> Amended by Annex No II of the FA of 5 Oct. 2007 on Geoinformation, in force since 1 July 2008 (AS **2008** 2793; BBl **2006** 7817).

<sup>726</sup> Repealed by Annex No II of the FA of 5 Oct. 2007 on Geoinformation, with effect from 1 July 2008 (AS **2008** 2793; BBl **2006** 7817).

<sup>727</sup> Repealed by Annex No II of the FA of 5 Oct. 2007 on Geoinformation, with effect from 1 July 2008 (AS **2008** 2793; BBl **2006** 7817).

<sup>728</sup> Repealed by Annex No II of the FA of 5 October 2007 on Geoinformation, with effect from 1 July 2008 (AS **2008** 2793; BBl **2006** 7817).

<sup>729</sup> Repealed by Annex No II of the FA of 5 October 2007 on Geoinformation, with effect from 1 July 2008 (AS **2008** 2793; BBl **2006** 7817).

<sup>2</sup> For this purpose, an announcement must be made to the public requesting them to give notice of and register these rights.

<sup>3</sup> Rights in rem registered under the previous law in public books shall, provided they may be created under the new law, be entered *ex officio* in the land register.

#### Art. 44

b. Consequences of non-registration

<sup>1</sup> Rights in rem under the previous law that are not registered remain valid but may not be cited in opposition to third parties who rely in good faith on the land register.

<sup>2</sup> The Confederation or the cantons may however enact legislation to have all rights in rem that are not recorded in the land register declared invalid after a specific date subject to prior notice.

<sup>3</sup> Unregistered public law real burdens and statutory liens under cantonal law created before the amendment of 11 December 2009<sup>730</sup> comes into force may for a period of ten years from the date on which the amendment comes into force be cited in opposition to third parties who rely on the land register in good faith.<sup>731</sup>

#### Art. 45<sup>732</sup>

4. Abolished rights

<sup>1</sup> Rights in rem that may no longer be established under the land register law such as the ownership of trees on another person's land, liens on usufructs and suchlike are not recorded in the land register but must be noted in an appropriate manner.

<sup>2</sup> If such rights have lapsed for whatever reason, they may not be re-established.

#### Art. 46

5. Postponement in the introduction of the land register

<sup>1</sup> The introduction of the land register in accordance with the provisions of this Code may be postponed by the cantons with the authorisation of the Federal Council provided the cantonal provisions on forms of notice, with or without amendments appear to be sufficient to guarantee the effects that the new law requires of the land register.

<sup>2</sup> The forms of notice under cantonal law that are intended to guarantee the effects required by the new law must be precisely specified.

<sup>730</sup> AS 2011 4637

<sup>731</sup> Inserted by No I 2 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BB1 2007 5283).

<sup>732</sup> Amended by No IV of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993; BB1 1962 II 1461).

**Art. 47**

6. Introduction of the property law before the land register

The property law under this Code in general comes into force even if the land registers have not been established.

**Art. 48**

7. Effect of cantonal forms

<sup>1</sup> When the property law comes into force and before the introduction of the land register, the cantons may designate the procedures, such those for drawing up documents or registration in the registers for land, liens and servitudes, that will immediately have the effect of being recorded in the land register.

<sup>2</sup> Even without or before the introduction of the land register, it may be provided that these procedures have the same effect as being recorded in the land register in the case of the creation, transfer, modification and extinction of rights in rem.

<sup>3</sup> However, in the event that the land register itself is not introduced or another equivalent institution established, these procedures do not have the same effect as being recorded in the land register in relation to third parties relying thereon in good faith.

**Art. 49**

F. Prescription

<sup>1</sup> Where a prescriptive period of five or more years is introduced, the part of a prescriptive period that has elapsed before this Code comes into force is taken into account, whereby however at least two years must elapse from this date in order to complete the prescriptive period.

<sup>2</sup> Shorter periods established by this Code for prescription or the expiry of rights begin to run only when this Code comes into force.

<sup>3</sup> Otherwise, prescription is governed from that date by the provisions of the new law.

**Art. 50**

G. Forms of contract

Contracts concluded before this Code comes into force remain valid even if their form is not in accordance with the provisions of the new law.

**Chapter Two: Introductory and Transitional Provisions****Art. 51**

A. Repeal of cantonal civil law

On commencement of the Civil Code, cantonal civil law provisions are repealed unless federal law provides otherwise.

**Art. 52**

B. Supplementary cantonal provisions  
I. Rights and duties of the cantons

<sup>1</sup> The cantons shall enact the provisions required to supplement the Civil Code, including in particular those governing the competent authorities;<sup>733</sup> and the establishment of civil registries, guardianship authorities and land registries.

<sup>2</sup> The cantons shall enact any such supplementary provisions as are required to implement the Civil Code and may do so provisionally in the form of ordinances.<sup>734</sup>

<sup>3</sup> Cantonal provisions on register law require federal approval.<sup>735</sup>

<sup>4</sup> Notice of cantonal provisions on other matters must be given to the Federal Office of Justice.<sup>736</sup>

**Art. 53**

II. Substitute ordinances

<sup>1</sup> Where a canton has failed to enact the necessary provisions in time, the Federal Council shall provisionally enact substitute ordinances and notify the Federal Assembly.

<sup>2</sup> Where a canton refrains from exercising its powers in respect of matters for which supplementary legislation is not indispensable, the provisions of the Civil Code remain applicable.

**Art. 54**

C. Designation of competent authorities

<sup>1</sup> Where the Civil Code makes reference to a competent authority, the cantons shall designate such authority, be it existing or yet to be created.

<sup>2</sup> Where the Civil Code does not make express reference to a court or an administrative authority, the cantons may designate either as the competent authority.

<sup>3</sup> Unless the Civil Procedure Code of 19 December 2008<sup>737</sup> applies, the cantons regulate proceedings.<sup>738</sup>

<sup>733</sup> Presently the Adult protection authority (see Art. 440).

<sup>734</sup> Amended by No II 21 of the FA of 15 Dec. 1989 on Approval of Cantonal Decrees by the Confederation, in force since 1 Feb. 1991 (AS **1991** 362; BBl **1988** II 1333).

<sup>735</sup> Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>736</sup> Inserted by No II 21 of the FA of 15 Dec. 1989 on Approval of Cantonal Decrees by the Confederation, in force since 1 Feb. 1991 (AS **1991** 362; BBl **1988** II 1333). Amended by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>737</sup> SR **272**

<sup>738</sup> Amended by Annex 1 No II 3 of the Civil Procedure Code of 19 Dec. 2008, in force since 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).



**Art. 55**

D. Public deeds  
I. In general<sup>739</sup>

1 The cantons shall regulate the manner in which public deeds are drawn up on their territory.

2 They enact provisions for the drawing up of public deeds in foreign languages.

**Art. 55a**<sup>740</sup>

II. Electronic  
copies and  
legalisations

1 The cantons may authorise the authenticating officials to make electronic copies of the public deeds that they issue.

2 They may also authorise the authenticating officials to certify electronically that the electronic copies that they create correspond to the original documents on paper and that the signatures are genuine.

3 The authenticating official must use a qualified electronic signature based on a qualified certificate from a recognised provider of certification services in accordance with the Federal Act of 18 March 2016<sup>741</sup> on Electronic Signatures.<sup>742</sup>

4 The Federal Council shall issue implementing provisions that guarantee the interoperability of computer systems and the integrity, authenticity and security of the data.

**Art. 56**<sup>743</sup>

E. Allocation of  
water rights

Until such time as federal law regulates the allocation of water rights, the following provision applies:

Rights to public waters may be recorded in the land register as distinct and permanent rights, provided they have been granted for at least 30 years or indefinitely and are not allocated to a dominant property in the form of an easement.

**Art. 57**<sup>744</sup>

F.–H. ...

<sup>739</sup> Amended by No I 2 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>740</sup> Inserted by No I 2 of the FA of 11 Dec. 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan. 2012 (AS **2011** 4637; BBl **2007** 5283).

<sup>741</sup> SR **943.03**

<sup>742</sup> Amended by Annex No II 3 of the FA of 18 March 2016 on Electronic Signatures, in force since 1 Jan. 2017 (AS **2016** 4651; BBl **2014** 1001).

<sup>743</sup> See current Art. 59 of the FA of 22 Dec. 1916 on Exploitation of Water Resources (SR **721.80**).

<sup>744</sup> Repealed by Art. 53 para. 1 item b of the FA of 8 Nov. 1934 on Banks and Savings Banks, with effect from 1 March 1935 (AS **51** 117; BS **10** 337; BBl **1934** I 171).

**Art. 58**<sup>745</sup>

J. Debt enforcement and bankruptcy

When this Code comes into force, the Federal Act of 11 April 1889<sup>746</sup> on Debt enforcement and Bankruptcy is amended as follows:

...<sup>747</sup>

**Art. 59**<sup>748</sup>

K. Application of Swiss and foreign law

<sup>1</sup> The Federal Act of 25 June 1891<sup>749</sup> on the Civil Law Status of Immigrants and Temporary Residents remains in force in respect of the legal status of Swiss nationals abroad and of foreigners in Switzerland and insofar as different laws apply in the cantons.

<sup>2</sup> ...<sup>750</sup>

<sup>3</sup> The following provisions are inserted in the Federal Act of 25 June 1891:

Art. 7a–7i

...

**Art. 60**<sup>751</sup>

L. Repeal of federal civil law

<sup>1</sup> When this Code comes into force, any provisions of federal civil law which contradict it are repealed.

<sup>2</sup> In particular, the following are repealed: the Federal Act of 24 December 1874<sup>752</sup> on the Determination and Documentation of Civil Status and Marriage; the Federal Act of 22 June 1881<sup>753</sup> on Personal Capacity to Act; the Federal Act of 14 June 1881<sup>754</sup> on the Code of Obligations.

<sup>3</sup> The special acts concerning the railways, steamships, the post, telegraph and telephone services, the seizure and compulsory liquidation of railways, the laws relating to factory employment and liability

<sup>745</sup> Last four articles renumbered owing to revocation of the original Art. 58 and 59, in accordance with No I of the Code of Obligations transitional provisions, in force since 1 Jan. 1912 (AS 27 317; BS 2 199; BBl 1905 II 1, 1909 III 725, 1911 I 845).

<sup>746</sup> SR 281.1

<sup>747</sup> For text, see the federal act referred to. For the wording of Art. 132<sup>bis</sup>, 141 para. 3 and 258 para. 4, see AS 24 233 Final Title Art. 60.

<sup>748</sup> Last four articles renumbered owing to revocation of the original Art. 58 and 59, in accordance with No I of the Code of Obligations transitional provisions, in force since 1 Jan. 1912 (AS 27 317; BS 2 199; BBl 1905 II 1, 1909 III 725, 1911 I 845).

<sup>749</sup> [BS 2 737; AS 1972 2819 II 1, 1977 237 II 1, 1986 122 II 1. AS 1988 1776 Annex No I para. a]. See current IPLA of 18 Dec. 1987 (SR 291).

<sup>750</sup> Repealed by No I 2 of the FA of 5 Oct. 1984, with effect from 1 Jan. 1988 (AS 1986 122 153 Art. 1; BBl 1979 II 1191).

<sup>751</sup> Amended by No I of the Code of Obligations transitional provisions, in force since 1 Jan. 1912 (AS 27 317; BS 2 199; BBl 1905 II 1, 1909 III 725, 1911 I 845).

<sup>752</sup> [AS 1 506]

<sup>753</sup> [AS 5 556]

<sup>754</sup> [AS 5 635, 11 490; BS 2 784 Art. 103 para. 1]

arising from the operation of factories and other enterprises, and all federal laws on matters governed by the Code of Obligations which have been enacted to supplement the Federal Act of 14 June 1881 on the Code of Obligations, remain in force.

**Art. 61**<sup>755</sup>

M. Final  
Provision

<sup>1</sup> This Code comes into force on 1 January 1912.

<sup>2</sup> Subject to the Federal Assembly's approval, the Federal Council is authorised to declare individual provisions effective at an earlier date.

<sup>755</sup> Last four articles renumbered owing to revocation of the original Art. 58 and 59, in accordance with No I of the Code of Obligations transitional provisions, in force since 1 Jan. 1912 (AS 27 317; BBl 1905 II 1, 1909 III 725, 1911 I 845).

**Text of the Previous Provisions<sup>756</sup> of Title Six**  
**Title Six: Marital Property Law**

<sup>756</sup> BS 2 3. These provisions apply as transitional law insofar as provided by Art. 9a ff. Final Title (Revision of Marital Law of 5 Oct. 1984). The provisions have not been translated into English.

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**Text of the Previous Provisions of Title Six<sup>757</sup>****Title Six: Marital Property Law**

<sup>757</sup> BS 2 3. These provisions apply as transitional law insofar as provided by Art. 9a ff. Final Title (Revision of Marital Law of 5 Oct. 1984). The provisions have not been translated into English.

