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Swiss Civil Code

of 10 December 1907 (Status as of 1 January 2021)

The Federal Assembly of the Swiss Confederation,
 based on Article 64 of the Federal Constitution^{1,2}
 and having considered the Dispatch of the Federal Council dated 28 May 1904³,
decrees:

Introduction

Art. 1

A. Application
of the law

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

² In the absence of a provision, the court⁴ 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.

³ In doing so, the court shall follow established doctrine and case law.

Art. 2

B. Scope and
limits of legal
relationships

¹ 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

² The manifest abuse of a right is not protected by law.

Art. 3

II. Good faith

¹ 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

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

² 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).

³ BBl 1904 IV 1, 1907 VI 367

⁴ 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 11). This amendment is taken into consideration throughout the Code.

² 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. Judicial⁵
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

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

² 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

¹ Federal civil law does not restrict the right of the cantons to enact public law.

² 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 Obligations⁶ 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

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

⁵ 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.

⁶ SR 220

² Such proof of incorrectness does not require to be in any particular form.

Art. 10⁷

Part One: Law of Persons

Title One: Natural Persons

Chapter One: Legal Personality

Art. 11

A. Personality in general

I. Legal capacity

¹ Every person has legal capacity.

² 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. 13⁸

2. Requirements

a. In general

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

Art. 14⁹

b. Majority

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

Art. 15¹⁰

c. ...

⁷ 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).

⁸ 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).

⁹ 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).

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

Art. 16¹¹

d. Capacity of judgement

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.

Art. 17¹²

III. Incapacity
1. In general

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.

Art. 18

2. Lack of capacity of judgement

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

Art. 19

3. Persons capable of judgement but lacking the capacity to act.
a. Principle¹³

¹ 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.¹⁴

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

³ They are liable in damages for unpermitted acts.

Art. 19a¹⁶

b. Consent of the legal representative

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

² 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.

¹¹ 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).

¹² 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).

¹³ 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).

¹⁴ 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).

¹⁵ 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).

¹⁶ Inserted 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. 19b¹⁷

c. Absence of
consent

¹ 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.

² 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 damage incurred.

Art. 19c¹⁸

4. Strictly
personal rights

¹ 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.

² 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. 19d¹⁹

III^{bis}. Restriction
of the capacity to
act

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

Art. 20

IV.²⁰ Kinship by
blood and by
marriage

1. Blood kinship

¹ The degree of kinship²¹ is determined by the number of intermediary generations.

² 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.

¹⁷ 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).

¹⁸ 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).

¹⁹ 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).

²⁰ 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).

²¹ 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. 21²²

2. Kinship by marriage

¹ 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.

² 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

¹ The place of origin of a person is determined by his or her citizenship.

² Citizenship is governed by public law.

³ 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

¹ 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.²³

² No person may have more than one domicile at a time.

³ This provision does not apply to places of business.

Art. 24

b. Change of domicile, temporary residence

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

² 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.

²² 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).

²³ 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. 25²⁴

c. Domicile of
minors²⁵

¹ The domicile of a child subject to parental responsibility²⁶ 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.²⁷

Art. 26²⁸

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
restriction²⁹

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. 28³⁰

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.

²⁴ 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).

²⁵ 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).

²⁶ Term in accordance with No I 1 of the FA of 26 June 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.

²⁷ 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).

²⁸ 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).

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

³⁰ 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. 28a³¹

2. Actions
a. In general³²

¹ 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.

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

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

Art. 28b³³

b. Violence,
threats or
harassment

¹ 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.

² 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.

³ 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.

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

³² 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).

³³ 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).

^{3bis} It shall give notice of its decision to the competent child and adult protection authorities, the competent cantonal authority under paragraph 4 and other authorities and third parties, provided this appears necessary in order to fulfil its responsibilities or for the protection of the applicant, or enables the decision to be enforced.³⁴

⁴ 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–28f³⁵

3. ...

Art. 28g³⁶

4. Right of reply
a. Principle³⁷

¹ 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.

² 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. 28h³⁸

b. Form and content

¹ The text of the reply must be succinct and confine itself to the subject matter of the contentious representation.

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

Art. 28i³⁹

c. Procedure

¹ 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.

³⁴ Inserted by No I 1 of the FA of 14 Dec. 2018 on Improving the Protection given to Victims of Violence, in force since 1 July 2020 (AS **2019** 2273; BBl **2017** 7307).

³⁵ 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).

³⁶ Inserted by No I of the FA of 16 Dec. 1983, in force since 1 July 1985 (AS **1984** 778; BBl **1982** II 636).

³⁷ 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).

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

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

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

Art. 28⁴⁰

d. Publication

¹ 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.

² 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.

³ The reply must be published free of charge.

Art. 28⁴¹

e. Recourse to the courts

¹ 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.

² ...⁴²

³ and ⁴ ...⁴³

Art. 29

III. Right to use one's name
1. Protection of one's name

¹ If a person's use of his or her name is disputed, he or she may apply for a court declaration confirming his rights.

² 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. General⁴⁴

¹ The government of the canton of residence may permit a person to change his or her name for good cause.⁴⁵

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

⁴¹ Inserted by No I of the FA of 16 Dec. 1983, in force since 1 July 1985 (AS **1984** 778; BBl **1982** II 636).

⁴² 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).

⁴³ 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).

⁴⁴ 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).

⁴⁵ 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).

2 ...⁴⁶

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

Art. 30a⁴⁷

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
I. Birth and
death

¹ Personality rights begin on the birth of the living child and end on death.

² An unborn child has legal capacity provided that it survives birth.

Art. 32

II. Proof
1. Burden of
proof

¹ 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.

² 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

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

² If records are missing or shown to be incorrect, proof may be adduced 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

¹ 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

⁴⁶ 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).

⁴⁷ 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).

declare that person presumed dead on application by any person deriving rights from his or her death.

2 ...⁴⁸

Art. 36

2. Procedure

¹ 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.

² 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.

³ 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

¹ 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.

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

³ A declaration of presumed death dissolves a marriage.⁴⁹

Chapter Two:⁵⁰ Registration of Civil Status

Art. 39⁵¹

A. Registers

1. In general

¹ Civil status is recorded in an electronic register (civil register).

² Civil status includes in particular:

⁴⁸ 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).

⁴⁹ Inserted by No 14 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** 11).

⁵⁰ Amended by No 11 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** 11).

⁵¹ Amended by No 11 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).

1. a person's particulars, such as those relating to birth, marriage, registered civil partnership and death;
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 notify⁵²

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

² It may provide that breaches of said duty be punishable by fines.

³ ...⁵³

Art. 41

III. Proof of undisputed information

¹ 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.

² 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

¹ 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.

² 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.

⁵² 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).

⁵³ Repealed by No I of the FA of 5 Oct. 2001 (Electronic civil register), with effect from 1 July 2004 (AS **2004** 2911; BBl **2001** 1639).

V. Data protection and disclosure

Art. 43a⁵⁴

¹ 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.

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

³ 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.

^{3bis} 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.⁵⁵

⁴ 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 2001⁵⁶ on Identification Documents for Swiss Nationals;
- 2.⁵⁷ the federal agency responsible for operating the computerised police search system under Article 15 of the Federal Act of 13 June 2008⁵⁸ 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 Code⁵⁹;
4. the federal agency responsible for investigations regarding missing persons⁶⁰;
- 5.⁶¹ 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 2015⁶²;

⁵⁴ 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).

⁵⁵ 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).

⁵⁶ SR **143.1**

⁵⁷ 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).

⁵⁸ SR **361**

⁵⁹ Now: Art. 365.

⁶⁰ Currently the Federal Office of Police.

⁶¹ 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).

⁶² SR **121**

- 6.⁶³ the authorities responsible for keeping the cantonal and communal registers of residents in accordance with the Register Harmonisation Act of 23 June 2006⁶⁴;
- 7.⁶⁵ 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 1946⁶⁶ on Old-Age and Survivors Insurance;
- 8.⁶⁷ 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 2000⁶⁸ on the Processing of Personal Data.

Art. 44

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

¹ 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.

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

Art. 45

2. Supervisory
authorities

¹ Each canton shall appoint a supervisory authority.

² 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;
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;

⁶³ 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).

⁶⁴ SR **431.02**

⁶⁵ 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).

⁶⁶ SR **831.10**

⁶⁷ 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).

⁶⁸ SR **235.2**

5. it provides for the basic and continuing education and training of persons working in the civil register service.

³ The Confederation is responsible for oversight. It may have recourse to cantonal appeal procedures against the decisions of the registrars and the supervisory authorities.⁶⁹

Art. 45a⁷⁰

Ia. Central civil information system

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

² The Confederation bears the operating and development costs.

³ 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.

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

⁵ 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.

⁶ 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

¹ Any person suffering loss caused unlawfully by persons employed in the civil register service in the exercise of their official duties is entitled to damages and, where justified by the gravity of the loss, to satisfaction.

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

⁶⁹ 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).

⁷⁰ 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).

³ The Government Liability Act of 14 March 1958⁷¹ applies in relation to persons employed by the Confederation.

Art. 47

III. Disciplinary measures

¹ 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.

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

³ The right to prosecute is reserved.

Art. 48

C. Implementing provisions

I. Federal law

¹ The Federal Council issues the provisions on implementation.

² 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 1946⁷² 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.⁷³

³ 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.

⁴ It determines the fees charged by the civil register service.

⁵ 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;
3. to make notifications and provide extracts from the civil register.⁷⁴

⁷¹ SR 170.32

⁷² SR 831.10

⁷³ 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).

⁷⁴ 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).

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
personality¹ 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.⁷⁵³ 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. 54C. 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.

Art. 55II. Action on
behalf of the
legal entity¹ The governing bodies express the will of the legal entity.² They bind the legal entity by concluding transactions and by their other actions.

⁷⁵ 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).

³ The governing officers are also personally liable for their wrongful acts.

Art. 56⁷⁶

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.⁷⁷

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.

Chapter Two: Associations

Art. 60

A. Formation
I. Corporate group of persons

¹ Associations with a political, religious, scientific, cultural, charitable, social or other non-commercial purpose acquire legal personality

⁷⁶ 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).

⁷⁷ 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).

as soon as their intention to exist as a corporate body is apparent from their articles of association.

² 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 register⁷⁸

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

² The association must be registered if it:

1. conducts a commercial operation in pursuit of its objects;
2. is subject to an audit requirement.⁷⁹

³ 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

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

² Mandatory provisions of law cannot be altered by the articles of association.

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.

⁷⁸ 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).

⁷⁹ 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. 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 general⁸⁰

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

⁸⁰ 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. 69a⁸¹

2. Accounting The committee shall maintain the association's business ledgers. The provisions of the Code of Obligations⁸² on commercial bookkeeping and accounting apply *mutatis mutandis*.

Art. 69b⁸³

- III. Auditors ¹ 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.
- ² 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.
- ³ The provisions of the Code of Obligations⁸⁴ on external auditors for companies apply *mutatis mutandis*.
- ⁴ In all other cases the articles of association and the general meeting⁸⁵ are free to make such auditing arrangements as they deem fit.

Art. 69c⁸⁶

- IV. Organisational defects ¹ If the association lacks one of the prescribed governing bodies or if it is no longer legally domiciled at its seat, a member or a creditor may apply to the court for an order that the necessary measures be taken.⁸⁷

⁸¹ 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).

⁸² SR **220**

⁸³ 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).

⁸⁴ SR **220**

⁸⁵ Corrected by the Federal Assembly Drafting Committee (Art. 58 para. 1 ParlA; SR **171.10**).

⁸⁶ 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).

⁸⁷ Amended by Annex No 1 of the FA of 17 March 2017 (Commercial Register Law), in force since 1 Jan. 2021 (AS **2020** 957; BBl **2015** 3617).

² 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.

³ The association bears the cost of such measures. The court may order the association to make an advance payment to the persons appointed.

⁴ 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

¹ Members may be admitted at any time.

² 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.

³ Membership is neither transferable nor heritable.

Art. 71⁸⁸

II. Duty to pay
subscriptions

Members have a duty to pay subscriptions if the articles of association so provide.

Art. 72

III. Exclusion

¹ The articles of association may specify the grounds on which a member may be excluded, but exclusion may also occur without reasons being given.

² In such cases, the exclusion may not be challenged based on the reasons.

³ Unless the articles of association provide otherwise, exclusion requires a resolution by the members and good cause.

Art. 73

IV. Status of
former members

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

² 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.

⁸⁸ 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. 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. 75a⁸⁹

C^{bis}. 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
1. By resolution

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

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.

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.

⁸⁹ 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. 81

II. Form of establishment

¹ A foundation may be created by public deed or by testamentary disposition.⁹⁰

² 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.

³ The probate authority shall inform the commercial registrar of the creation of the foundation by testamentary disposition.⁹¹

Art. 82

III. Challenge

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

Art. 83⁹²

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.

Art. 83a⁹³

II. Bookkeeping

¹ The supreme governing body of the foundation shall maintain its business ledgers. The provisions of the Code of Obligations⁹⁴ on commercial bookkeeping and accounting apply *mutatis mutandis*.

Art. 83b⁹⁵

III. Auditors
1. Duty of audit and applicable law

¹ The board of trustees shall appoint external auditors.

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

⁹⁰ 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).

⁹¹ 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).

⁹² 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).

⁹³ 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).

⁹⁴ SR **220**

⁹⁵ 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).

³ Where there are no special provisions for foundations, the provisions of the Code of Obligations⁹⁶ on external auditors for public limited companies apply *mutatis mutandis*.

⁴ 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. 83^{c97}

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. 83^{d98}

IV. Organisational defects

¹ If the planned system of organisation proves inadequate, if the foundation lacks one of the prescribed governing bodies or one such body is not lawfully constituted, or if the foundation is no longer legally domiciled at its seat, the supervisory authority must take the necessary measures. In particular it may:⁹⁹

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.

² 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.

³ The foundation bears the cost of such measures. The supervisory authority may require the foundation to make an advance payment to the persons appointed.

⁴ 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.

⁹⁶ SR 220

⁹⁷ 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).

⁹⁸ 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).

⁹⁹ Amended by Annex No I of the FA of 17 March 2017 (Commercial Register Law), in force since 1 Jan. 2021 (AS 2020 957; BBl 2015 3617).

^{1bis} The cantons may subject foundations at communal level to supervision at cantonal level.¹⁰⁰

² The supervisory authority must ensure that the foundation's assets are used for their declared purpose.

Art. 84a¹⁰¹

C^{bis}. 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*.

Art. 84b¹⁰²

Art. 85¹⁰³

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.

¹⁰⁰ 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).

¹⁰¹ 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).

¹⁰² 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).

¹⁰³ 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).

Art. 86

II. Amendment of objects
 1. Request by the supervisory authority or the board of trustees¹⁰⁴

¹ 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.¹⁰⁵

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

Art. 86a¹⁰⁶

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

¹ 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.

² 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 Taxation¹⁰⁷, such new objects must likewise be public or charitable.

³ 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.

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

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

Art. 86b¹⁰⁸

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.

¹⁰⁴ 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).

¹⁰⁵ 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).

¹⁰⁶ 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).

¹⁰⁷ SR **642.11**

¹⁰⁸ 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).

Art. 87

E. Family and ecclesiastical foundations

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

^{1bis} They are exempt from the duty to appoint external auditors.¹⁰⁹

² Private law disputes are decided by the courts.

Art. 88¹¹⁰

F. Dissolution and deletion from the register
I. Dissolution by the competent authority

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

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.

² Family and ecclesiastical foundations shall be dissolved by court order.

Art. 89¹¹¹

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

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

² Dissolution must be reported to the commercial registrar so that the entry may be deleted.

Art. 89a¹¹²

G. Employee benefits schemes¹¹³

¹ The following additional provisions apply to employee benefits schemes established in accordance with Art. 331 of the Code of Obligations¹¹⁴ in the form of a foundation.¹¹⁵

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

¹⁰⁹ 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).

¹¹⁰ 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).

¹¹¹ 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).

¹¹² 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^{bis}, 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).

¹¹³ 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).

¹¹⁴ SR **220**

¹¹⁵ 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).

³ 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.¹¹⁶

⁴ ...¹¹⁷

⁵ 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.

⁶ For employee benefits schemes providing old age, survivors' and invalidity pensions which are subject to the Vested Benefits Act of 17 December 1993¹¹⁸ (VBA), the provisions of the Federal Act of 25 June 1982 on Occupational Old Age, Survivors' and Invalidity Pension Provision (OPA)¹¹⁹ on the following matters apply:¹²⁰

- 1.¹²¹ the definition and principles of occupational pension arrangements and the insurable salary or income (Art. 1, 33a and 33b);
- 2.¹²² the requirement of being subject to OASI (Art. 5 para. 1);
3. the beneficiaries in the case of survivors' benefits (Art. 20a);
- 3a.¹²³ the adjustment of the invalidity pension following the equitable division of occupational pensions (Art. 24 para. 5);
- 3b.¹²⁴ the provisional continuation of insurance and of the entitlement to benefits on the reduction or termination of the invalidity pension (Art. 26a);
- 4.¹²⁵ the adjustment of plan benefits to inflation (Art. 36 para. 2–4);
- 4a.¹²⁶ the agreement on a lump sum payment (Art. 37a);

¹¹⁶ 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).

¹¹⁷ 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).

¹¹⁸ SR **831.42**

¹¹⁹ SR **831.40**

¹²⁰ 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).

¹²¹ 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).

¹²² 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).

¹²³ 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).

¹²⁴ 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).

¹²⁵ Amended by Annex No 1 of the FA of 18 June 2004, in force since 1 Jan. 2005 (AS **2004** 4635; BBl **2003** 6399).

¹²⁶ 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).

5. the prescription of claims and the safekeeping of insurance documents (Art. 41);
- 5a.¹²⁷ 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^{bis});
6. liability (Art. 52);
- 7.¹²⁸ the licensing and duties of the supervisory bodies (Art. 52a–52e);
- 8.¹²⁹ 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);
- 10.¹³⁰ termination of contracts (Art. 53e);
11. the guarantee fund (Art. 56 para. 1 lit. c and para. 2–5, Art. 56a, 57 and 59);
- 12.¹³¹ supervision and oversight (Art. 61–62a and 64–64c);
- 13.¹³² ...
- 14.¹³³ 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);

¹²⁷ 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).

¹²⁸ 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).

¹²⁹ 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).

¹³⁰ 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).

¹³¹ 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).

¹³² 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).

¹³³ 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).

23. provision of information to insured persons (Art. 86b).¹³⁴

⁷ 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^{bis});
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);
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).¹³⁵

⁸ 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*.¹³⁶

¹³⁴ 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 (1st 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).

¹³⁵ 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).

¹³⁶ 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).

Title Two^{bis}:^{137 138} Collective Assets

Art. 89b

A. No management

¹ 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.

² 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.

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

Art. 89c

B. Jurisdiction

¹ The canton in which the main part of the collective is managed has jurisdiction.

² Unless the canton provides otherwise, the authority that supervises the foundations has jurisdiction.

Part Two: Family Law

Division One: Marital Law

Title Three:¹³⁹ Marriage

Chapter One: Engagement

Art. 90

A. Betrothal

¹ Engagement is constituted by mutual promises to marry.

² Minors incur no obligation through betrothal without the consent of their legal representative.¹⁴⁰

³ Engagement does not give rise to any actionable obligation to marry.

Art. 91

B. Ending the engagement
I. Gifts

¹ 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.

¹³⁷ Corrected by the Federal Assembly Drafting Committee (Art. 58 Abs. 1 ParIA; SR **171.10**).

¹³⁸ 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).

¹³⁹ 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).

¹⁴⁰ 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 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. Prescription

Claims arising from the engagement prescribe one year from the ending of the engagement.

Chapter Two: Requirements for Marriage

Art. 94

A. Capacity to marry

¹ To be able to marry, the prospective spouses must have reached 18 years of age and have the capacity of judgement.

² ...¹⁴¹

Art. 95

B. Impediments
I. Kinship¹⁴²

¹ Marriage between lineal relatives and between siblings or half-siblings, whether related to each other by parentage or adoption, is prohibited.¹⁴³

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.

¹⁴¹ 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).

¹⁴² 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).

¹⁴³ 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).

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. 97a¹⁴⁴

A^{bis}. 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.
- ² 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.
- ³ 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.
- ⁴ Engaged couples who are not Swiss citizens must prove during the preparatory procedure that they are lawfully resident in Switzerland.¹⁴⁵

Art. 99

II. Conduct and completion of the preparatory procedure

- ¹ The civil register office verifies that:
 1. the request has been duly submitted;
 2. the identity of the engaged couple has been established; and

¹⁴⁴ 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).

¹⁴⁵ 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).

3.¹⁴⁶ 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.

² Provided these requirements are fulfilled, the civil register office shall inform the betrothed parties that the preparatory procedure has been completed and of the legally prescribed time limits for holding the wedding ceremony.¹⁴⁷

³ 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.

⁴ 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.¹⁴⁸

Art. 100¹⁴⁹

III. Time limits The wedding ceremony may take place within three months following notification of completion of the preparatory procedure.

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.¹⁵⁰

¹⁴⁶ 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).

¹⁴⁷ Amended by No I of the FA of 28 Sept. 2018, in force since 1 Jan. 2020 (AS **2019** 3813; BBl **2017** 6769).

¹⁴⁸ 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).

¹⁴⁹ Amended by No I of the FA of 28 Sept. 2018, in force since 1 Jan. 2020 (AS **2019** 3813; BBl **2017** 6769).

¹⁵⁰ 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).

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 spouses¹⁵¹ 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;
2. that one of the spouses lacked capacity of judgement at the time of the wedding and has not regained such capacity since;
- 3.¹⁵² that the marriage was prohibited due to kinship;
- 4.¹⁵³ 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;
- 5.¹⁵⁴ a spouse has not married of his or her own free will;
- 6.¹⁵⁵ one of the spouses is a minor, unless the continuation of the marriage is in the overriding interest of this spouse.

¹⁵¹ Footnote relevant to German text only.

¹⁵² 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).

¹⁵³ 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).

¹⁵⁴ 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).

¹⁵⁵ 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).

Art. 106

II. Action for
annulment

¹ 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.¹⁵⁶

² 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.

³ 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;
3. contracted the marriage because he or she was intentionally deceived with regard to essential personal attributes of the other spouse;
- 4.¹⁵⁷ ...

Art. 108

II. Action for
annulment

¹ 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.

² 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

¹ 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.

¹⁵⁶ 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).

¹⁵⁷ 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).

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

³ 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.¹⁵⁸

Art. 110¹⁵⁹

Title Four:¹⁶⁰ Divorce and Separation

Chapter One: Requirements for Divorce

Art. 111¹⁶¹

A. Divorce by
joint request
I. Comprehen-
sive agreement

¹ Where the spouses jointly request divorce and submit a comprehensive agreement on the consequences of the divorce along with any 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.

² 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

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

² 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.

³ ...¹⁶²

¹⁵⁸ 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).

¹⁵⁹ 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).

¹⁶⁰ Amended by No I 3 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** 11).

¹⁶¹ 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).

¹⁶² 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. 113¹⁶³**Art. 114¹⁶⁴**

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. 115¹⁶⁵

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. 116¹⁶⁶**Chapter Two: Separation****Art. 117**

A. Requirements
and procedure

¹ Spouses may petition for a separation decree subject to the same requirements as apply to divorce.

² ...¹⁶⁷

³ The right to petition for divorce is unaffected by the separation decree.

Art. 118

B. Effects of
separation

¹ By operation of the law, the separation decree implements the marital property separation of property regime.

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

¹⁶³ 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).

¹⁶⁴ 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).

¹⁶⁵ 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).

¹⁶⁶ 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).

¹⁶⁷ 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 Three: Consequences of Divorce

Art. 119¹⁶⁸

- A. Civil status of divorced spouses
- ¹ 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
- ¹ The provisions of marital property law apply to the division of marital property.
- ² 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
- ¹ 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.
- ² 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.
- ³ 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. 122¹⁶⁹

- 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.

¹⁶⁸ 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).

¹⁶⁹ 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).

Art. 123¹⁷⁰

II. Equitable
division of
termination
benefits

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

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

³ 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 1993¹⁷¹.

Art. 124¹⁷²

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

¹ 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^{ter} of the Vested Benefits Act of 17 December 1993¹⁷³ following cancellation of the invalidity pension counts as the termination benefits.

² The provisions on the equitable division of termination benefits apply *mutatis mutandis*.

³ 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. 124a¹⁷⁴

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

¹ 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.

² 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.

¹⁷⁰ 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).

¹⁷¹ SR **831.42**

¹⁷² 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).

¹⁷³ SR **831.42**

¹⁷⁴ 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).

³ 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. 124b¹⁷⁵

V. Exceptions

¹ 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.

² 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.

³ 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. 124c¹⁷⁶

VI. Offset of mutual entitlements

¹ 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.

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

¹⁷⁵ 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).

¹⁷⁶ 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).

Art. 124d¹⁷⁷

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. 124e¹⁷⁸

VIII. Impossibility

¹ 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.

² 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. 125E. Post-marital maintenance
I. Requirements

¹ 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.

² 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;
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.

¹⁷⁷ 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).

¹⁷⁸ 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).

³ 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

¹ 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.

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

³ 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

¹ 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.

² 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.

³ 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 ¹ The duty to pay maintenance expires on the death of either the receiving party or the paying party.
- ² Unless otherwise agreed, it likewise expires on the remarriage of the party entitled to receive maintenance.

Art. 131¹⁷⁹

- IV. Enforcement
1. Enforcement assistance ¹ 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.
- ² The Federal Council determines the terms of enforcement assistance.

Art. 131a¹⁸⁰

2. Advance payments ¹ Public law may provide for advance payments to be made should the liable person fail to make the necessary maintenance payments.
- ² If the state authority makes maintenance payments to the entitled person, the maintenance entitlement with all rights is assigned to the state authority.

Art. 132

3. Directions to debtors and posting security¹⁸¹ ¹ 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.
- ² 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.

Art. 133¹⁸²

- F. Children
I. Parental rights and obligations ¹ 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;

¹⁷⁹ 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).

¹⁸⁰ 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).

¹⁸¹ 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).

¹⁸² 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).

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

² 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.

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

Art. 134

II. Change of
circumstances

¹ 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.

² The requirements for the modification of other parental rights and - obligations are governed by the provisions on the effects of the parent-child relationship.¹⁸³

³ If the parents agree, the child protection authority reassesses parental responsibility, residence and approves a child support agreement. In the other cases, the court competent to modify the divorce decree decides.¹⁸⁴

⁴ 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.¹⁸⁵

Art. 135–149¹⁸⁶

Art. 150–158

Repealed

¹⁸³ 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).

¹⁸⁴ 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).

¹⁸⁵ 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).

¹⁸⁶ 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).

Title Five:¹⁸⁷ General Effects of Marriage

Art. 159

A. Marital union;
rights and duties
of spouses

- ¹ The wedding ceremony binds the spouses in marital union.
- ² They mutually undertake to strive to safeguard the interests of the marital union and to care jointly for the children.
- ³ They owe each other loyalty and support.

Art. 160¹⁸⁸

B. Surname

- ¹ Each spouse retains his or her surname.
- ² 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.
- ³ 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.

Art. 161¹⁸⁹

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

- ¹ The spouses jointly provide for the proper maintenance of the family, each according to his or her ability.
- ² 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.
- ³ In so doing they take due account of the needs of the marital union and of their own personal circumstances.

¹⁸⁷ 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.

¹⁸⁸ 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).

¹⁸⁹ 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. 164

II. Allowance for personal use

¹ 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.

² 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

¹ 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.

² 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.

³ 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.

Art. 166

F. Representation of the marital union

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

² 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.

³ 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.

Art. 167

G. Spouses' career or business

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.

Art. 168

H. Transactions
by the spouses
I. In general

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

Art. 169

II. Family home

¹ 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.

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

Art. 170

J. Duty to inform

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

² 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.

³ 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

¹ 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.

² 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.

³ 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*.¹⁹⁰

¹⁹⁰ 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. 173

2. While living together
a. Financial contributions

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

² 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.

³ Payments may be claimed for the future and for one year preceding the request.

Art. 174

b. Revocation of powers of representation

¹ 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.

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

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

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

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

- 1.¹⁹¹ 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.

² 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.

¹⁹¹ 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).

³ 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.¹⁹²

Art. 176a¹⁹³

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
debtors¹⁹⁴

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

¹ To the extent required to ensure the family's financial security or fulfilment of a financial obligation arising from the marital union, at the request of one spouse the court may make the power to dispose of certain assets conditional on its consent.

² The court orders the appropriate protective measures.

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

Art. 179¹⁹⁵

6. Change of
circumstances¹⁹⁶

¹ 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*.¹⁹⁷

² 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.

¹⁹² 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).

¹⁹³ 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).

¹⁹⁴ 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).

¹⁹⁵ Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** 11).

¹⁹⁶ 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).

¹⁹⁷ 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. 180¹⁹⁸*Repealed***Title Six:**¹⁹⁹ **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. 182B. Marital
agreement
I. Choice of
regime

¹ A marital agreement may be concluded before or after the wedding.

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

Art. 183II. Capacity to
enter into an
agreement

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

² Minors, or adults subject to a deputyship that covers the conclusion of a marital agreement require the consent of their legal representative.²⁰⁰

Art. 184III. Form of the
agreement

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

Art. 185C. Extraordinary
property regime
I. At the request
of one spouse
1. By court order

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

² In particular, good cause exists:

¹⁹⁸ 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).

¹⁹⁹ Amended of Title Six in accordance with No 11 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.

²⁰⁰ 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).

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.

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

Art. 186²⁰¹

2. ...

Art. 187

3. Revocation

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

² 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
distrain

1. Bankruptcy

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

Art. 189

2. Distrain

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.

²⁰¹ 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).

Art. 190

- b. Request²⁰² 1 The request is directed against both spouses.
 2 ...²⁰³

Art. 191

3. Revocation 1 If the creditors have been satisfied, at the request of one spouse the court may order the restoration of the community of property regime.
 2 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 1 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.
 2 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 that he or she may prove that the asset received is worth less than the debt.

Art. 194²⁰⁴

E. ...

Art. 195

- F. Management of one spouse's assets by the other 1 Where one spouse expressly or tacitly entrusts management of his or her assets to the other, the provisions governing agency apply unless otherwise agreed.
 2 The provisions governing settlement of debts between spouses are reserved.

²⁰² 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).

²⁰³ 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).

²⁰⁴ 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).

Art. 195a

G. Inventory

¹ 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.

² 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. 196A. 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. 197II. Acquired
property

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

² 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;
4. income derived from his or her own property;
5. property acquired to replace acquired property.

Art. 198III. 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

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

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

Art. 200

IV. Proof

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

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

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

Art. 201

B. Management, benefits and power of disposal

¹ 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.

² 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

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

² 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

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

² 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

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

² 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.

³ The spouses settle their debts to each other.

Art. 206

2. Participation in increased value

¹ 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.

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

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

Art. 207

III. Calculating the surplus for each spouse
1. Separation of acquired property and individual property

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 ...²⁰⁵

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.

Art. 210

4. Surplus

¹ 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.

² 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

¹ 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.

² The owner of the agricultural enterprise or his or her heirs may bring a claim against the other spouse for proportionate added value or

²⁰⁵ 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).

participation only in the amount they would receive if the business were stated at its market value.

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

Art. 213

b. Special circumstances

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

² 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

¹ 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.

² 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

¹ 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.

² 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.

³ Moreover, the provisions governing claims in abatement under inheritance law apply *mutatis mutandis*.²⁰⁶

²⁰⁶ 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).

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

¹ 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.

² The common property belongs to both spouses jointly.

³ 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

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

² Revenue from individual property becomes common property.

Art. 224

b. Further
community of
property regimes

¹ 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.

² Unless otherwise agreed, income from such assets does not become common property.

Art. 225

III. Individual
property

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

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

³ 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

I. Common property

1. Everyday housekeeping

¹ The spouses must manage the common property in the best interests of the marital union.

² 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

¹ 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.

² Third parties are entitled to presume such consent provided they do not know or cannot be expected to know that it is absent.

³ The provisions governing representation of the marital union are reserved.

Art. 229

3. Use of common property for professional or business purposes

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.

Art. 230

4. Renunciation and acceptance of inheritances

¹ 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.

² If the spouse is unable to obtain consent or if it is withheld without good cause, he or she may petition the court.²⁰⁷

Art. 231

5. Liability and management costs

¹ 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.

² The costs of management are borne by the common property.

²⁰⁷ 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. 232

II. Individual
property

¹ Each spouse administers and disposes of his or her individual property within the limits of the law.

² If income accrues to individual property, the management costs are borne by such property.

Art. 233

C. Liability
toward third
parties
I. Full liability

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.

Art. 234

II. Individual
liability

¹ 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.

² Claims arising from the unjust enrichment of the marital union are reserved.

Art. 235

D. Debts
between spouses

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

² 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

¹ 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.

² 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.

³ 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. Compensation operations between joint and individual property

¹ 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.

² 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

¹ 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.

² A different method of division may be agreed by marital agreement.

³ Such agreements must not adversely affect the statutory inheritance entitlements of the spouse's issue.

Art. 242

2. In other cases
- ¹ 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.
- ² The remaining common property is divided equally between the spouses.
- ³ 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

- ¹ 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.
- ² 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.
- ³ 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

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

² 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

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

² 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. 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 Relationship²⁰⁸

Chapter One: General Provisions²⁰⁹

Art. 252²¹⁰

A. Formation of
parent-child
relationship in
general

¹ The parent-child relationship is formed between child and mother on the birth of the child.

² It is formed between child and father by virtue of the latter being married to the mother, by recognition or by court declaration.

³ Moreover, the parent-child relationship is formed by adoption.

Art. 253²¹¹

B. ...

Art. 254²¹²

Chapter Two: Paternity of the Husband²¹³

Art. 255²¹⁴

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.

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 1 of the FA of 25 June 1976, in force since 1 Jan. 1978 (AS 1977 237; BBl 1974 II 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 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).

²¹² 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).

²¹³ 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).

²¹⁴ 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. 256²¹⁵

B. Challenge
I. Right to
challenge

¹ The presumption of paternity may be challenged in court:

1. by the husband;

2.²¹⁶ 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^{217,218}

Art. 256a²¹⁹

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.²²⁰

Art. 256b²²¹

2. In the case of
conception
before marriage
or while spouses
were living apart

¹ 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.

² 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. 256c²²²

III. Time limits

¹ 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

²¹⁵ 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).

²¹⁶ 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).

²¹⁷ SR 810.11

²¹⁸ 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).

²¹⁹ 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).

²²⁰ 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).

²²¹ 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).

²²² 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).

had sexual intercourse with the mother around the date of the conception, but in any event not later than five years after the birth.

² The child's challenge must be filed at the latest within one year of attaining the age of majority.²²³

³ Once these time limits have expired, a challenge of paternity is admissible provided there is good cause for the delay.

Art. 257²²⁴

C. Conflict of presumptions

¹ 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.²²⁵

² If this presumption is disproved, the first husband is deemed to be the father.

Art. 258²²⁶

D. Challenge by the parents

¹ If the husband died or lost capacity of judgement before the time limit expired, his father or his mother may challenge his paternity.

² In this case the provisions governing a challenge by the husband apply *mutatis mutandis*.

³ 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. 259²²⁷

E. Marriage of the parents

¹ 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.

² Recognition may be challenged:

1. by the mother;

²²³ 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).

²²⁴ 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).

²²⁵ 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).

²²⁶ 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).

²²⁷ 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).

2.²²⁸ 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.

³ The provisions governing challenge of recognition apply *mutatis mutandis*.

Chapter Three: Recognition and Court Declaration of Paternity²²⁹

Art. 260²³⁰

A. Recognition
I. Admissibility
and form

¹ Where the parent-child relationship exists only with the mother, the father may recognise the child.

² 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.²³¹

³ 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. 260a²³²

II. Challenge
1. Right to
challenge

¹ 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.

² 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.

³ The challenge is directed against the recognising person and the child, insofar as they themselves are not the challenging persons.

²²⁸ 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).

²²⁹ 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).

²³⁰ 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).

²³¹ 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).

²³² 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. 260b²³³

2. Grounds

¹ The challenging person must prove that the recognising person is not the child's father.

² 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. 260c²³⁴

3. Time limits

¹ 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.

² 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.²³⁵

³ Once these time limits have expired, a challenge of recognition is admissible provided there is good cause for the delay.

Art. 261²³⁶

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. 262²³⁷

II. Presumption

¹ If the defendant had sexual intercourse with the mother during the period between the 300th day and the 180th day before the child's birth, his paternity is presumed.

²³³ 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).

²³⁴ 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).

²³⁵ 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).

²³⁶ 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).

²³⁷ 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).

² Paternity is also presumed even if the child was conceived prior to the 300th day or after the 180th 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. 263²³⁸

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;
- 2.²³⁹ 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.

Chapter Four:²⁴⁰ **Adoption**

Art. 264²⁴¹

A. Adoption of minors I. General requirements

¹ 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.

² 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.

²³⁸ 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).

²³⁹ 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).

²⁴⁰ Originally Chapter Three.

²⁴¹ 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. 264a²⁴²

II. Joint adoption ¹ 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.

² 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. 264b²⁴³

III. Adoption by a single person ¹ 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.

² 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.

³ 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.

⁴ 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.

Art. 264c²⁴⁴

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.

²⁴² 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).

²⁴³ 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).

²⁴⁴ 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. 264^{d245}

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. 265²⁴⁶

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. 265^{a247}

VII. Parents' consent²⁴⁸
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.²⁴⁹

Art. 265^{b250}

2. Time of consent

¹ Consent to adoption may not be given until at least six weeks after the birth of the child.

² It may be revoked within six weeks of having been accepted.

³ Where consent, having been revoked, is given again, it is then final.

²⁴⁵ Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

²⁴⁶ Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

²⁴⁷ 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).

²⁴⁸ Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

²⁴⁹ Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

²⁵⁰ 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).

Art. 265c²⁵¹

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. 265d²⁵²

- b. Decision

¹ 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.²⁵³

² In all other cases, the decision is made at the time of the adoption.

³ ...²⁵⁴

Art. 266²⁵⁵

- B. Adoption of
an adult

¹ 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.

² In all other respects, the provisions governing adoption of minors apply *mutatis mutandis*, with the exception of the provision on parental consent.

²⁵¹ 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).

²⁵² 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).

²⁵³ Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

²⁵⁴ Repealed by No I of the FA of 17 June 2016 (Adoption), with effect from 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

²⁵⁵ 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).

Art. 267²⁵⁶

C. Effects
I. In general

¹ The adoptive child acquires the legal status of a child of the persons wishing to adopt.

² Previous parent-child relationships are extinguished.

³ 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. 267a²⁵⁷

II. Name

¹ 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.

² 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.

³ 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.

⁴ 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.

Art. 267b²⁵⁸

III. Citizenship

The citizenship of a minor is determined by provisions governing the legal effects of the parent-child relationship.

²⁵⁶ 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).

²⁵⁷ 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)

²⁵⁸ 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. 268²⁵⁹

D. Procedure
I. In general

¹ Adoption is pronounced by the competent cantonal authority at the adoptive parents' domicile.

² The adoption requirements must already be met when the application is submitted.²⁶⁰

³ 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.²⁶¹

⁴ 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.²⁶²

⁵ 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.²⁶³

Art. 268a²⁶⁴

II. Investigation

¹ An application for adoption may not be upheld until all material circumstances have been thoroughly investigated, where necessary in consultation with the relevant specialists.

² 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.²⁶⁵

³ ...²⁶⁶

²⁵⁹ 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).

²⁶⁰ Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

²⁶¹ Amended by No I of the FA of 17 June 2016 (Adoption), in force since 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 1 of the FA of 30 June 1972, in force since 1 April 1973 (AS 1972 2819; BBl 1971 I 1200).

²⁶⁵ Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

²⁶⁶ Repealed by No I of the FA of 17 June 2016 (Adoption), with effect from 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

- Art. 268a**^{bis 267}
- 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. 268a**^{ter 268}
- IV. Representation 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. 268a**^{quater 269}
- 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.

- Art. 268b**²⁷⁰
- Dbis. Confidentiality of adoption information
- ¹ The adopted child and the adoptive parents are entitled to confidentiality of adoption information.

²⁶⁷ Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

²⁶⁸ Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

²⁶⁹ Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

²⁷⁰ 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).

² 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.

³ 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. 268c²⁷¹

Dter. Information on the adoption, the biological parents and their issue

¹ The adoptive parents must inform the child of his or her adoption when his or her age or maturity permits.

² 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.

³ 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. 268d²⁷²

Dquater. Cantonal information centre and tracing services

¹ Information about the biological parents, their direct descendants and the child may be obtained from the cantonal authority responsible for the adoption procedure.

² 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.

³ If the person referred to in the request for information refuses to make personal contact, the authority or the authorised tracing service 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.

⁴ The cantons shall designate a body to provide advice to the biological parents, their direct descendants or the child on request.

²⁷¹ 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).

²⁷² 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. 268^{e273}

Dquinquies.
Contact with the
biological
parents

¹ 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.

² 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.

³ 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. 269²⁷⁴

E. Challenge
I. Grounds
1. Lack of
consent

¹ 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.

² However, the parents are not entitled to bring such action where they may appeal against the decision to the Federal Supreme Court.

Art. 269a²⁷⁵

2. Other defects

¹ 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.

² However, a challenge is excluded if the defect has been rectified in the interim or if it relates solely to procedural provisions.

Art. 269b²⁷⁶

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.

²⁷³ Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBI **2015** 877).

²⁷⁴ 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).

²⁷⁵ 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).

²⁷⁶ 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. 269^{c277}

F. Adoption
agency services

¹ The Confederation is responsible for supervising child adoption agency activities.

² 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.²⁷⁸

³ 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.

⁴ ...²⁷⁹

Title Eight: Effects of the Parent-Child Relationship²⁸⁰**Section One: Community of Parents and Children²⁸¹****Art. 270²⁸²**

A. Family
surname
I. Child of
married parents

¹ 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.

² Within one year of the birth of their first child, the parents may request that the child take the surname of the other parent.

³ If the parents bear a joint family name, the child takes that name.

²⁷⁷ 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).

²⁷⁸ 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).

²⁷⁹ 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).

²⁸⁰ 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).

²⁸¹ 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).

²⁸² 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).

II. Child of
unmarried
parents**Art. 270a**²⁸³

¹ 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.

² 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.

³ If neither parent has parental responsibility, the child takes the mother's name before marriage.

⁴ A change in the allocation of parental responsibility has no effect on names. The provisions on changing names are reserved.

Art. 270b²⁸⁴III. 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. 271²⁸⁵

B. Citizenship

¹ The child acquires the cantonal and communal citizenship of the parent whose surname the child bears.

² 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. 272²⁸⁶C. Support and
common welfare

Parents and children owe each other such support, consideration and respect as the good of the family community requires.

²⁸³ 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).

²⁸⁴ 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).

²⁸⁵ 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).

²⁸⁶ 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. 273²⁸⁷

- D. Contact
- I. Parents and children
- 1. Principle

¹ Parents not granted parental responsibility or whose children are not resident with them are entitled to reasonable contact with their minor children, and their children are entitled to contact with them.²⁸⁸

² 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.

³ Contact entitlements must be stipulated if either the father or the mother so requests.

Art. 274²⁸⁹

- 2. Restrictions

¹ 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.²⁹⁰

² 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.

³ 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. 274a²⁹¹

- II. Third parties

¹ 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.

² The restrictions on parents' visiting rights apply *mutatis mutandis*.

²⁸⁷ 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).

²⁸⁸ 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).

²⁸⁹ 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).

²⁹⁰ 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).

²⁹¹ 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. 275²⁹²

III. Responsible
authorities

¹ 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.

² 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.²⁹³

³ 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. 275a²⁹⁴

E. Right to
information

¹ 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.

² 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.

³ The provisions governing responsibility for and limitations on contact with the child apply *mutatis mutandis*.

Section Two: Parents' Duty of Maintenance²⁹⁵**Art. 276**²⁹⁶

A. General
I. Object and
scope²⁹⁷

¹ Maintenance is provided by caring for and raising the child and in the form of monetary payments.²⁹⁸

²⁹² 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).

²⁹³ 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).

²⁹⁴ 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).

²⁹⁵ 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).

²⁹⁶ 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).

²⁹⁷ 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).

²⁹⁸ 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).

² 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.²⁹⁹

³ 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. 276a³⁰⁰

II. Precedence of maintenance for minors

¹ The duty of maintenance towards a minor shall take precedence over other maintenance duties under family law.

² 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. 277³⁰¹

B. Duration

¹ The parents' duty of maintenance lasts until the child attains the age of majority.³⁰²

² 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.³⁰³

Art. 278³⁰⁴

C. Married parents

¹ For the duration of their marriage, the parents bear the costs of maintenance in accordance with the provisions of marital law.

² Each spouse must give the other all reasonable assistance in discharging the duty to maintain children born prior to the marriage.

²⁹⁹ 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).

³⁰⁰ 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).

³⁰¹ 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).

³⁰² 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).

³⁰³ Amended by No I of the FA of 7 Oct. 1994, in force since 1 Jan. 1996 (AS **1995** 1126; BBl **1993** I 1169).

³⁰⁴ 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. 279³⁰⁵

D. Court action
I. Right to sue³⁰⁶

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 ...³⁰⁷

Art. 280–284³⁰⁸

II. and III. ...

Art. 285³⁰⁹

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. 285a³¹⁰

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.

³⁰⁵ 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).

³⁰⁶ 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).

³⁰⁷ 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).

³⁰⁸ 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).

³⁰⁹ 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).

³¹⁰ 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. 286³¹¹

V. Change of
circumstances
1. In general³¹²

¹ 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.

² 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.

³ Should the child have unforeseen, extraordinary needs the court may order the parents to make a special financial contribution.³¹³

Art. 286a³¹⁴

2. Shortfalls

¹ 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.

² This claim must be brought within one year of it being known that the circumstances have improved substantially.

³ 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. 287³¹⁵

E. Maintenance
agreements
1. Regular
payments

¹ Maintenance agreements are binding on the child only once they have been approved by the child protection authority.

² 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.

³ If the agreement is concluded in court proceedings, such approval must be given by the court.

³¹¹ 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).

³¹² 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).

³¹³ 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).

³¹⁴ 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).

³¹⁵ 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. 287^{a316}

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. 288³¹⁷

III. Final
settlement³¹⁸

¹ Full and final settlement of the child's maintenance entitlement may be agreed if it is in the child's best interests.

² 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. 289³¹⁹

F. Fulfilment
I. Entitlement

¹ 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.³²⁰

² However, where the state authority assumes the cost of maintaining the child, such claim and all attendant rights pass to the state authority.

³¹⁶ 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).

³¹⁷ 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).

³¹⁸ Originally No II.

³¹⁹ 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).

³²⁰ 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. 290³²¹

II. Enforcement
1. Enforcement
assistance

¹ 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.

² The Federal Council determines the terms of enforcement assistance.

Art. 291³²²

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. 292³²³

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. 293³²⁴

G. Public law

¹ 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.

² Public law also governs the provision of advances to maintain the child if the parents fail to fulfil their duty of maintenance.

Art. 294³²⁵

H. Foster parents

¹ Foster parents are entitled to receive an appropriate fostering allowance unless otherwise agreed or clearly dictated by the circumstances.

² Where children are fostered by close relatives or with a view to subsequent adoption there is a presumption that no remuneration is due.

³²¹ 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).

³²² 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).

³²³ 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).

³²⁴ 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).

³²⁵ 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. 295³²⁶

J. Rights of the
unmarried
mother

¹ 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:³²⁷

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.

² On grounds of equity, the court may award partial or full compensation for such costs if the pregnancy ends prematurely.

³ 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 Responsibility³²⁸**Art. 296**³²⁹

A. Principles

¹ Parental responsibility serves the best interests of the child.

² Until such time as they attain the age of majority, children remain the joint parental responsibility of their father and mother.

³ 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. 297³³⁰

Abis. Death of a
parent

¹ If the parents have joint parental responsibility and one parent dies, the surviving parent retains sole parental responsibility.

³²⁶ 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).

³²⁷ 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).

³²⁸ 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).

³²⁹ 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).

³³⁰ 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).

² 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. 298³³¹

Ater. Divorce and other marital proceedings

¹ 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.

² 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.

^{2bis} 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.³³²

^{2ter} 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.³³³

³ 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. 298a³³⁴

Aquater. Recognition and court declaration of paternity
I. Joint declaration by the parents

¹ 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.

² 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.

³³¹ 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).

³³² 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).

³³³ 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).

³³⁴ 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).

³ Before making the declaration, the parents may seek advice from the child protection authority.

⁴ 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.

⁵ Unless and until the declaration has been made, the mother has sole parental responsibility.

Art. 298b³³⁵

II. Decision of
the child
protection
authority

¹ 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.

² 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.

³ 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.³³⁶

^{3bis} 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.³³⁷

^{3ter} 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.³³⁸

⁴ 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.

³³⁵ 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).

³³⁶ 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).

³³⁷ 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).

³³⁸ 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. 298c³³⁹

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. 298d³⁴⁰

¹ 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.

² It may limit itself to regulating residence, contact or the sharing of parenting duties.

³ 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.³⁴¹

Aquinquies, Change in the situation after the adoption of a stepchild in a cohabitation relationship

Art. 298e³⁴²

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-parents³⁴⁴**Art. 299**³⁴³

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.

³³⁹ 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).

³⁴⁰ 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).

³⁴¹ 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).

³⁴² Inserted by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS **2017** 3699; BBl **2015** 877).

³⁴³ 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).

³⁴⁴ 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. 300³⁴⁵

Asepties, Foster
parents³⁴⁶

¹ 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.

² Foster parents must be consulted before any important decisions are taken regarding the child.

Art. 301³⁴⁷

B. Scope
I. In general

¹ 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.

^{1bis} 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.³⁴⁸

² 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.

³ The child is not permitted to leave the family home without the parents' consent, nor may he or she be unlawfully removed from them.

⁴ The parents give the child his or her first name.

Art. 301a³⁴⁹

II. Deciding on
the place of
residence

¹ Parental responsibility includes the right to decide on the child's place of residence.

² 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:

³⁴⁵ 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).

³⁴⁶ Amended by No I of the FA of 17 June 2016 (Adoption), in force since 1 Jan. 2018 (AS 2017 3699; BBl 2015 877).

³⁴⁷ 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).

³⁴⁸ 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).

³⁴⁹ 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.

³ 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.

⁴ A parent who wishes to change his or her own domicile has the same duty to provide information.

⁵ 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. 302³⁵⁰

III. Upbring-
ing³⁵¹

¹ The parents must raise the child according to their circumstances and encourage and safeguard the child's physical, mental and moral development.

² 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.

³ To that end, the parents must co-operate as appropriate with school authorities and, where required, with public and charitable youth support agencies.

Art. 303³⁵²

IV. Religious
upbringing³⁵³

¹ The parents are free to determine the child's religious upbringing.

² Any agreement restricting this freedom is invalid.

³ Once a child is 16 years of age, he or she is free to decide his or her own religious denomination.

³⁵⁰ 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).

³⁵¹ 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).

³⁵² 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).

³⁵³ 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. 304³⁵⁴

V. Representa-
tion
1. In relation to
third parties
a. In general³⁵⁵

¹ 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.³⁵⁶

² If both parents have parental responsibility, all third parties acting in good faith may assume that each parent acts with the other's consent.³⁵⁷

³ 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.³⁵⁸

Art. 305³⁵⁹

b. Child's legal
status³⁶⁰

¹ 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.³⁶¹

² The child is liable with all his or her assets for any obligations entered into, without regard to the parents' property rights.

Art. 306³⁶²

2. Within the
family communi-
ty

¹ 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.³⁶³

² 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.³⁶⁴

³⁵⁴ 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).

³⁵⁵ 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).

³⁵⁶ 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).

³⁵⁷ 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).

³⁵⁸ 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).

³⁵⁹ 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).

³⁶⁰ 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).

³⁶¹ 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).

³⁶² 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).

³⁶³ 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).

³⁶⁴ 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).

³ In the event of a conflict of interests, the parents' powers become automatically void by law in relation to the matter concerned.³⁶⁵

Art. 307³⁶⁶

C. Child protection
I. Appropriate measures

¹ 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.

² The child protection authority has the same duty with regard to children placed with foster parents or otherwise living outside the family home.

³ 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. 308³⁶⁷

II. Deputyship³⁶⁸

¹ 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.

² 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.³⁶⁹

³ Parental responsibility may be restricted accordingly.

Art. 309³⁷⁰

Art. 310³⁷¹

III. Revocation of the right to decide on place of residence³⁷²

¹ 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

³⁶⁵ 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).

³⁶⁶ 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).

³⁶⁷ 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).

³⁶⁸ 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).

³⁶⁹ 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).

³⁷⁰ 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).

³⁷¹ 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).

³⁷² 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.

² 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.

³ 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. 311³⁷³

IV. Withdrawal
of parental
responsibility
1. Ex-officio³⁷⁴

¹ If other child protection measures have failed or offer little prospect of proving adequate, the child protection authority shall revoke parental responsibility:³⁷⁵

- 1.³⁷⁶ 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.

² Where parental responsibility is withdrawn from both parents, a legal guardian is appointed for their children.

³ Unless expressly ordered otherwise, the withdrawal of parental responsibility is effective in respect of all the children, including those born subsequently.

Art. 312³⁷⁷

2. With the
parents' con-
sent³⁷⁸

The child protection authority shall withdraw parental responsibility:³⁷⁹

- ³⁷³ 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).
- ³⁷⁴ 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).
- ³⁷⁵ 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).
- ³⁷⁶ 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).
- ³⁷⁷ 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).
- ³⁷⁸ 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).
- ³⁷⁹ 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. 313³⁸⁰

V. Change in
circumstances

¹ If circumstances change, the child protection measures in place must be adapted to suit the new situation.

² On no account may parental responsibility be restored within less than one year of its withdrawal.

Art. 314³⁸¹

VI. Procedure
1. General

¹ The provisions on the procedure before the adult protection authority apply *mutatis mutandis*.

² In appropriate cases, the child protection authority may request the parents to attempt mediation.

³ 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. 314a³⁸²

2. Hearing for
the child

¹ 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.

² The record of the hearing contains only the findings of relevance to the decision. The parents are informed of these findings.

³ A child capable of judgement may appeal against a decision to refuse a hearing.

Art. 314a^{bis 383}

3. Representa-
tion for the child

¹ 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.

³⁸⁰ 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).

³⁸¹ 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).

³⁸² 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).

³⁸³ 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).

² 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.

³ The child's deputy may file applications and appeals.

Art. 314b³⁸⁴

4. Committal to a secure institution or psychiatric hospital

¹ 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*.

² If the child is capable of judgement, he or she may petition the court directly.

Art. 314c³⁸⁵

5. Right to notify

¹ Any person may notify the child protection authorities if a child's physical, mental or sexual integrity appears to be at risk.

² If a report is in the interest of the child, persons who are subject to professional confidentiality under the Swiss Criminal Code³⁸⁶ are also entitled to notify the authorities. This provision does not apply to auxiliary persons bound by professional confidentiality under the Criminal Code.

Art. 314d³⁸⁷

6. Duty to notify

¹ The following persons, provided they are not subject to professional confidentiality under the Swiss Criminal Code³⁸⁸, 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.

³⁸⁴ 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).

³⁸⁵ 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).

³⁸⁶ SR **311.0**

³⁸⁷ 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).

³⁸⁸ SR **311.0**

² The duty to notify is fulfilled when a person notifies a superior.

³ The cantons may provide for further notification obligations.

Art. 314^{e389}

7. Cooperation
and administra-
tive assistance

¹ 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.

² Persons bound by professional confidentiality in accordance with the Swiss Criminal Code³⁹⁰ 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.

³ 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 2000³⁹¹ remains reserved.

⁴ Administrative authorities and courts shall pass on the necessary documentation, reports and information, provided there is no conflict with interests worthy of protection.

Art. 315³⁹²

VII. Jurisdiction
1. In general³⁹³

¹ Child protection measures are ordered by the child protection authorities at the child's domicile.³⁹⁴

² 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.

³ If the latter authorities implement a child protection measure, they must inform the authority at the child's domicile.

³⁸⁹ 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).

³⁹⁰ SR **311.0**

³⁹¹ SR **935.61**

³⁹² 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).

³⁹³ 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).

³⁹⁴ 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. 315a³⁹⁵

2. In marital
proceedings
a. Jurisdiction of
the court

¹ 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.³⁹⁶

² The court may also modify child protection measures already in place to take account of changes in circumstances.

³ However, the child protection authority retains the power:³⁹⁷

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. 315b³⁹⁸

b. Amendment
of court orders

¹ 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*.

² In all other cases jurisdiction lies with the child protection authority.³⁹⁹

Art. 316⁴⁰⁰

VIII. Supervi-
sion of foster
children

¹ 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.

³⁹⁵ 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).

³⁹⁶ 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).

³⁹⁷ 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).

³⁹⁸ 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).

³⁹⁹ 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).

⁴⁰⁰ 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).

¹bis Where a child is fostered with a view to subsequent adoption, a single cantonal authority is responsible.⁴⁰¹

² The Federal Council enacts implementing regulations.

Art. 317⁴⁰²

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 Child⁴⁰³

Art. 318⁴⁰⁴

A. Management

¹ As long as they have parental responsibility for the child, the parents have the right and the duty to administer the child's property.

² If a parent dies, the surviving parent must file an inventory of the child's property with the child protection authority.⁴⁰⁵

³ 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.⁴⁰⁶

Art. 319⁴⁰⁷

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.

⁴⁰¹ 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).

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 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).

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 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).

⁴⁰⁶ 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).

⁴⁰⁷ 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. 320⁴⁰⁸

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. 321⁴⁰⁹

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. 322⁴¹⁰

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. 323⁴¹¹

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.

² 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.

⁴⁰⁸ 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).

⁴⁰⁹ 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).

⁴¹⁰ 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).

⁴¹¹ 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. 324⁴¹²

E. Protection of
the child's
property
I. Appropriate
measures

¹ 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.

² 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.

³ Procedure and jurisdiction are regulated *mutatis mutandis* by the provisions governing child protection.

Art. 325⁴¹³

II. Withdrawal of
management

¹ 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.

² The child protection authority does likewise if a child's property that is not managed by the parents is threatened.

³ 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. 326⁴¹⁴

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. 327⁴¹⁵

II. Liability

¹ The parents are liable to make restitution as if they were authorised agents.

² The parents must surrender the proceeds of any property alienated in good faith.

³ The parents do not owe compensation for any authorised expenditures on the child or the household.

⁴¹² 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).

⁴¹³ 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).

⁴¹⁴ 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).

⁴¹⁵ 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).

Section Five:⁴¹⁶ 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 A child subject to guardianship has the same legal status as a child
I. Of the child subject to parental responsibility.

Art. 327c

- II. Of the guardian ¹ A guardian has the same rights as the parents.

² 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*.

³ 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. 328⁴¹⁷

- A. Persons obliged to lend assistance ¹ 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.

² The duty of maintenance of parents, spouses and registered partners is reserved.⁴¹⁸

Art. 329

- B. Scope and enforcement of the claim for assistance⁴¹⁹ ¹ The claim for assistance is directed against those with a duty to provide it in order of their inheritance entitlements; the amount is

⁴¹⁶ 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).

⁴¹⁷ Amended by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** 11).

⁴¹⁸ 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).

⁴¹⁹ 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).

dependent on the degree of assistance required to maintain the indigent claimant and on the circumstances of the person obliged to provide it.

^{1bis} 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.⁴²⁰

² 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.⁴²¹

³ The provisions governing child maintenance entitlement and the transfer of such entitlement to the state authority are applicable *mutatis mutandis*.⁴²²

Art. 330

C. Maintenance of foundlings

¹ Foundlings are maintained by the commune in which they have become naturalised.

² 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

¹ 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.

² The authority extends over all persons living in the household, whether relatives by blood⁴²³ or by marriage or employees or persons in a similar position based on a contractual relationship.⁴²⁴

⁴²⁰ 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).

⁴²¹ 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).

⁴²² 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).

⁴²³ 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).

⁴²⁴ 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).

Art. 332

B. Effect
I. House rules
and welfare

¹ The house rules to which the household members are subject must take due account of the interests of all involved.

² In particular, the household members must be allowed the freedom required for their education, occupation and religious practices.

³ 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

¹ 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.⁴²⁵

² 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 damage to himself or to others.⁴²⁶

³ 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. 334⁴²⁷

III. Claims of
children and
grandchildren
1. Requirements

¹ 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.⁴²⁸

² In the event of dispute the court determines the amount of compensation, the security required and the payment method.

Art. 334^{bis 429}

2. Asserting
claims

¹ The compensation due to children or grandchildren may be claimed on the debtor's death.

⁴²⁵ 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).

⁴²⁶ 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).

⁴²⁷ Amended by No I 1 of the FA of 6 Oct. 1972, in force since 15 Feb. 1973 (AS **1973** 93; BBl **1970** 1 805, **1971** 1 737).

⁴²⁸ 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).

⁴²⁹ Inserted by No I 1 of the FA of 6 Oct. 1972, in force since 15 Feb. 1973 (AS **1973** 93; BBl **1970** 1 805, **1971** 1 737).

² 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.

³ The claim is not subject to prescription, but must be brought at the latest on division of the deceased debtor's estate.

Chapter Three: Family Property

Art. 335

A. Family foundations

¹ 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.

² 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

¹ Joint ownership in undivided shares may be constituted for a limited or indefinite duration.

² If constituted for an indefinite duration, it may be terminated by any co-owner subject to six months' notice.

³ 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.

Art. 339

III. Effect
1. Type of ownership

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.

Art. 340

2. Management and representation

a. In general

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.

Art. 341

b. Manager's powers

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.

Art. 342

3. Common property and personal property

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.

Art. 343

IV. Dissolution
1. Grounds

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

¹ 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.

² A co-owner who marries is entitled to request such settlement without giving notice of termination.

Art. 345

3. Death of a co-owner

¹ On the death of a co-owner, heirs who are not also co-owners are entitled only to settlement of his share.

² 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

¹ 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.

² Its implementation may not be requested at an inopportune time.

Art. 347

V. Revenue-generating co-ownership

1. Nature

¹ 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.

² 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

¹ 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.

² 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.

³ 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. 349–358⁴³⁰**Art. 359⁴³¹****Division Three:⁴³² 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

¹ 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.

² He or she must define the tasks that are to be assigned and may issue instructions on how these tasks are to be fulfilled.

³ 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. 361B. Execution and
revocation
I. Execution

¹ The advance care directive must be executed in holographic form or publicly authenticated.

² A holograph advance care directive must be handwritten, dated and signed by the client from beginning to end.

³ On request, the Civil Register Office shall record in the central database the fact that a person has executed an advance care directive 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

¹ The client may revoke the advance care directive at any time in either of the ways provided for its execution.

⁴³⁰ Repealed by No I 4 of the FA of 26 June 1998, with effect from 1 Jan. 2000 (AS **1999** 1118; BBl **1996** 11).

⁴³¹ 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).

⁴³² 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).

² He or she may also revoke the advance care directive by destroying the document.

³ 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

¹ 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.

² 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.

³ 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 Obligations⁴³³ 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

¹ 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 Obligations⁴³⁴ on agency contracts.

² 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.

³ In the event of a conflict of interest, the powers of the appointee cease to apply by law.

⁴³³ SR 220

⁴³⁴ SR 220

Art. 366

F. Remuneration
and expenses

¹ 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.

² The remuneration and the required expenses are charged to the client.

Art. 367

G. Termination

¹ The appointee may terminate the advance care directive at any time subject to giving two months' written notice to the adult protection authority.

² For good cause, the appointee may terminate the directive without notice.

Art. 368

H. Intervention
by the adult
protection
authority

¹ 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.

² 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

¹ If the client regains the capacity of judgement, the advance care directive shall by law cease to have effect.

² 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.

³ 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

¹ 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.

² 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.

³ 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

¹ The patient decree must be executed in writing, and be dated and signed.

² 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.

³ The provision on revoking an advance care directive applies *mutatis mutandis*.

Art. 372

C. Loss of capacity of judgement

¹ 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.

² 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.

³ 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

¹ 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.

² 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

¹ 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.

² 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.

³ 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 Obligations⁴³⁵ on agency contracts *mutatis mutandis*.

Art. 376

C. Intervention
by the adult
protection
authority

¹ 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.

² 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

¹ 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.

² 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.

³ If possible, the person lacking capacity of judgement shall also be involved in making the decision.

⁴ The treatment plan shall be adapted to ongoing developments.

Art. 378

B. The repre-
sentative

¹ 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.

² 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.

³ 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 ¹ 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.

² 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.

³ 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 ¹ 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.

² In determining the services provided by the institution, account must be taken of the wishes of the person concerned as far as possible.

³ 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

¹ 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.

² 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.

³ 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

¹ 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.

² 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.

³ 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

¹ 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.

² 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.

³ 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

¹ 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.

² If no one outside the institution expresses an interest in the client, the residential or nursing institution shall notify the adult protection authority.

³ 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

¹ Official adult protection measures shall aim to secure the best interests and protection of persons in need.

² Where possible, they should preserve and encourage the independence of the persons concerned.

Art. 389

B. Subsidiarity
and proportionality

¹ 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.

² Any official measure must be necessary and suitable.

Section Two: The Deputyship

Sub-Section One: General Provisions

Art. 390

- A. Requirements ¹ 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.
- ² Account must be taken of the burden on and the protection of family members and third parties.
- ³ 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 ¹ The adult protection authority shall define the scope of the deputyship's responsibilities according to the needs of the client.
- ² The scope of responsibilities shall relate to personal care, the management of his or her assets or legal matters.
- ³ 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 ¹ If establishing a deputyship is clearly a disproportionate measure due to 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

¹ 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.

² The assistance deputyship does not limit the capacity of the client to act.

Art. 394

B. Representative deputyship I. In general

¹ A representative deputyship is established if the person in need is unable to deal with certain matters and therefore must be represented.

² The adult protection authority may limit the capacity of the client to act accordingly.

³ 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

¹ 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.

² The management powers also cover savings from the managed income or the revenue from the managed capital unless the adult protection authority provides otherwise.

³ Without limiting the capacity of the client to act, the adult protection authority may prohibit him or her from accessing individual assets.

⁴ 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

¹ 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.

² 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.

Art. 398

E. General
deputyship

¹ A general deputyship is established if a person, in particular due to permanent loss of capacity of judgement, is in particular need.

² It covers all aspects of personal care, management of assets and legal matters.

³ The client's capacity to act is revoked by law.

Sub-Section Three: End of the Deputyship**Art. 399**

¹ The deputyship ends by law on the death of the client.

² 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

¹ 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.

² The person may only be appointed with their consent.⁴³⁶

³ 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

¹ 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

² It shall if possible take account of the wishes of family members or other closely associated persons.

³ If the client rejects a specific person as the deputy, the adult protection authority shall respect this wish provided it is reasonable.

⁴³⁶ 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.

Art. 406

B. Relationship
with the client

¹ 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.

² 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.

Art. 407

C. Client's
autonomy

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.

Art. 408

D. Asset
management
I. Tasks

¹ The deputy shall manage the assets with due care and carry out all the legal acts connected with their management.

² 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.

³ The Federal Council shall issue provisions on the investment and safe custody of assets.

Art. 409

II. Personal
allowance

The deputy shall provide the client with an allowance from the client's assets which the client is free to spend.

Art. 410

III. Accounts

¹ 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.

² 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 Obligations⁴³⁷.

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

¹ 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 a 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. life annuity and lifetime maintenance agreements 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.

² 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.

³ 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

¹ The deputy may request to be discharged at the earliest after serving a term of four years.

² Prior to this, the deputy may request to be discharged for good cause.

Art. 423

II. Other cases

¹ 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.

² 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

¹ 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.

² 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.

³ 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.

⁴ 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

¹ 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.

² The burden that the patient places on family members and third parties and their protection must be taken into account.

³ The patient shall be discharged as soon as the requirements for hospitalisation no longer are fulfilled.

⁴ 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

¹ 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.

² 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.

³ The patient shall be notified in writing that he or she may petition the court.

Art. 428

B. Responsibility
for hospitalisa-
tion and
discharge

I. Adult protec-
tion authority

¹ The adult protection authority is responsible for ordering hospitalisation and discharge.

² In specific cases, it may delegate responsibility for discharge to the institution.

Art. 429

II. Doctors

1. Responsibility

¹ 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.

² Hospitalisation may not continue beyond the specified period at the latest unless an enforceable hospitalisation order from the adult protection authority applies.

³ The institution decides on discharge.

Art. 430

2. Procedures

¹ The doctor shall examine and interview the patient in person.

² 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.

³ An appeal does not have suspensive effect unless the doctor or the competent court orders otherwise.

⁴ 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.

⁵ 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

¹ 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.

² 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

¹ 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.

² 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.

³ 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.

⁴ 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.

² 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.

³ The procedure is governed *mutatis mutandis* by the provisions on proceedings before a judicial appellate authority.

⁴ 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

¹ The adult protection authority is a specialist authority. It is appointed by the cantons.

² It has a quorum of three members for taking decisions. The cantons may provide for exceptions for specific matters.

³ It also carries out the tasks of the child protection authority.

Art. 441

B. Supervisory authority

¹ The cantons shall appoint the supervisory authorities.

² The Federal Council may issue provisions on supervision.

Art. 442

C. Local jurisdiction

¹ 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.

² 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.

³ 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.

⁴ 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.

⁵ 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

¹ 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.

² 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.⁴³⁸

³ The cantons may provide for further notification obligations.⁴³⁹

Art. 444

B. Verification
of jurisdiction

¹ The adult protection authority shall verify its jurisdiction *ex officio*.

² If it decides that it has no jurisdiction, it shall assign the case immediately to the authority that it regards as having jurisdiction.

³ If it is uncertain as to whether it has jurisdiction, it shall consult the authority that it believes may have jurisdiction.

⁴ If no agreement is reached after consultation, the authority originally involved shall refer the question of jurisdiction to the appellate authority.

Art. 445

C. Precautionary
measures

¹ The adult protection authority shall at the request of a person participating in the proceedings or *ex officio* take all the precautionary

⁴³⁸ 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).

⁴³⁹ 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).

measures required for the duration of the proceedings. It may in particular order an adult protection measure as a precautionary measure.

² 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.

³ An appeal against precautionary measures may be filed within ten days of notice thereof being given.

Art. 446

D. Procedural principles

¹ The adult protection authority investigates the circumstances of the case *ex officio*.

² 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.

³ It is not limited by the requests made by the persons participating in the proceedings.

⁴ It shall apply the law *ex officio*.

Art. 447

E. Hearing

¹ The client shall be heard in person unless to do so appears inappropriate.

² 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

¹ 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.

² 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 confidentiality at their own request or at the request of the adult protection authority.⁴⁴⁰

⁴⁴⁰ 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).

³ Members of the clergy, lawyers, defence agents, mediators and former welfare deputies appointed in the case are not subject to the obligation to cooperate.

⁴ 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

¹ 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.

² 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

¹ The persons participating in the proceedings have the right to inspect the case files, unless legitimate interests require otherwise.

² 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.

Sub-section Two: Before the Appellate Authority

Art. 450

A. Object and right of appeal

¹ Decisions of the adult protection authority are subject to a right of appeal to the competent court.

² 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.

³ The appeal must be filed with the court in writing and with a statement of the grounds.

Art. 450a

B. Grounds of appeal

¹ The appeal may challenge:

1. an infringement of the law;
2. an incorrect or incomplete finding of legally relevant fact;
3. an inappropriate decision.

² An appeal is also competent on the grounds of denial of justice or unjustified delay.

Art. 450b

C. Deadline for filing the appeal

¹ 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.

² In the case of a decision concerning care-related accommodation, the appeal must be filed within ten days of notification of the decision.

³ 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

¹ The judicial appellate authority shall give the adult protection authority the opportunity to express its position.

² 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

¹ A statement of grounds is not required for an appeal against a decision relating to care-related hospitalisation.

² The appeal does not have suspensive effect unless the adult protection authority or the judicial appellate authority rules otherwise.

³ In cases involving mental disorders, the decision must be based on the opinion of an expert.

⁴ 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.

⁵ 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

¹ The adult protection authority shall enforce decisions on request or *ex officio*.

² If the adult protection authority or the judicial appellate authority in the decision has already ordered compulsory enforcement measures, these may be enforced directly.

³ 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

¹ The adult protection authority is subject to a duty of confidentiality in the absence of overriding interests.

² 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

¹ An adult protection measure may be cited in opposition to third parties even if they are acting in good faith.

² 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.

³ 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 damage caused thereby.

Art. 453

C. Duty of cooperation

¹ 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.

² 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

¹ 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, to satisfaction.

² The same right applies if the adult protection authority or the supervisory authority behaves unlawfully in relation to other adult protection matters.

³ The canton is liable; the person suffering damage has no right to damages against the person who caused the damage.

⁴ The canton's right of recourse against the person that caused the damage is governed by the cantonal law.

Art. 455**B. Prescription**

¹ The right to claim damages or satisfaction prescribes in accordance with the provisions of the Code of Obligations⁴⁴¹ on the law of tort.⁴⁴²

² If the person who caused the damage committed a criminal offence through his or her conduct, the right to claim damages or satisfaction prescribes at the earliest when the right to prosecute the offence prescribes. If the right to prosecute is no longer liable to prescription because a first instance criminal judgment has been issued, the right to claim damages or satisfaction prescribes at the earliest three years after notice of the judgment is given.⁴⁴³

³ If the injury is related to the ordering or conduct of a long-term measure, the prescriptive period for a claim against the canton does not begin 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 Obligations⁴⁴⁴ on agency.

Part Three: Law of Succession**Division One: Heirs****Title Thirteen: Statutory Heirs****Art. 457****A. Related⁴⁴⁵ heirs****I. Issue**

¹ The nearest heirs of a deceased person are his or her issue.

² Children inherit in equal parts.

³ Predeceased children are replaced by their own issue in all degrees per stirpes.

⁴⁴¹ SR 220

⁴⁴² Amended by Annex No 3 of the FA of 15 June 2018 (Revision of the Law on Prescription), in force since 1 Jan. 2020 (AS 2018 5343; BBl 2014 235).

⁴⁴³ Amended by Annex No 3 of the FA of 15 June 2018 (Revision of the Law on Prescription), in force since 1 Jan. 2020 (AS 2018 5343; BBl 2014 235).

⁴⁴⁴ SR 220

⁴⁴⁵ 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. 458

- II. Parental line
- ¹ Where the deceased is not survived by any issue, the estate passes to the parental line.
 - ² The father and mother each inherit one-half of the estate.
 - ³ A predeceased parent is replaced by his or her issue in all degrees per stirpes.
 - ⁴ Where there are no issue on one side, the entire estate passes to the heirs on the other.

Art. 459

- III. Grandparental line
- ¹ Where the deceased is survived by neither issue nor heirs in the parental line, the estate passes to the line of the grandparents.
 - ² Where the grandparents of the paternal and maternal lines survive the deceased, they inherit in equal parts on both sides.
 - ³ A predeceased grandparent is replaced by his or her issue in all degrees per stirpes.
 - ⁴ 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.
 - ⁵ 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. 460⁴⁴⁶

- IV. Scope of succession rights
- The succession rights of relatives end with the line of the grandparents.

Art. 461⁴⁴⁷**Art. 462**⁴⁴⁸

- 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;

⁴⁴⁶ 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).

⁴⁴⁷ 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).

⁴⁴⁸ 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).

3. the entire estate, where no heirs exist in the parental line either.

Art. 463–464⁴⁴⁹

C... **Art. 465⁴⁵⁰**

Art. 466⁴⁵¹

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. 468⁴⁵²

B. Contract of
succession

¹ Any person who is capable of judgement and has reached the age of 18 may conclude a contract of succession as a testator.

² 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

¹ Dispositions made in error or under the influence of malicious deception, threats or coercion are void.

² 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.

⁴⁴⁹ 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).

⁴⁵⁰ 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.

⁴⁵¹ 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).

⁴⁵² 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).

³ 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.

Section Two: Testamentary Freedom

Art. 470

A. Disposable part
I. Scope of testamentary powers

¹ 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.⁴⁵³

² A person who is not survived by any such heirs may dispose of his or her entire property by testamentary disposition.

Art. 471⁴⁵⁴

II. Statutory entitlement

The statutory entitlement is:

1. for any issue, three-quarters of their statutory succession rights;
2. for each parent, one-half;
- 3.⁴⁵⁵ for the surviving spouse or registered partner, one-half.

Art. 472⁴⁵⁶

III. ...

Art. 473

IV. Dispositions in favour of the spouse

¹ 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.⁴⁵⁷

² 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.⁴⁵⁸

⁴⁵³ 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).

⁴⁵⁴ 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).

⁴⁵⁵ 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).

⁴⁵⁶ Repealed by No I 2 of the FA of 5 Oct. 1984 (AS **1986** 122 153 Art. 1; BBl **1979** II 1191).

⁴⁵⁷ 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).

⁴⁵⁸ 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).

³ If the surviving spouse remarries, the usufruct ceases to apply to that part of the estate which, on succession, could not have been encumbered by a usufruct under the provisions ordinarily governing the statutory entitlements of the deceased's issue.⁴⁵⁹

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:

- 1.⁴⁶⁰ 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.

⁴⁵⁹ 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).

⁴⁶⁰ 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).

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.

³ The disinherited person's issue retain their statutory entitlements as if he or she had predeceased.

Art. 479

III. Burden of proof

¹ A disinheritance is valid only if the testator indicates the reason for the disinheritance in his or her testamentary disposition.

² 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.

³ 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

¹ 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.

² At the disinherited person's request, the disinheritance is void if, on commencement of the succession process, 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

¹ 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.

² Any property in respect of which no testamentary disposition has been made passes to the statutory heirs.

Art. 482

B. Burdens and conditions

¹ 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.

² Immoral or unlawful burdens or conditions render the disposition null and void.

³ Where they are merely onerous to third parties or meaningless, they are deemed not to exist.

⁴ 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.⁴⁶¹

Art. 483

C. Naming of heirs

¹ The testator may name one or more heirs to the entire estate or to a fraction thereof.

² 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

¹ The testator may bequeath a legacy to a beneficiary without naming that person as an heir.

² 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.

³ 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

¹ The object must be delivered to the beneficiary in the same condition that it was in at the commencement of the succession process, including damage and growth and with or without encumbrance.

² With regard to expenditure on and deterioration of the legacy since the commencement of the succession process, the obligor of the legacy has the same rights and duties as an agent without authority.

⁴⁶¹ 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).

Art. 486

III. Relationship
to the estate

¹ 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.

² If the obligors do not survive the testator, are unworthy to inherit or disclaim their inheritance, the legacies remain nonetheless effective.

³ 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. Remainder-
men
I. Designation of
a remainderman

¹ 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.

² No such obligation may be imposed on the remainderman.

³ The same provisions apply to legacies.

Art. 489

II. Time of
delivery

¹ Except where the disposition stipulates otherwise, the time of delivery is deemed to be the death of the provisional heir.

² 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.

³ 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

¹ In all cases in which remaindermen are designated, the competent authority must order an inventory to be drawn up.

² 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.

³ 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

¹ A provisional heir acquires the inheritance in the same manner as any named heir.

² He or she becomes the owner of the inheritance with an obligation to deliver it.

Art. 492

2. Of the
remainderman

¹ The remainderman acquires the testator's bequest if he or she is alive at the stipulated delivery time.

² If he or she dies before then, the inheritance passes to the provisional heir unless the testator has ordered otherwise.

³ If the provisional heir dies before the testator or is unworthy of inheritance or disclaims the inheritance, it passes to the remainderman.

Art. 492^{a462}

V. Issue lacking
capacity of
judgement

¹ 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.

² The designation of the remainderman ceases to apply by law if the issue, contrary to expectation, becomes capable of judgement.

Art. 493

G. Foundations

¹ 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.

² 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

¹ 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.

² He or she is free to dispose of his or her property as he or she sees fit.

⁴⁶² 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).

³ 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

¹ The testator may conclude an inheritance renunciation contract with an heir with or without valuable consideration.

² The renouncing party is not deemed to be an heir on succession.

³ Unless the contract provides otherwise, the renunciation of an inheritance also applies to the issue of the renouncing party.

Art. 496

2. Void renun-
ciation

¹ Where certain persons are named in the renunciation contract as heirs in lieu of the renouncing party, the renunciation is void if such persons fail to acquire the inheritance for whatever reason.

² 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 commencement of the succession process 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
1. 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

¹ 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.

² The deed must be signed by the testator.

³ The official must date and sign the deed.

Art. 501

c. Role of the witnesses

¹ 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.

² 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.

³ 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

¹ 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.

² 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

¹ Persons who lack capacity to act, have been deprived of their civil rights due to a criminal conviction⁴⁶³ or are unable to read or write, lineal relatives⁴⁶⁴ 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.

² 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.

⁴⁶³ 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).

⁴⁶⁴ 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. 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.

Art. 505

3. Holographic will

¹ 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.⁴⁶⁵

² 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

¹ 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.

² 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.

³ 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

¹ 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.

² The two witnesses may instead have the will recorded by a judicial authority along with the same declaration.

³ 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.

⁴⁶⁵ 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. 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.

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 Obligations⁴⁶⁶ in the event of failure to perform such benefits or to furnish security for them.

Art. 515

2. Predeceased
heir

¹ Where the heir or legatee does not survive the testator, the contract becomes void.

² 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

¹ In the will, the testator may appoint one or more persons with capacity to act to execute the will.

² 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.

³ They are entitled to adequate recompense for their activities.

Art. 518

B. Function of
an executor

¹ Unless otherwise provided by the testator, the executors have the same rights and duties as an official estate administrator.

² 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.

³ 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 testamen-
tary capacity,
lack of free will,
unlawfulness or
immorality

¹ 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.

² 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 general⁴⁶⁷

¹ If the testamentary disposition is formally defective, it is declared invalid on being contested before a court.

² 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.

³ The right of action is governed by the same provisions as apply in the event of a lack of testamentary capacity.

Art. 520^{a468}

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. Prescription

¹ The right to bring an action of declaration of invalidity prescribes 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.

⁴⁶⁷ 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).

⁴⁶⁸ 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).

² In all cases, the right to bring an action on grounds of lack of testamentary capacity, immorality or unlawfulness against a beneficiary acting in bad faith does not prescribe until 30 years have elapsed.

³ Invalidity may be invoked as a defence at any time.

Art. 522

B. Action in abatement
1. Requirements
1. In general

¹ 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.

² 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

¹ 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.

² 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

¹ 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.

² 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

¹ 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.

² 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. 531⁴⁶⁹

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

¹ 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.

² If the declaration of the invalidity of a later disposition revives an earlier one, the prescriptive periods begin on the date on which invalidity was declared.

³ 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

¹ 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.

² 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.

³ 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.

⁴⁶⁹ 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. Reimburse-
ment

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 the Succession Process****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
commences⁴⁷⁰

¹ The succession process commences in respect of the entire estate at the deceased's last domicile.

² ...⁴⁷¹

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

⁴⁷⁰ 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).

⁴⁷¹ 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

¹ 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.

² Unworthiness to inherit does not apply if the person now deceased has forgiven the person concerned.

Art. 541

b. Effect on issue

¹ Unworthiness to inherit applies only to the person concerned.

² 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

¹ In order to inherit, an heir must be alive and capable of inheriting at the time of succession.

² 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

¹ A legatee surviving the testator and capable of inheriting acquires a claim to the legacy.

² 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.
- ^{1bis} If it is required to protect the child's interests, the child protection authority shall establish a deputyship.⁴⁷²
- ² If the child is stillborn, it is disregarded for inheritance purposes.⁴⁷³

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.

⁴⁷² 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).

⁴⁷³ 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

¹ 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.

² 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.

³ 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

¹ 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.

² 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*

¹ 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*.

² 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.

³ 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

¹ The competent authority must of its own accord take all measures necessary to ensure proper succession.⁴⁷⁴

² 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.

³ ...⁴⁷⁵

Art. 552

B. Sealing the estate

The order to seal the estate is given whenever provided for by cantonal law.

Art. 553

C. Inventory

¹ 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.⁴⁷⁶

² 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.

³ Cantonal legislation may require that an inventory be drawn up in other cases.

Art. 554

D. Estate administrators
I. In general

¹ Estate administrators are appointed:

1. where such an appointment is in the best interests of an heir who is permanently absent and without representation;

⁴⁷⁴ 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).

⁴⁷⁵ 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).

⁴⁷⁶ 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).

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.

² Where the deceased had named an executor, administration of the estate is entrusted to him or her.

³ Where the deceased was subject to a deputyship that covers asset management, the deputy is responsible for administering the estate unless other instructions apply.⁴⁷⁷

Art. 555

II. In the case of unknown heirs

¹ 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.

² 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

¹ If the deceased left a will, this must be submitted to the authority without delay even if it appears to be invalid.

² 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.

³ 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

¹ The testator's will must be opened and read out by the competent authority within one month of its submission.

² All heirs known to the authority are summoned to attend the reading.

³ If the testator left more than one will, all are to be submitted to the authority and opened and read out by it.

⁴⁷⁷ 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

¹ At the estate's expense, all interested parties receive a copy of the provisions of the will as relate to them.

² Legatees of unknown whereabouts are informed by appropriate public notice.

Art. 559

IV. Release of
the estate

¹ 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.

² 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

¹ On the death of the deceased, the estate in its entirety vests by operation of law in the heirs.

² 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.

³ Vesting in the named heirs takes effect retroactively from the date on which the succession process commenced and the statutory heirs must relinquish the estate to them according to the rules governing possession.

Art. 561⁴⁷⁸

II. ...

Art. 562

III. Legatees
1. Vesting

¹ 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.

⁴⁷⁸ 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).

² 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.

³ 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

¹ 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.

² 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

¹ The claims of the testator's creditors precede those of legatees.

² 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

¹ 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.

² 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 1. Declaration 1. Right to renounce

¹ The legal and named heirs are entitled to disclaim the inheritance passing to them.

² 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

¹ The time limit for a disclaimer is three months.

² 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

¹ If an heir dies before disclaiming or accepting an inheritance, the right to disclaim passes to his or her heirs.

² 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.

³ 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

¹ An heir must declare his or her disclaimer orally or in writing to the competent authority.

² It must be unconditional and without reservation.

³ The authority keeps an official record of disclaimers.

Art. 571

II. Forfeiture of right to disclaim

¹ 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.

² 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

¹ 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.

² 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

¹ Where the inheritance is disclaimed by all the nearest heirs, the estate is liquidated by the bankruptcy office.

1. In general

² 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

¹ When disclaiming the inheritance, the heirs may request that it be offered to their subsequent heirs before the estate is liquidated.

² 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

¹ 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.

² If their challenge is upheld, the inheritance is placed in official liquidation.

³ 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

¹ 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.

² The endowment of newly-weds according to local custom and the costs of raising and educating children are not affected by such liability.

³ Heirs acting in good faith are liable only to the extent they are still enriched.

Chapter Three: Public Inventory

Art. 580

A. Requirements

¹ Any heir entitled to disclaim his or her inheritance has the right to request a public inventory.

² The request must be made to the competent authority within one month in the same form as the disclaimer.

³ A request made by one heir is also valid for the others.

Art. 581

B. Procedure
I. Inventory

¹ 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.

² 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.

³ 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

¹ 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.

² Such notices must alert the creditors to the consequences of any failure to register.

³ 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*

¹ Claims and debts evident from the public registers or from the papers of the deceased are included *ex officio*.

² The debtors and creditors must be notified of any such inclusion.

Art. 584

IV. Result

¹ 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.

² 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

¹ While the inventory is being drawn up, only the necessary administrative actions may be taken.

² 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, prescription

¹ While the inventory is being drawn up, no action may be taken to enforce the debts of the deceased.

² ...⁴⁷⁹

³ Except in urgent matters, court proceedings may neither be commenced nor continued.

Art. 587

D. Effect
I. Time limit for declaration of intention

¹ Once the inventory is closed, all the heirs are requested to declare within one month their intentions with regard to acquiring the inheritance due to them.

⁴⁷⁹ Repealed by Annex No 3 of the FA of 15 June 2018 (Revision of the Law on Prescription), with effect from 1 Jan. 2020 (AS **2018** 5343; BBl **2014** 235).

² 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

¹ 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.

² 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

¹ 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.

² The acquisition of the inheritance with all attendant rights and obligations takes effect retroactively from the date on which the succession process commenced.

³ 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

¹ 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.

² 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.

³ 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

¹ Rather than disclaim the inheritance or accept it subject to public inventory, each heir is entitled to request official liquidation.

² However, such request may not be granted if at least one co-heir accepts the inheritance.

³ 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

¹ 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.

² Subject to the same conditions, legatees may request provisional measures by way of security.

Art. 595

B. Procedure
I. Administration

¹ The official liquidation is carried out by the competent authority or by one or more estate administrators acting at the authority's behest.

² It begins with the taking of an inventory and the attendant formal call to account.

³ 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

¹ 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.

² 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.

³ 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

¹ 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.

² ...⁴⁸⁰

Art. 599

B. Effect

¹ 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.

² The defendant cannot invoke adverse possession in respect of property belonging to the estate.

Art. 600

C. Prescription

¹ 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.

² The prescriptive period for the right to bring an action against a defendant acting in bad faith is always 30 years.

⁴⁸⁰ 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. 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

¹ 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.

² 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.

³ 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

¹ The heirs are jointly and severally liable for the debts of the deceased.

² 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.⁴⁸¹

Art. 604

B. Right to
division

¹ 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.

² 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.

³ Where one heir is insolvent, his or her co-heirs may apply for provisional measures to secure their own claims immediately upon succession.

⁴⁸¹ 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).

Art. 605

C. Deferral of division

¹ 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.

² 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.

Chapter Two: Method of Division**Art. 607**

A. In general

¹ Statutory heirs must divide the estate among themselves and with the named heirs according to the same principles.

² Except where provided otherwise, they are free to decide on the method of division.

³ 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

¹ The testator is entitled by means of testamentary disposition to give his or her heirs instructions concerning the division and the formation of portions.

² 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.

³ 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

¹ 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.

² 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

¹ Except where other provisions apply, all heirs have an equal right to the estate property.

² 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.

³ 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. 612a⁴⁸²

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.

⁴⁸² 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).

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.⁴⁸³

Art. 613

D. Special items
I. Items that
belong together,
family docu-
ments

¹ Items which by their nature belong together must not be separated if one of the heirs objects to such separation.

² Family documents and items of special sentimental value to the family must not be sold if any of the heirs objects.

³ 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. 613a⁴⁸⁴

I.bis 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.

⁴⁸³ Inserted 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).

⁴⁸⁴ 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).

Art. 616⁴⁸⁵**Art. 617**⁴⁸⁶

IV. Land
1. Method of
allocation
a. Imputed value

Land is charged to the heirs' portions at its market value as at the time of the division.

Art. 618

b. Valuation
procedure

¹ Where the heirs are unable to agree on the market value, it is estimated by an officially appointed expert.⁴⁸⁷

² ...⁴⁸⁸

Art. 619⁴⁸⁹

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 1991⁴⁹⁰ on Rural Land Rights.

Art. 620–625⁴⁹¹**Chapter Three: Hotchpot****Art. 626**

A. Hotchpot duty
of the heirs

¹ 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.

² 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.

⁴⁸⁵ 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).

⁴⁸⁶ 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).

⁴⁸⁷ 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).

⁴⁸⁸ 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).

⁴⁸⁹ 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).

⁴⁹⁰ SR **211.412.11**

⁴⁹¹ 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. 627

B. Hotchpot if heirs cease to be heirs

¹ 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.

² 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.

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.⁴⁹²

⁴⁹² 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).

Art. 632

E. Occasional
gifts

Customary occasional gifts are not subject to hotchpot.

Art. 633⁴⁹³**Chapter Four: Completion and Effect of Division****Art. 634**

A. Agreement
I. Contract of
division

¹ 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.

² In order to be valid, the contract of division must be done in writing.

Art. 635

II. Contracts
regarding shares
of the estate

¹ In order to be valid, contracts between heirs regarding assignment of shares of the estate must be done in writing.⁴⁹⁴

² 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 succe-
sion

¹ 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.

² Any performance rendered under such contracts may be reclaimed.

Art. 637

B. Liability
among co-heirs
I. Warranty

¹ On completion of the division, the co-heirs are mutually liable for the estate property as if they were purchasers and vendors.

² 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.

⁴⁹³ 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).

⁴⁹⁴ 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).

³ Claims under such warranty prescribe 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.

Art. 639

C. Liability
toward third
parties
I. Joint and
several liability

¹ 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.

² 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.

Art. 640

II. Recourse
against co-heirs

¹ 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.

² Recourse is taken first against the person who assumed such debt in the division.

³ 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

Art. 641

A. Nature of
ownership
I. In general⁴⁹⁵

¹ The owner of an object is free to dispose of it as he or she sees fit within the limits of the law.

² 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.

⁴⁹⁵ 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. 641a⁴⁹⁶

II. Animals

¹ Animals are not objects.

² Where no special provisions exist for animals, they are subject to the provisions governing objects.

Art. 642

B. Scope of ownership

I. Constituent parts

¹ The owner of an object also has ownership of all its constituent parts.

² 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.

Art. 643

II. Natural fruits

¹ The owner of an object also has ownership of its natural fruits.

² Natural fruits are the periodic produce and revenues customarily derived from an object used according to its purpose.

³ Prior to separation, the natural fruits are an integral part of the object.

Art. 644

III. Accessories

1. Definition

¹ Any disposition affecting an object also applies to its accessories, unless an exception is made.

² 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.

³ If an object is an accessory, it remains so regardless of temporary separation from the main object.

Art. 645

2. Exclusions

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.

⁴⁹⁶ 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).

Art. 646

C. Collective ownership
I. Co-ownership
1. Relationship among co-owners

¹ Co-ownership exists where several persons own a share in an object which is physically undivided.

² Unless otherwise stipulated, they are co-owners in equal measure.

³ 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.

Art. 647⁴⁹⁷

2. Use and administration rules

¹ 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.⁴⁹⁸

^{1bis} 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.⁴⁹⁹

² 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.

Art. 647a⁵⁰⁰

3. Ordinary administration

¹ 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.

² With the consent of the majority of the co-owners, the authority to carry out administration may be submitted to a different regime,

⁴⁹⁷ Amended by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

⁴⁹⁸ Amended by No I 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).

⁴⁹⁹ Inserted by No I 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).

⁵⁰⁰ Inserted by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

subject to the statutory provisions governing necessary and urgent measures.

Art. 647b⁵⁰¹

4. Major administrative acts

¹ 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 in land improvements and the appointment of an administrator whose authority extends beyond ordinary administrative acts.

² The provisions governing necessary construction work are reserved.

Art. 647c⁵⁰²

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. 647d⁵⁰³

b. Useful work

¹ 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.

² 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.

³ 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.

⁵⁰¹ Inserted by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993; BBl 1962 II 1461).

⁵⁰² Inserted by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993; BBl 1962 II 1461).

⁵⁰³ 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. 647^{e504}

c. Works to improve appearance or convenience

¹ 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.

² 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.

Art. 648⁵⁰⁵

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. 649⁵⁰⁶

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. 649a⁵⁰⁷

8. Binding nature of rules and noting in the land register⁵⁰⁸

The use and administration rules agreed by the co-owners, their administrative decisions and all relevant court judgments and orders are

⁵⁰⁴ Inserted by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993; BBl 1962 II 1461).

⁵⁰⁵ Amended by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993; BBl 1962 II 1461).

⁵⁰⁶ Amended by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993; BBl 1962 II 1461).

⁵⁰⁷ Inserted by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993; BBl 1962 II 1461).

⁵⁰⁸ 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).

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.⁵⁰⁹

Art. 649b⁵¹⁰

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 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.

² 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.

³ 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. 649c⁵¹¹

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. 650⁵¹²

10. Dissolution
a. Right to
request division

¹ 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.

⁵⁰⁹ 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).

⁵¹⁰ Inserted by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

⁵¹¹ Inserted by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

⁵¹² Amended by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

² 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.⁵¹³

³ Dissolution may not be requested at an inopportune time.

Art. 651

b. Form of partition

¹ 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.

² 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.

³ Physical division giving rise to unequal shares may entail monetary payments to balance out the shares.

Art. 651a⁵¹⁴

c. Animals kept as pets

¹ 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.

² 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.

³ 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

¹ The rights and obligations of the joint owners are determined by the rules governing their legal or contractual community.

⁵¹³ 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).

⁵¹⁴ 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).

² 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.

³ 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

¹ Dissolution occurs when the object is alienated or the community is terminated.

² Unless otherwise provided, division of the object is effected according to the provisions governing co-ownership.

Art. 654a⁵¹⁵

III. Joint ownership of agricultural enterprises and land

The dissolution of joint ownership of agricultural enterprises and agricultural land is governed by the Federal Act of 4 October 1991⁵¹⁶ on Rural Land Rights.

Title Nineteen: Land Ownership

Chapter One: Object, Acquisition and Loss of Land Ownership

Art. 655⁵¹⁷

A. Subject matter

I. Immovable property⁵¹⁸

¹ The object of land ownership is all immovable property.

² 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.

³ 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

⁵¹⁵ 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).

⁵¹⁶ SR **211.412.11**

⁵¹⁷ Amended by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

⁵¹⁸ 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).

2. is established for at least 30 years or for an unlimited period.⁵¹⁹

Art. 655a⁵²⁰

II. Dependent property

¹ 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 main parcel and may not be alienated, pledged or encumbered separately.

² 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

¹ The acquisition of land ownership must be recorded in the land register.

² 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

¹ In order to be binding, a contract to transfer land ownership must be executed as a public deed.

² Testamentary disposition and marital contracts require the forms prescribed by the law of succession and marital property law.

Art. 658

2. Appropriation

¹ Immovable property recorded in the land register may be appropriated only if the register establishes that it has no owner.

² Appropriation of land not recorded in the land register is subject to the provisions governing ownerless objects.

⁵¹⁹ 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).

⁵²⁰ 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. 659

3. Formation of
new land

¹ 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.

² The cantons are free to allocate such land to owners of adjoining land.

³ 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 general⁵²¹

¹ Ground displacement from one parcel of land to another does not alter the boundaries of the parcels.

² 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. 660a⁵²²

b. Constant
ground dis-
placement

¹ 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.

² When designating such areas, due consideration shall be given to the characteristics of the land in question.

³ 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. 660b⁵²³

c. Redrawing of
boundaries

¹ If a land boundary is rendered impractical by ground displacement, any affected landowner may request that it be redrawn.

² Any loss or gain in value shall be balanced out.

⁵²¹ 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).

⁵²² 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).

⁵²³ 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. 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

¹ 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.

² 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.

³ 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 prescription of debt claims.

Art. 664

6. Ownerless and public objects

¹ Ownerless and public objects are subject to the sovereignty of the canton on whose territory they are situated.

² 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.

³ 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

¹ 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.

² 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.

³ 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.⁵²⁴

Art. 666

C. Loss

¹ Land ownership is extinguished on deletion of the land register entry and on complete loss of the immovable property.

² In the case of compulsory purchase, the time at which the loss occurs is determined according to federal and cantonal compulsory purchase law.

Art. 666a⁵²⁵

D. Judicial measures

I. Where the owner cannot be found

¹ 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.

² 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.

³ 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.

⁴ The ordering of measures does not interrupt the period required to obtain extraordinary adverse possession.

Art. 666b⁵²⁶

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.

⁵²⁴ 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).

⁵²⁵ 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).

⁵²⁶ 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).

Chapter Two: Substance and Limitation of Land Ownership

Art. 667

A. Substance I. Scope

¹ 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.

² Within the limits prescribed by law, it includes all buildings and plants as well as springs.

Art. 668

II. Boundaries 1. Type of boundary

¹ Land boundaries are established by the land register plans and by boundary markings on the land itself.

² In the event of discrepancy between the existing land register plans and the boundary markings, the land register plans are presumed correct.

³ The foregoing presumption does not apply to areas designated by the canton as being in permanent danger of ground displacement.⁵²⁷

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

¹ 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.

² 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.

⁵²⁷ 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).

³ 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
- ¹ Where the materials are not removed from the land, the landowner must provide appropriate compensation for the cost of the materials.
- ² Where the landowner on whose land the building work was carried out acted in bad faith, the court may award full damages.
- ³ 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
- ¹ 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.
- ² The right to encroach on neighbouring land may be recorded as an easement in the land register.
- ³ 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
- ¹ 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.
- ² The creation of rights to buildings in respect of individual storeys of a building is not permitted.

Art. 676

4. Pipes, cables,
conduits

¹ 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.⁵²⁸

² 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, cables and conduits belonging to another person is established by way of easement.

³ 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.⁵²⁹

Art. 677

5. Movable
structures

¹ 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.

² Their existence is not recorded in the land register.

Art. 678

IV. Plants grown
on the parcel of
land

¹ 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.

² 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.⁵³⁰

³ 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.⁵³¹

⁵²⁸ 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).

⁵²⁹ 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).

⁵³⁰ Amended by No I of the FA of 20 June 2003, in force since 1 Jan. 2004 (AS **2003** 4121; BBI **2002** 4721).

⁵³¹ Inserted by No I of the FA of 20 June 2003, in force since 1 Jan. 2004 (AS **2003** 4121; BBI **2002** 4721).

Art. 679

V. Landowner's liability
1. Acts in excess of ownership rights⁵³²

¹ 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.

² Where a building or installation deprives a neighbouring parcel of land of certain properties, the aforementioned rights apply only if the regulations that applied at the time the building or installation was constructed were not complied with.⁵³³

Art. 679a⁵³⁴

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 damage, the neighbour may only claim damages from the landowner.

Art. 680

B. Limitations
I. In general

¹ Statutory restrictions on ownership exist irrespective of whether they are recorded in the land register.

² Any lifting or modification thereof by agreement is invalid unless executed in the form of a public deed and recorded in the land register.

³ Public law restrictions on ownership may not be revoked or modified.

Art. 681⁵³⁵

II. Restrictions on alienation; statutory right of pre-emption
1. General principles

¹ 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.

² 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.

⁵³² 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).

⁵³³ 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).

⁵³⁴ 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).

⁵³⁵ 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).

³ Statutory rights of pre-emption may neither be inherited nor assigned. They take precedence over contractual rights of pre-emption.

Art. 681a⁵³⁶

2. Exercise

¹ Where a purchase agreement is concluded, the vendor must notify persons with a right of pre-emption of the terms thereof.

² 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.

³ During that time a person may exercise a right of pre-emption against any owner of the land.

Art. 681b⁵³⁷

3. Modification,
waiver

¹ 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.

² The beneficiary may waive his or her statutory right of pre-emption in writing once the event that triggers it has occurred.

Art. 682⁵³⁸

4. In respect of
co-ownership
and building
rights⁵³⁹

¹ 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.⁵⁴⁰

² 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

⁵³⁶ 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).

⁵³⁷ 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).

⁵³⁸ Amended by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

⁵³⁹ 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).

⁵⁴⁰ 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).

encumbers, providing the land is used in the exercise of his or her right.

3...⁵⁴¹

Art. 682^{a542}

5. Right of pre-emption of farms and farmland

Rights of pre-emption of agricultural enterprises and agricultural land are also governed by the Federal Act of 4 October 1991⁵⁴³ on Rural Land Rights.

Art. 683⁵⁴⁴

Art. 684

III. Law of neighbours
1. Excess detriment⁵⁴⁵

¹ 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.

² 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.⁵⁴⁶

Art. 685

2. Excavation and construction
a. Rule

¹ 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.

² Buildings which contravene the provisions of the law of neighbours are subject to the provisions governing encroaching buildings.

⁵⁴¹ 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).

⁵⁴² 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).

⁵⁴³ SR **211.412.11**

⁵⁴⁴ 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).

⁵⁴⁵ 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).

⁵⁴⁶ 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. 686

b. Cantonal regulations

¹ The cantons may set minimum separation distances to be observed in excavation and construction works.

² They have the right to issue further building regulations.

Art. 687

3. Plants
a. Rule

¹ 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.

² If a landowner tolerates branches overhanging cultivated or developed land, he or she is entitled to the fruit that grows on them.

³ 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

¹ 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.

² No person may alter the natural course of flow to his or her neighbour's damage.

³ 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

¹ 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.

² 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

¹ 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.⁵⁴⁷

² 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.

³ 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.⁵⁴⁸

Art. 692

b. Safeguarding
the interests of
the servient
landowner

¹ The servient owner is entitled to just and equitable consideration of his or her own interests.

² 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

¹ 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.

² The costs of such re-routing are normally borne by the owner of the dominant property.

³ 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

¹ 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

⁵⁴⁷ 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).

⁵⁴⁸ 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).

her neighbours to grant him or her the necessary right of way in exchange for full compensation.

² This right is in the first place exercised against the neighbour who, in the light of existing ownership and access circumstances, may most reasonably be expected to grant such right of way, and secondly in respect of the neighbour for whom it is least damaging.

³ 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

¹ Rights of way established directly by law exist without need for registration.

² However, if permanent they are noted in the land register.

Art. 697

8. Enclosure

¹ The costs of enclosing a parcel of land are borne by its owner, subject to the provisions governing co-ownership of boundary markers.

² 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

¹ 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.

² 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

¹ 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.

² 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

¹ 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.

² 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. 703⁵⁴⁹

2. Land improvements

¹ 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.

² The cantons regulate the procedure. In particular, they must issue detailed rules on consolidation of landholdings.

³ Cantonal legislation may further facilitate the realisation of such land improvements and may declare that the corresponding provisions also

⁵⁴⁹ 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).

apply to building land and to areas designated as being in permanent danger of ground displacement.⁵⁵⁰

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

⁵⁵⁰ 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).

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

¹ 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.

² When determining which water source is thus affected, the interests of the person required to supply the water are the primary consideration.

³ Where circumstances change, a modification of the arrangement in place may be requested.

Art. 711

VII. Duty to
cede
1. Water sources

¹ 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.

² 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:⁵⁵¹ Condominium**Art. 712a**

A. Definition
and object
I. Definition

¹ 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.

² 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.

³ 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

¹ 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.

² 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.

³ 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.

⁵⁵¹ 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

¹ 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.

² 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.

³ The objection is ineffective if made without good cause.⁵⁵²

Art. 712d

B. Creation and extinction
I. Deed of constitution

¹ Condominium is constituted by entry in the land register.

² 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.

³ 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.⁵⁵³

¹ 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.⁵⁵⁴

² 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

⁵⁵² 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).

⁵⁵³ 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).

⁵⁵⁴ 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.⁵⁵⁵

⁴ Condominium owners wishing to maintain the condominium may prevent such termination by buying out the others.⁵⁵⁶

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.

⁵⁵⁵ 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).

⁵⁵⁶ 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).

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.⁵⁵⁷

Art. 712h

II. Communal charges and costs
1. Definition and distribution

¹ 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.

² 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.

³ 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

¹ 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.

² 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.

³ 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.

⁵⁵⁷ 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. 712l

III. Community's capacity to act

¹ 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.

² The community of condominium owners may sue and collect debts in its own name and may be sued or subjected to debt enforcement proceedings.⁵⁵⁸

Art. 712m

D. Organisation
I. Assembly of condominium owners
1. Competence and legal status

¹ 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.

² 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

¹ The assembly of condominium owners is convened and chaired by the administrator, unless the assembly resolves otherwise.

² Minutes are taken of the assembly's resolutions and held in safe-keeping by the administrator or the chairman of the meeting.

⁵⁵⁸ 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. 712o

3. Voting rights ¹ 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.
- ² 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 ¹ 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.
- ² If the assembly is not quorate, a second meeting must be convened which may be held no earlier than ten days after the first.
- ³ 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 ¹ If the assembly of condominium owners fails to appoint an administrator, any condominium owner is entitled to request the court to appoint one.
- ² Other interested parties, such as the pledgee or insurer, have the same right to request court appointment of an administrator.

Art. 712r

2. Removal ¹ 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.
- ² 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.
- ³ A court-appointed administrator may not be removed prior to expiry of the period for which he or she was appointed.

3. Duties
a. Implementa-
tion of provi-
sions and
resolutions
concerning
administration
and use

Art. 712s

¹ 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.

² He or she divides the communal costs and charges among the condominium owners, makes out the relevant invoices, collects contributions, manages the available funds and applies them as required by law.

³ 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.

b. External
representation

Art. 712t

¹ 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.

² 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.

³ 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

¹ Transfer of chattel ownership requires the delivery of possession to the acquirer.

² 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 alien-

ate 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

¹ 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.

² Reservation of ownership is not permitted in livestock trading.

Art. 716

b. Transactions involving payment by instalments

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.

Art. 717

3. Acquisition without possession

¹ 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.

² The court shall rule on this at its discretion.

Art. 718

II. Appropriation
1. Ownerless chattels

Ownership of an ownerless chattel is acquired by the act of taking it into possession with the intention of becoming its owner.

Art. 719

2. Escaped animals

¹ 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.

² Domesticated animals become ownerless once they regress to a feral state and no longer return to their masters.

³ Swarms of bees do not become ownerless by virtue of straying onto land belonging to others.

Art. 720

III. Found
property
1. Reporting,
tracing
a. In general⁵⁵⁹

¹ 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.

² He or she has a duty to report the find to the police if the value of the object clearly exceeds ten francs.

³ 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.

Art. 720a⁵⁶⁰

b. Animals

¹ 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.

² The cantons designate the authority to which such finds must be reported.

Art. 721

2. Safekeeping
and auction

¹ A find must be held in appropriate safekeeping.

² 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.

³ The proceeds of sale at auction replace the object.

Art. 722

3. Acquisition of
ownership,
return

¹ 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.

^{1bis} In the case of animals kept as pets rather than for investment or commercial purposes, the period is two months.⁵⁶¹

⁵⁵⁹ 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).

⁵⁶⁰ 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.

⁵⁶¹ 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).

¹ter 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.⁵⁶²

² If the find is returned to its owner, the finder is entitled to compensation for all outlays and to a suitable finder's reward.

³ 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 ¹ 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.

² Subject to the provisions governing objects of scientific value, treasure trove belongs to the owner of the land or chattel where it was found.

³ 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 ¹ Ownerless natural specimens and antiquities of scientific value are the property of the canton on whose territory they are found.⁵⁶³

¹bis 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 prescriptive period on the canton's right to recover them.⁵⁶⁴

² 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.

³ 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.

⁵⁶² 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).

⁵⁶³ 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).

⁵⁶⁴ 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. 725

IV. Driftage

¹ 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.

² 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

¹ 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.

² 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.

³ Claims for damages and unjust enrichment are reserved.

Art. 727

VI. Joining and mixing chattels

¹ 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.

² 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.

³ Claims for damages and unjust enrichment are reserved.

Art. 728

VII. Adverse possession

¹ If a person has possessed a chattel belonging to another person uninterruptedly 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.

^{1bis} In the case of animals kept as pets rather than for investment or commercial purposes, the period is two months.⁵⁶⁵

^{1ter} Subject to exceptions prescribed by law, the time limit for adverse possession in the case of objects of cultural heritage within the mean-

⁵⁶⁵ 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).

ing of Art. 2 para. 1 of the Cultural Property Transfer Act of 20 June 2003⁵⁶⁶ is 30 years.⁵⁶⁷

² 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.

³ The computation, interruption and suspension of adverse possession time limits are governed *mutatis mutandis* by the provisions on the prescription 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.

Division Two: Limited Rights in rem

Title Twenty-One: Easements and Real Burdens

Chapter One: Easements

Art. 730

A. Object

¹ 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.

² 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.⁵⁶⁸

Art. 731

B. Creation and extinction

I. Creation

1. Registration

¹ An easement is created by entry in the land register.

² The provisions governing land ownership apply to the acquisition or registration of an easement, except where otherwise provided.

³ Adverse possession of an easement is possible only in respect of parcels of land which may be possessed adversely.

⁵⁶⁶ SR 444.1

⁵⁶⁷ 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).

⁵⁶⁸ 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. 732⁵⁶⁹

2. Legal transaction

¹ The legal transaction creating an easement is only valid if done as a public deed.

² 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.

Art. 734II. 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

¹ If the beneficiary of an easement becomes the servient owner, he or she may have the easement deleted from the land register.

² If it is not deleted, the easement remains in place as a right in rem.

Art. 736

3. By court order

¹ If an easement is of no value to the dominant property, the servient owner may request its deletion.

² 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. 737C. Nature
I. Scope
1. In general

¹ The beneficiary is entitled to take all measures necessary to preserve and exercise the easement.

² However, he or she is obliged to exercise his or her rights as benignly as possible.

³ The servient owner must not do anything to obstruct the exercise of the easement or render it more difficult.

⁵⁶⁹ 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. 738

2. As defined by
land register
entry

¹ The land register entry for an easement defines the scope of the easement, provided it clearly indicates the attendant rights and duties.

² 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. 740a⁵⁷⁰

5. In the case of
two or more
beneficiaries

¹ 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.

² 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

¹ The beneficiary is responsible for maintaining any fixtures required for the exercise of an easement.

² 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.⁵⁷¹

⁵⁷⁰ 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).

⁵⁷¹ 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. 742

III. Relocation of
the encum-
brance⁵⁷²

¹ 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.

² He or she is entitled to do so even if the easement is recorded in the land register as being in a specific location.

³ ...⁵⁷³

Art. 743⁵⁷⁴

IV. Partition of a
property

¹ If the dominant property is partitioned, the easement normally continues to exist in favour of each part of the dominant property.

² 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.

³ The revision procedure is governed by the regulations on the deletion and amendment of land register entries.

Art. 744⁵⁷⁵**Chapter Two: Usufruct and other Personal Servitudes****Art. 745**

A. Usufruct
I. Object

¹ A usufruct may be held over chattels, immovable property, rights or assets.

² Unless otherwise provided, it confers complete enjoyment of the object on the usufructuary.

³ A usufruct of immovable property may be limited to a specific part thereof.⁵⁷⁶

⁵⁷² 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).

⁵⁷³ 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).

⁵⁷⁴ 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).

⁵⁷⁵ 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).

⁵⁷⁶ Inserted by No I of the FA of 20 June 2003, in force since 1 Jan. 2004 (AS **2003** 4121; BBl **2002** 4721).

Art. 746II. Establishment
1. In general

¹ 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.

² 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. 747⁵⁷⁷

2. ...

Art. 748III. Extinction
1. Grounds

¹ 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.

² 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.

³ A statutory usufruct ends on cessation of its cause.

Art. 749

2. Duration

¹ Usufruct ceases with the death of the usufructuary and in the case of legal entities on their dissolution.

² In the case of legal entities, however, it may not last more than 100 years.

Art. 7503. Replacement
on extinction of
usufruct

¹ The owner of the object of a usufruct is not obliged to replace or restore the object if it has been destroyed.

² If it is replaced or restored the usufruct is restored with it.

³ 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. 7514. Return
a. Duty

When the usufruct ends, the person in possession of the object must return it to the owner.

⁵⁷⁷ Repealed by No I 2 of the FA of 5 Oct. 1984, with effect from 1 Jan. 1988 (AS 1986 I 22 153 Art. 1; BBl 1979 II 1191).

Art. 752

b. Liability

¹ 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.

² He or she must replace any items which have been used up if such consumption is not intrinsic to the use of the object.

³ He or she is not obliged to compensate for any depreciation caused by the proper use of the object.

Art. 753

c. Costs

¹ 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.

² 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. Prescription 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 prescribe one year after the return of the object.

Art. 755IV. Scope
1. Rights of the usufructuary
a. In general

¹ The usufructuary has the rights of possession, use and enjoyment of the object.

² He or she is responsible for looking after it.

³ In the exercise of these rights, he or she must exercise reasonable care.

Art. 756

b. Natural fruits

¹ Natural fruits belong to the usufructuary if they have ripened during the period of the usufruct.

² 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.

³ 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

¹ Unless it is a strictly personal right, the exercise of the usufruct may be assigned to another person.

² 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

¹ The owner is entitled to request security from the usufructuary providing he or she may show that his or her rights are jeopardised.

² 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.

³ 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

¹ A person who has transferred an object as a gift while reserving a personal right of usufruct may not be required to provide security.

² 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

¹ 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.

² 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.

³ 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 administra-
tion

¹ 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.

² If the taxes and duties are payable by the owner, the usufructuary must compensate him or her to the same extent.

³ 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

¹ 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.

² 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

¹ 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.

² To the extent that fruits are collected beyond such limits they belong to the owner.

Art. 769

b. Use

¹ The usufructuary must not change the intended use of the immovable property in a manner that is significantly detrimental to the owner.

² He or she must neither transform nor substantially modify the object.

³ 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

¹ The usufructuary of woodland is entitled to farm it within the limits of a reasonable business plan.

² Both owner and usufructuary may require compliance with a plan which takes due account of their rights.

³ 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

¹ 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.

² 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.

³ 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

¹ A usufruct of debts entitles the usufructuary to retain the realised revenue.

² 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.

³ 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

¹ 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.

² The benefit received, such as the repayment of the principal, if under the usufruct.

³ Both creditor and usufructuary are entitled to a secure, interest-bearing reinvestment of the principal.

Art. 775

c. Right to
assignment

¹ 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.

² 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.

³ 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

¹ The right of residence is the right to live in all or part of a building.

² It is neither transferable nor heritable.

³ It is subject to the provisions governing usufruct unless the law provides otherwise.

Art. 777

II. Rights of the
usufructuary

¹ The scope of the right of residence is generally tailored to the personal requirements of the usufructuary.

² 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.

³ 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

¹ If the right of residence is exclusive, the usufructuary bears the costs of ordinary maintenance.

² 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 register⁵⁷⁸

¹ 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.

² Unless otherwise agreed, this right is transferable and heritable.

³ 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. 779a⁵⁷⁹

II. Legal transaction

¹ The legal transaction creating a building right is only valid if done as a public deed.

² 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. 779b⁵⁸⁰

III. Nature, scope and noting⁵⁸¹

¹ 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

⁵⁷⁸ Amended by No I of the FA of 19 March 1965, in force since 1 July 1965 (AS **1965** 445; BBl **1963** I 969).

⁵⁷⁹ Inserted by No I of the FA of 19 March 1965 (AS **1965** 445; BBl **1963** I 969). Amended by No I 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).

⁵⁸⁰ Inserted by No I of the FA of 19 March 1965, in force since 1 July 1965 (AS **1965** 445; BBl **1963** I 969).

⁵⁸¹ Amended by No I 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).

of the building right, are binding on every new owner of the right and the servient property.

² Additional contractual provisions may be noted in the land register, if the parties so agree.⁵⁸²

Art. 779c⁵⁸³

IV. Consequences 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.

Art. 779d⁵⁸⁴

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. 779e⁵⁸⁵

Art. 779f⁵⁸⁶

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.

- ⁵⁸² 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).
- ⁵⁸³ Inserted by No I of the FA of 19 March 1965, in force since 1 July 1965 (AS **1965** 445; BBl **1963** I 969).
- ⁵⁸⁴ Inserted by No I of the FA of 19 March 1965, in force since 1 July 1965 (AS **1965** 445; BBl **1963** I 969).
- ⁵⁸⁵ 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).
- ⁵⁸⁶ 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. 779g⁵⁸⁷

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.

Art. 779h⁵⁸⁸

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. 779i⁵⁸⁹

VI. Liability for remuneration for the right

1. Right to establish a lien

¹ Provided the building right is recorded in the land register, the landowner is entitled to established a lien thereon against each current holder as security for up to three annual payments.

² 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. 779k⁵⁹⁰

2. Registration

¹ The lien may be recorded at any time during the existence of the building right and is exempt from deletion in compulsory sale proceedings.

² The provisions governing recording of a building contractor's lien apply *mutatis mutandis*.

Art. 779l⁵⁹¹

VII. Maximum duration

¹ A building right may be established as a distinct right for a maximum of 100 years.

⁵⁸⁷ Inserted by No I of the FA of 19 March 1965, in force since 1 July 1965 (AS 1965 445; BBl 1963 I 969).

⁵⁸⁸ Inserted by No I of the FA of 19 March 1965, in force since 1 July 1965 (AS 1965 445; BBl 1963 I 969).

⁵⁸⁹ Inserted by section I of the FA of 19 March 1965, in force since 1 July 1965 (AS 1965 445; BBl 1963 I 969).

⁵⁹⁰ Inserted by section I of the FA of 19 March 1965, in force since 1 July 1965 (AS 1965 445; BBl 1963 I 969).

⁵⁹¹ Inserted by section I of the FA of 19 March 1965, in force since 1 July 1965 (AS 1965 445; BBl 1963 I 969).

² 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

¹ 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.

² Unless otherwise agreed, the right is transferable and heritable.

³ If the right of access to water is distinct and permanent, it may be recorded in the land register as immovable property.

Art. 781

E. Other servitudes

¹ 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.

² Unless otherwise agreed, such servitudes are non-transferable and their nature and scope is based on the beneficiaries' normal needs.

³ In other respects they are subject to the provisions governing easements.

Art. 781a⁵⁹²

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

¹ 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.

² The current owner of another property may be designated as the beneficiary.

³ 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

⁵⁹² 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).

the nature of the servient property or the economic needs of the benefited property.⁵⁹³

Art. 783

B. Establishment and extinction

I. Establishment
1. Registration and form of acquisition

¹ A real burden is established by recording in the land register.

² 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.

³ The provisions governing land ownership apply to the acquisition or registration of real burdens, unless otherwise provided.

Art. 784⁵⁹⁴

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. 785⁵⁹⁵

Art. 786

II. Extinction
1. In general

¹ A real burden is extinguished on deletion of the entry or on the complete loss of the servient property.

² 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

¹ The creditor may request redemption of the real burden by agreement and also.⁵⁹⁶

⁵⁹³ 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).

⁵⁹⁴ 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).

⁵⁹⁵ 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).

⁵⁹⁶ 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).

- 1.⁵⁹⁷ 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.

² 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.⁵⁹⁸

Art. 788

- b. By the debtor
- 1 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.
 - ² 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.
 - ³ 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
- 1 A real burden is not subject to prescription.
 - ² 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
- 1 The real burden creditor has no personal claim against the debtor, but only the right to satisfaction from the servient property.

⁵⁹⁷ 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).

⁵⁹⁸ 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).

² However, three years after it if due, each individual obligation becomes a personal obligation for which the property is no longer liable.

Art. 792

II. Debt liability ¹ If the land changes ownership, the new owner automatically becomes the obligor under the real burden.

² 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.⁵⁹⁹

Title Twenty-Two: Mortgages

Chapter One: General Provisions

Art. 793

A. Requirements ¹ A mortgage may be created on immovable property in the form of a mortgage contract or a mortgage certificate.⁶⁰⁰

I. Types

² No other types of mortgage are permitted.

Art. 794

II. Form of the debt ¹ Whenever a mortgage is created, a specific amount denominated in Swiss currency must be indicated as the debt.

1. Amount

² 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 ¹ The interest payable may be set at any level at the parties' discretion within the legal limits imposed to prevent abusive interest rates.

² Cantonal law may provide for a maximum permissible interest rate for debts secured by mortgages.

⁵⁹⁹ 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).

⁶⁰⁰ 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. 796

III. Immovable property

1. Property subject to a charge

¹ A mortgage may be created only on immovable property recorded in the land register.

² 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

¹ Where a mortgage is created, the immovable property that it encumbers must be clearly specified.

² 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.

Art. 798

b. In the case of more than one property

¹ 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.

² 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.

³ Unless otherwise agreed, the total amount secured by the mortgage is divided in proportion to the values of the properties.

Art. 798^{a601}

3. Agricultural properties

The Federal Act of 4 October 1991⁶⁰² on Rural Land Rights applies to the establishment of mortgages over agricultural properties.

Art. 799

B. Creation and extinction

I. Creation

1. Registration

¹ Subject to exceptions provided by law, a mortgage is created by its recording in the land register.

² A legal transaction creating a mortgage is valid only if done as a public deed.⁶⁰³

⁶⁰¹ 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).

⁶⁰² SR **211.412.11**

⁶⁰³ 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. 800

2. In the case of joint ownership

¹ In the case of joint ownership of a property, each joint owner may create a mortgage over his or her share.

² 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

¹ A mortgage is extinguished on deletion of the entry or the complete loss of the property.

² Extinction as a result of compulsory purchase is governed by federal and cantonal compulsory purchase law.

Art. 802

III. Charges on consolidated land
1. Transfer of liens

¹ 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.

² 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.

Art. 803

2. Redemption by the debtor

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.

Art. 804

3. Monetary compensation

¹ 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.

² 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.

Art. 805

C. Effect
1. Extent of security

¹ A mortgage right encumbers the entire property including all its constituent parts and accessories.

² If accessories, such as machines or hotel furnishings, are expressly listed in the mortgage agreement and noted as such in the land regis-

ter, they are treated accordingly unless it is shown that the law precludes their qualification as accessories.

³ Rights of third parties to the accessories are reserved.

Art. 806

II. Rent

¹ 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.

² Tenants and lessees are bound by the mortgage only once they have been informed of the enforcement proceedings or the bankruptcy has been published.

³ Transactions by the property owner involving claims for unmatured rent and any actions of dstraint 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

1. In the event of a reduction in value

a. Court order and action by the creditor

¹ If the owner reduces the value of the mortgaged property, the creditor may request that the court prohibit any further detrimental action.

² 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.

³ 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.⁶⁰⁴

⁴ 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.⁶⁰⁵

⁶⁰⁴ 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).

⁶⁰⁵ 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. 809

b. Security,
restoration,
redemption

¹ 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.

² He or she may also demand security in the case of imminent depreciation.

³ 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.

Art. 810

2. Depreciation
without owner's
fault

¹ 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 damage.

² 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.⁶⁰⁶

³ 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.⁶⁰⁷

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

¹ Any waiver by the owner of right to create further charges over the servient property is non-binding.

² 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

⁶⁰⁶ 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).

⁶⁰⁷ 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).

encumbrances, which will be deleted if, in the event of enforcement proceedings, their existence is prejudicial to the mortgage creditor.

³ 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.

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 ¹ A mortgage right secures the creditor:

1. for the principal;
2. for the costs of debt enforcement and default interest;
- 3.⁶⁰⁸ 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.

² The interest rate originally agreed must not exceed five per cent to the detriment of subordinate mortgage creditors.

Art. 819⁶⁰⁹

4. Security for maintenance costs ¹ 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.

² 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 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.

1. Precedence

² 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.

⁶⁰⁸ 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).

⁶⁰⁹ 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. 821

2. Extinction of
debt and lien

¹ If a land improvement is made without state subsidy, the debt in relation to the lien must be repaid in annual payments of at least five per cent of the registered amount of the lien.

² 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

¹ A payment under insurance policy may be made to the owner of the insured property only with the consent of all the charge creditors.

² However, it may be made to the owner for the purposes of restoring the property subject to the charge provided adequate security is furnished.

³ In other respects, the cantonal provisions governing fire insurance are reserved.

Art. 823⁶¹⁰

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

¹ A mortgage contract may secure any kind of debt, be it current, future or contingent.

² The mortgaged property need not be owned by the debtor.

Art. 825

B. Establishment
and extinction
I. Establishment

¹ 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.

² 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.

⁶¹⁰ 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).

³ In lieu of such evidence, a certificate of registration may be appended to the mortgage contract deed.

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

¹ 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.

² If he or she satisfies the creditor, the claim passes to him or her.

Art. 828

3. Unilateral
redemption
a. Conditions
and procedure

¹ 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.

² He or she must give the creditors six months' notice in writing of his or her intention to redeem the mortgage.

³ The redemption amount is distributed among the creditors according to their rank.

Art. 829

b. Public auction

¹ 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.

² If a higher price than the one offered is obtained at auction, the mortgage is redeemed at that higher price.

³ 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. 836⁶¹¹

D. Statutory
mortgage right
I. Under cantonal
law

¹ 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.

² 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.

³ More restrictive regulations under cantonal law are reserved.

Art. 837⁶¹²

II. With entry
1. Cases in point

¹ 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.

² 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.

³ 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.

⁶¹¹ 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).

⁶¹² 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. 839⁶¹³

3. Tradesmen
and building
contractors

a. Registration

¹ 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.

² Application for such entry must be made within four months of completion of the work.

³ 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.

⁴ 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.

⁵ 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.

⁶ 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

¹ 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.

⁶¹³ 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).

² 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.

³ 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:⁶¹⁴ Mortgage Certificates

Art. 842

A. Mortgage certificate

I. Purpose; Relationship with the debt arising from the basic relationship

¹ A mortgage certificate gives rise to a personal debt secured by a mortgage.

² 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

³ 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

¹ The owner of a mortgaged property who is not also the debtor under the mortgage certificate is subject to the provisions governing mortgage contracts.

² 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.

⁶¹⁴ 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.

Art. 851

IX. Place of
payment

¹ The debtor must make all payments at the domicile of the creditor unless otherwise agreed.

² 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

Art. 852

X. Changes in
the legal
relationship

¹ 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.

² In the case of a mortgage certificate on paper, the land register shall note the amendment on the document of title.

³ 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.

Art. 853

XI. Discharge

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.

Art. 854

XII. Extinction
1. In the absence
of a creditor

¹ 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.

² The debtor also has the right to continue to use the mortgage certificate.

Art. 855

2. Deletion

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

¹ 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

² 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

¹ A register mortgage certificate is created when it is recorded in the land register.

I. Establishment

² It is recorded in the name of the creditor or of the landowner.

Art. 858

II. Transfer

¹ 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.

² 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

¹ 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.

² A distraint order is executed by recording the restriction on power of disposal in the land register.

³ The usufruct is created by its recording in the land register.

Art. 860

C. Mortgage
certificate on
paper

¹ 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

² The bearer or a specific person, in particular the landowner, may be named as the creditor under the paper mortgage certificate.

³ 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

¹ The mortgage certificate on paper is issued by the land register issued.

² 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.

³ 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

¹ 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.

² 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.

³ 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

¹ A claim arising from a mortgage certificate may not be alienated, pledged or otherwise asserted unless the claimant is in possession of the document.

² 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

¹ The assignment of a mortgage certificate debt requires the delivery of the document of title to the assignee.

² 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

¹ 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

² The cancellation is made in accordance with the provisions governing the cancellation of bearer securities but subject to a notice period of six months

³ 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. 876–883⁶¹⁵

Title Twenty-Three: Charges on Chattels

Chapter One: Pledges of Chattels and Special Liens

Art. 884

A. Pledges
I. Establishment
1. Possession by
pledgee

¹ Except where otherwise provided by law, chattels may be pledged only by the transfer of possession of the chattel to the pledgee.

² 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.

³ The general lien is not established as long as the pledger retains exclusive possession of the chattel.

⁶¹⁵ 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

¹ 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.

² The Federal Council regulates the keeping of the register.⁶¹⁶

³ The cantons may levy fees for entries in the register and the associated administration; they determine the register districts and the responsible officials.⁶¹⁷

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 pledger's consent.

Art. 888

II. Extinction
1. Loss of
possession

¹ The general lien is extinguished once the pledgee no longer possesses the pledged chattel and is unable to demand its return from third parties.

² The effects of the lien are suspended as long as the pledger has exclusive possession of the pledged chattel with the pledgee's consent.

Art. 889

2. Return

¹ 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.

² 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.

⁶¹⁶ 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).

⁶¹⁷ 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.

³ 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 ¹ No special lien may be asserted over chattels which by their nature are not realisable.

² 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 ¹ In the event of the debtor's insolvency, the creditor has a special lien even if his or her claim is not yet due.

² 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 ¹ 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.

² 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 ¹ Debts or other rights may be pledged provided they are assignable.

² 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 ¹ 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.

² The pledgee and the pledger may inform the debtor of the pledge.

³ 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.

³ The pledging of intermediated securities is governed exclusively by the Intermediated Securities Act of 3 October 2008^{618, 619}

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.

⁶¹⁸ SR 957.1

⁶¹⁹ 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 companies⁶²⁰

¹ Pledged shares are represented at general meetings of shareholders by the shareholder rather than the pledgee.

² Pledged capital contributions to a limited liability company are represented in the members' general meeting by the member rather than the pledgee.⁶²¹

Art. 906

III. Administration and payment

¹ 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.

² 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.

³ Where no such consent is forthcoming, he or she must deposit the amount due.

Chapter Three: Pawnbroking**Art. 907**

A. Pawnbrokers
I. Licensing

¹ Any person wishing to operate as a pawnbroker requires a licence from the cantonal government.

² Cantonal law may provide that such licences are granted only to cantonal or communal bodies and charitable organisations.

³ The cantons may levy fees from pawnbrokers.

Art. 908

II. Duration of licence

¹ A licence is granted to private pawnbrokers for a specific period only, but may be renewed.

² A licence may be revoked at any time if the pawnbroker fails to comply with the provisions applicable to his or her business.

⁶²⁰ 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).

⁶²¹ 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

¹ 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.

² The pawnbroker has no claim against the pledger.

Art. 911

2. Right to
surplus

¹ If the auction proceeds exceed the pawned amount, the pledger is entitled to the surplus.

² Several claims against the same pledger may be treated as a single claim for the purpose of calculating the surplus.

³ 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

¹ Provided it has not yet been sold, the pledger may redeem the pawned chattel against return of the receipt.

² 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.

³ 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

¹ On redemption the pawnbroker is entitled to charge interest for the full current month.

² 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

- ¹ Cantonal law may issue further regulations governing pawnbroking.
² ...⁶²²

Chapter Four: ...**Art. 916–918⁶²³**

Division Three: Possession and the Land Register
Title Twenty-Four: Possession

Art. 919

A. Definition
and types
I. Definition

- ¹ Effective control over a thing constitutes possession of it.
² In the case of easements and real burdens, effective exercise of the right constitutes possession.

Art. 920

II. Direct and
derivative
possession

- ¹ 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.
² 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

- ¹ Possession is transferred by the delivery of the object itself or of the means by which the recipient may gain effective control of it.
² Transfer is complete once the transferee is able to exercise effective control over the object with the consent of the prior possessor.

⁶²² 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).

⁶²³ 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

¹ 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.

² 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.

³ 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

¹ 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.

² 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

¹ A possessor has the right to use force in self-defence against any unlawful interference.

² 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.

³ In doing so, he or she must abstain from all force not justified by the circumstances.

Art. 927

2. Action for restitution

¹ 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.

² 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.

³ The claim is for restitution of the object plus damages.

Art. 928

3. Action for
trespass

¹ A possessor disturbed by trespass may bring an action against the trespasser even if the latter claims to be in the right.

² The claim is for cessation of trespass, prohibition of further trespass and damages.

Art. 929

4. Admissibility
and prescription

¹ An action for restitution or trespass is only admissible if the possessor sues for restitution of the object or for cessation of trespass immediately on becoming aware of the interference in his or her rights and the identity of the trespasser.

² 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

¹ The possessor of a chattel is presumed to be its owner.

² 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

¹ 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.

² 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

¹ 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.⁶²⁴

^{1bis} 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 2003⁶²⁵, 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.⁶²⁶

² 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.

³ 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

¹ A person who has not acquired a chattel in good faith may be required by the previous possessor to return it at any time.

² 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

¹ 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.

² However, a person who exercises effective control over the land may bring an action for wrongful dispossession or trespass.

⁶²⁴ 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).

⁶²⁵ SR **444.1**

⁶²⁶ 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).

Art. 938

III. Liability
 1. Possessor in
 good faith
 a. Use

¹ 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.

² He or she is not obliged to replace what has been lost or damaged.

Art. 939

b. Indemnity

¹ 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.

² 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.

³ Any fruits collected by a possessor are set off against his or her claim for indemnification.

Art. 940

2. Possession in
 bad faith

¹ 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.

² He or she may claim indemnification only of such expenditure as the rightful owner would also have had to incur.

³ 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.

Art. 941

IV. Adverse
 possession

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.

Title 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.⁶²⁷

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.⁶²⁸

Art. 943⁶²⁹

- 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 pre-requisites 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 ...⁶³⁰

⁶²⁷ Inserted by Annex 1 of the FA of 19 Dec. 2003 on Electronic Signatures, in force since 1 Jan. 2005 (AS **2004** 5085; BBl **2001** 5679).

⁶²⁸ Inserted by Annex 1 of the FA of 19 Dec. 2003 on Electronic Signatures, in force since 1 Jan. 2005 (AS **2004** 5085; BBl **2001** 5679).

⁶²⁹ Amended by No I of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS **1964** 993; BBl **1962** II 1461).

⁶³⁰ 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

¹ Each item of immovable property has its own folio and number in the main register.

² 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

¹ 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.

² 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

¹ Two or more parcels of land may be entered on one folio with the owner's consent, regardless of whether they are contiguous.

² The entries on such folio are valid for all the land in question with the exception of easements.

³ 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

¹ 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.

² Supporting documents are duly classified and archived.

³ 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 general⁶³¹

¹ The Federal Council prescribes the land register forms, issues the necessary regulations and regulates at its discretion the keeping of auxiliary registers.

² 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. 949a⁶³²

b. For electronic
registers

¹ A canton wishing to keep the land register electronically must obtain the approval of the Federal Department of Justice and Police.

² 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.

³ 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. 949b⁶³³

4a. ...

Art. 949c⁶³⁴

4b. ...

⁶³¹ 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).

⁶³² 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).

⁶³³ Not yet in force (AS **2018** 4017).

⁶³⁴ Not yet in force (AS **2018** 4017).

Art. 949⁶³⁵

4c. Commissioning private individuals to use the electronic version of the land register

¹ 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.

² The commissioned individuals are subject to the oversight of the cantons and of the Confederation.

Art. 950⁶³⁶

5. Official cadastral survey

¹ 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.

² The Geoinformation Act of 5 October 2007⁶³⁷ regulates the qualitative and technical requirements of the official cadastral survey.

Art. 951

II. Keeping the register

1. Districts

a. Allocation to districts

¹ For land register purposes the cantons are divided into districts.

² Immovable property is entered in the register for the district in which it is situated.

Art. 952

b. Land straddling more than one district

¹ 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.

² Entries which establish rights are to be made in the register of the district in which the largest part of the property is situated.

³ Entries in this land register will be notified by the registrar to the other land registries.

⁶³⁵ 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).

⁶³⁶ 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).

⁶³⁷ SR **510.62**

Art. 953

2. Land registries¹ 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.⁶³⁸

Art. 954

3. Fees¹ 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. Liability⁶³⁹¹ The cantons are liable for any damage 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. 956⁶⁴⁰

- IV. Administrative supervision¹ The management of the land registries is subject to the administrative supervision of the cantons.
- ² The Confederation exercises the supervisory control.

Art. 956a⁶⁴¹

- V. Legal protection¹ 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.

⁶³⁸ 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).

⁶³⁹ 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).

⁶⁴⁰ 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).

⁶⁴¹ 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).

² 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 if it has a right of appeal under cantonal law;
3. the federal supervisory authority.

³ No appeal may be brought against an entry, amendment or deletion of rights in rem or priority notices executed in the main register.

Art. 956⁶⁴²

2. Appeal proceedings

¹ The period within which an appeal to the cantonal appellate authorities must be filed amounts to 30 days.

² 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. 957⁶⁴³

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

¹ 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.

² By virtue of being entered under priority notice, they may be invoked against any rights subsequently acquired.

⁶⁴² 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).

⁶⁴³ 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

¹ 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;
- 2.⁶⁴⁴ a distraint order;
- 3.⁶⁴⁵ a case in which entry under priority notice is envisaged by law, such as a remainderman's expectancy.

² On entry under priority notice, the restrictions on powers of disposal become effective against all subsequently acquired rights.

Art. 961

c. Provisional
entries

¹ 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.

² 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.

³ 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.⁶⁴⁶

Art. 961a⁶⁴⁷

d. Entry of
subordinate
rights

A priority notice in the land register does not preclude the registration of a right with a subordinate rank.

⁶⁴⁴ 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).

⁶⁴⁵ 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).

⁶⁴⁶ 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).

⁶⁴⁷ 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. 962⁶⁴⁸

II. Noting
1. Restrictions
under public law

¹ 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.

² 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*.

³ 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. 962a⁶⁴⁹

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

¹ Entries in the land register are based on a written declaration by the owner of the immovable property to which the entry relates.

⁶⁴⁸ 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).

⁶⁴⁹ 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).

² 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.

³ 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 ¹ Amendment or deletion of an entry in the land register requires an declaration in writing by the person whose entitlement results from the entry.

² Such application may be made by signing the journal.

Art. 965

2. Authority
a. Valid proof of authority ¹ 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.

² 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.

³ The legal basis for the requested disposition is established by proof that the formal requirements have been observed.

Art. 966

b. Completion of application ¹ Where the documentation required for a disposition in the land register is not forthcoming, the application is rejected.

² 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 ¹ 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.

² Interested parties will be provided on request with an extract of the entry.

³ 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 ¹ 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.⁶⁵⁰

² The time limit for challenging such dispositions begins on receipt of such notification.

Art. 970⁶⁵¹

C. Public nature
of land register
I. Information
and right of
consultation

¹ Any person showing a legitimate interest is entitled to consult the land register or to be provided with an extract.

² 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.

³ 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.

⁴ An objection based on ignorance of a land register entry is inadmissible.

Art. 970a⁶⁵²

- II. Publication ¹ The cantons may provide that all acquisitions of immovable property be published.

⁶⁵⁰ 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).

⁶⁵¹ 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).

⁶⁵² 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.⁶⁵³

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.

⁶⁵³ 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. 974a⁶⁵⁴

E. Deletion and amendment of entries

I. Revision

1. On the division of property

¹ If a property is divided, the easements, priority notices and notes for each divided part must be revised.

² 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.

³ 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. 974b⁶⁵⁵

2. In the case of the consolidation of parcels of land

¹ 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.

² 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.

³ 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.

⁴ The provisions on revision on the division of property apply by analogy.

Art. 975

II. Unwarranted entries⁶⁵⁶

¹ 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.

² Rights in rem acquired in good faith by third parties relying on the entry and claims for damages are reserved.

⁶⁵⁴ 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).

⁶⁵⁵ 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).

⁶⁵⁶ 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. 976⁶⁵⁷

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. 976a⁶⁵⁸2. Other entries
a. In general

¹ 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.

² 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. 976b⁶⁵⁹

b. On objection

¹ If the beneficiary files an objection, the land registry shall reassess the request for deletion at the request of the encumbered person.

² 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. 976c⁶⁶⁰

3. Public revision procedure

¹ 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-

⁶⁵⁷ 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).

⁶⁵⁸ 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).

⁶⁵⁹ 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).

⁶⁶⁰ 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.

² This order must be noted in the corresponding land register folios.

³ 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. Corrections⁶⁶¹

¹ Unless the interested parties consent in writing, the land registrar may correct the register only in accordance with a court order.

² Instead of correcting an unwarranted entry, the registrar may delete it and make a new one.

³ 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 Provisions⁶⁶²

Chapter One: Application of Former and New Law⁶⁶³

Art. 1

A. General provisions
I. General rule of non-retroactive effect

¹ 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.

² 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.

³ However, circumstances occurring after the commencement hereof are subject to the new law, unless this Code provides otherwise.

⁶⁶¹ 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).

⁶⁶² Amended by No 14 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** 11).

⁶⁶³ 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. 6a⁶⁶⁴

IIa. Central civil
register database

¹ The Federal Council regulates the transition from the former procedure for keeping the civil register to the electronic civil register.

² The Confederation assumes the capital investment costs up to an amount of 5 million francs.

Art. 6b⁶⁶⁵

III. Legal entities
1. In general⁶⁶⁶

¹ 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.

² 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.

^{2bis} 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.⁶⁶⁷

³ 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. 6c⁶⁶⁸

2. Accounting
and auditors

The provisions of the Amendment of 16 December 2005⁶⁶⁹ relating to accounting and auditors apply from first financial year that begins on or after the commencement of this Code.

⁶⁶⁴ 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).

⁶⁶⁵ Originally Art. 6a. Previously Art. 7.

⁶⁶⁶ 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).

⁶⁶⁷ 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).

⁶⁶⁸ 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).

⁶⁶⁹ AS **2007** 4791; BBl **2002** 3148, **2004** 3969

Art. 6d⁶⁷⁰

IV. Protection of
the individual
against violence,
threats or
stalking

The new law applies to proceedings that are already pending when the amendment of 14 December 2018 comes into force.

Art. 7⁶⁷¹

C. Family law
I. Marriage

¹ The new law applies to marriage as soon as the Federal Act of 26 June 1998⁶⁷² has come into force.

² 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. 7a⁶⁷³

Ibis, Divorce
1. Principle

¹ Divorce proceedings are governed by the new law as soon as the Federal Act of 26 June 1998⁶⁷⁴ has come into force.

² 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.

³ 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. 7b⁶⁷⁵

2. Pending
divorce proceed-
ings

¹ The new law applies to divorce proceedings that are pending on the commencement of the Federal Act of 26 June 1998⁶⁷⁶ and which must be judged by a cantonal authority.

² 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

⁶⁷⁰ Inserted by No I 1 of the FA of 14 Dec. 2018 on Improving the Protection given to Victims of Violence, in force since 1 July 2020 (AS **2019** 2273; BBl **2017** 7307).

⁶⁷¹ Inserted by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** 11).

⁶⁷² AS **1999** 1118; BBl **1996** 11

⁶⁷³ Inserted by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** 11).

⁶⁷⁴ AS **1999** 1118; BBl **1996** 11

⁶⁷⁵ Inserted by No I 4 of the FA of 26 June 1998, in force since 1 Jan. 2000 (AS **1999** 1118; BBl **1996** 11).

⁶⁷⁶ AS **1999** 1118; BBl **1996** 11

³ 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.

Art. 7c⁶⁷⁷

3. Period of separation for pending divorce proceedings

For divorce proceedings that are pending on commencement of the Amendment of 19 December 2003⁶⁷⁸ and must be judged by a cantonal authority, the period of separation under the new law applies.

Art. 7d⁶⁷⁹

4. Occupational pension

¹ The new law on occupational pensions on divorce applies as soon as the amendment of 19 June 2015 comes into force.

² 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.

³ 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. 7e⁶⁸⁰

5. Conversion of existing pensions

¹ 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.

² In the case of decisions made abroad, jurisdiction is determined by Article 64 of the Federal Act of 18 December 1987⁶⁸¹ on International Private Law.

³ Any pension payments already made under previous law are considered part of the pension awarded.

⁶⁷⁷ 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).

⁶⁷⁸ AS **2004** 2161

⁶⁷⁹ 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).

⁶⁸⁰ 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).

⁶⁸¹ SR **291**

Art. 8⁶⁸²

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. 8a⁶⁸³

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. 8b⁶⁸⁴

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. 9⁶⁸⁵

II. Marital
property law
applicable to
marriages
contracted before
1 January
1912⁶⁸⁶

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. 9a⁶⁸⁷

IIbis. Marital
property law
applicable to
marriages
contracted after
1 January
1912⁶⁸⁸
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.

⁶⁸² 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).

⁶⁸³ 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).

⁶⁸⁴ 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).

⁶⁸⁵ 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).

⁶⁸⁶ For the application of the transitional law, see also the previous provisions of the Sixth Title at the end of the Civil Code.

⁶⁸⁷ 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).

⁶⁸⁸ See the provisions applicable until 31 Dec. 1987 at the end of this text.

Art. 9b⁶⁸⁹

2. Change from a union of property to participation in acquired property
 a. Change to the bodies of assets

¹ 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.

² 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.

³ The wife reclaims the property she brought into the marriage that became her husband's property or makes a claim for compensation.

Art. 9c⁶⁹⁰

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. 9d⁶⁹¹

c. Division of marital property under the new law

¹ 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.

² 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.

³ 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. 9e⁶⁹²

3. Retention of the union of property regime

¹ Spouses subject to the statutory marital property regime of union of property who have not changed this marital property regime by mari-

⁶⁸⁹ 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).

⁶⁹⁰ 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).

⁶⁹¹ 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).

⁶⁹² 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.

² 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.

³ The new regulations on the separation of property apply in future to the spouses' separate property.

Art. 9⁶⁹³

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. 10⁶⁹⁴

5. Marital agreement
a. In general

¹ 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.

² The new regulations on the separation of property apply in future to the spouses' separate property.

³ 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. 10a⁶⁹⁵

b. Legal effect in relation to third parties

¹ 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.

² 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.

⁶⁹³ 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).

⁶⁹⁴ 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).

⁶⁹⁵ 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. 10^{b696}

c. Application of the new law

¹ 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.

² 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. 10^{c697}

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. 10^{d698}

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. 10^{e699}

f. Register of marital property

¹ After the Federal Act of 5 October 1984 comes into force, no further entries will be made in the register of marital property.

² The right to inspect the register continues to apply.

Art. 11⁷⁰⁰

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.

⁶⁹⁶ 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).

⁶⁹⁷ 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).

⁶⁹⁸ 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).

⁶⁹⁹ 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).

⁷⁰⁰ 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. 11a⁷⁰¹

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. 12⁷⁰²

III. The parent-
child relationship
in general

¹ 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.

² 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 of authority.

³ A transfer or withdrawal of parental authority officially ordered under the previous law remains effective after the new law comes into force.

⁴ 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*.⁷⁰³

⁵ 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.⁷⁰⁴

Art. 12a⁷⁰⁵

III^{bis}. Adoption
1. Continuation
of the previous
law

¹ 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

⁷⁰¹ 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).

⁷⁰² 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).

⁷⁰³ 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).

⁷⁰⁴ 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).

⁷⁰⁵ 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 1912⁷⁰⁶; consents validly given in accordance with this law remain effective in every case.

² 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 20th birthday.⁷⁰⁷

Art. 12b⁷⁰⁸

2. Pending proceedings

The new law applies to adoption procedures pending at the time the amendment of 17 June 2016 comes into force.

Art. 12c⁷⁰⁹

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. 12c^{bis}710

Art. 12d⁷¹¹

IIIter. 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.

⁷⁰⁶ Art. 465 Civil Code in the version of 1 Jan. 1912:

¹ 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.

² Adoptive parents and their blood relatives have no rights of succession in respect of an adoptive child.

⁷⁰⁷ Inserted by No I of the FA of 7 Oct. 1994, in force since 1 Jan. 1996 (AS **1995** 1126; BBl **1993** I 1169).

⁷⁰⁸ Inserted by No 13 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).

⁷⁰⁹ Inserted by No 13 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).

⁷¹⁰ 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).

⁷¹¹ 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. 13⁷¹²

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. 13a⁷¹³

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. 13b⁷¹⁴

IV^{bis}. 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. 13c⁷¹⁵

IV^{ter}. 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^{bis} ⁷¹⁶

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.

⁷¹² 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).

⁷¹³ 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).

⁷¹⁴ Inserted by No I of the FA of 7 Oct. 1994, in force since 1 Jan. 1996 (AS **1995** 1126; BBl **1993** I 1169).

⁷¹⁵ 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).

⁷¹⁶ 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).

² 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. 13d⁷¹⁷

IV^{quater}. Name of the child

¹ 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.

² 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.

³ In accordance with Article 270b, this shall be subject to the child's consent.

Art. 14⁷¹⁸

V. Adult protection
1. Existing measures

¹ The new law governs adult protection as soon as the Amendment of 19 December 2008⁷¹⁹ comes into force.

² 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.

³ 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.

⁴ Where a doctor based on Article 397b paragraph 2 in its version of 1 January 1981⁷²⁰ 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

⁷¹⁷ 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).

⁷¹⁸ 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).

⁷¹⁹ AS **2011** 725

⁷²⁰ 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. 14a⁷²¹

2. Pending proceedings

¹ Pending proceedings shall be continued by the new competent authority after the Amendment of 19 December 2008⁷²² comes into force.

² The new procedural law applies.

³ 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

¹ 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.

² The foregoing applies both to heirs and to succession.

Art. 16

II. Testamentary dispositions

¹ 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.

² 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.

³ 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.

⁷²¹ 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).

⁷²² AS **2011** 725

Art. 17

E. Property law
I. Rights in rem
in general

¹ 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.

² 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.

³ 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

¹ 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.

² The ordinance on maintaining the land register determines what documentary proof is required for the registration of such rights.

³ 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

¹ Adverse possession is governed by the new law after this Code comes into force.

² 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. 20⁷²³

IV. Special
rights of
ownership
1. Trees on
another person's
land

¹ Existing rights of ownership in relation to trees on another person's land continue to be recognised under cantonal law.

² The cantons shall have the power to limit or revoke these conditions.

Art. 20^{bis}⁷²⁴

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.

⁷²³ Amended by No IV of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993; BBl 1962 II 1461).

⁷²⁴ 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^{ter} 725

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^{quater} 726

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 2009⁷²⁷ 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.⁷²⁸

Art. 22

VI. Mortgage rights

1. Recognition of the existing document of title

¹ Documents of title existing when this Code comes into force remain in force without having to be adapted to the new law.

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.

⁷²⁵ Inserted by No IV of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993; BBl 1962 II 1461).

⁷²⁶ Inserted by No IV of the FA of 19 Dec. 1963, in force since 1 Jan. 1965 (AS 1964 993; BBl 1962 II 1461).

⁷²⁷ AS 2011 4637

⁷²⁸ 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).

² Until the introduction of the land register, the previous cantonal legal forms for their creation remain valid.

Art. 24

3. Repayment of securities

¹ 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.

² However, until the introduction of the land register, the forms are governed by cantonal law.

Art. 25

4. Extent of liability under the lien

¹ In the case of all mortgage rights, the extent of liability under the lien is determined by the new law.

² 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

¹ 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.

² In relation to effects that arise by operation of the law which cannot be modified contractually, the new law also applies to existing liens.

³ 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.⁷²⁹

Art. 31 and 32⁷³⁰

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 ...⁷³¹

Art. 33a⁷³²

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

⁷²⁹ 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).

⁷³⁰ 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).

⁷³¹ 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).

⁷³² 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. 33⁷³³

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 2009⁷³⁴ comes into force be converted into a register mortgage certificate.

Art. 34

VII. Charges on
chattels
1. Provisions on
form

¹ From the date on which the Code comes into force, charges on chattels may only be created in the forms provided for herein.

² 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

¹ 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.

² 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

¹ 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.

² It may also be exercised by the creditors in respect of claims that originated before this date.

³ The effect of special liens originating at an earlier date is subject to the provisions of this Code.

⁷³³ 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; BB1 **2007** 5283).

⁷³⁴ 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 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.⁷³⁵
1. Establishment of the land register
register

2 ...⁷³⁶

Art. 39⁷³⁷

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 ...⁷³⁸

² The surveying and the introduction of the land register may be carried out successively for the individual districts of a canton.

Art. 42⁷³⁹**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.

⁷³⁵ 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).

⁷³⁶ 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).

⁷³⁷ 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).

⁷³⁸ 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).

⁷³⁹ 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).

² For this purpose, an announcement must be made to the public requesting them to give notice of and register these rights.

³ 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

¹ 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.

² 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.

³ Unregistered public law real burdens and statutory liens under cantonal law created before the amendment of 11 December 2009⁷⁴⁰ 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.⁷⁴¹

Art. 45⁷⁴²

4. Abolished
rights

¹ 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.

² If such rights have lapsed for whatever reason, they may not be re-established.

Art. 46

5. Postponement
in the introduc-
tion of the land
register

¹ 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.

² The forms of notice under cantonal law that are intended to guarantee the effects required by the new law must be precisely specified.

⁷⁴⁰ AS 2011 4637

⁷⁴¹ 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).

⁷⁴² 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

¹ 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.

² 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.

³ 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. 49⁷⁴³

F. Prescription

¹ Where the new law specifies a longer period than the previous law, the new law applies, provided prescription has not yet taken effect under the previous law.

² Where the new law specifies a shorter period, the previous law applies.

³ The entry into force of the new law does not change the date on which an ongoing prescriptive period began, unless the law provides otherwise.

⁴ Otherwise, the new law governs prescription from the time it comes into force.

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.

⁷⁴³ Amended by Annex No 3 of the FA of 15 June 2018 (Revision of the Law on Prescription), in force since 1 Jan. 2020 (AS **2018** 5343; BBl **2014** 235).

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

¹ The cantons shall enact the provisions required to supplement the Civil Code, including in particular those governing the competent authorities⁷⁴⁴ and the establishment of civil registries, guardianship authorities and land registries.

² 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.⁷⁴⁵

³ Cantonal provisions on register law require federal approval.⁷⁴⁶

⁴ Notice of cantonal provisions on other matters must be given to the Federal Office of Justice.⁷⁴⁷

Art. 53

II. Substitute ordinances

¹ 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.

² 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

¹ Where the Civil Code makes reference to a competent authority, the cantons shall designate such authority, be it existing or yet to be created.

² 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.

⁷⁴⁴ Presently the Adult protection authority (see Art. 440).

⁷⁴⁵ 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).

⁷⁴⁶ 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).

⁷⁴⁷ 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).

³ Unless the Civil Procedure Code of 19 December 2008⁷⁴⁸ applies, the cantons regulate proceedings.⁷⁴⁹

Art. 55

D. Public deeds
I. In general⁷⁵⁰

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. 55a⁷⁵¹

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 2016⁷⁵² on Electronic Signatures.⁷⁵³

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. 56⁷⁵⁴

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.

⁷⁴⁸ SR 272

⁷⁴⁹ 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).

⁷⁵⁰ 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).

⁷⁵¹ 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).

⁷⁵² SR 943.03

⁷⁵³ 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).

⁷⁵⁴ See current Art. 59 of the FA of 22 Dec. 1916 on Exploitation of Water Resources (SR 721.80).

Art. 57⁷⁵⁵

F.–H. ...

Art. 58⁷⁵⁶

J. Debt enforcement and bankruptcy

When this Code comes into force, the Federal Act of 11 April 1889⁷⁵⁷ on Debt enforcement and Bankruptcy is amended as follows:

...⁷⁵⁸**Art. 59**⁷⁵⁹

K. Application of Swiss and foreign law

¹ The Federal Act of 25 June 1891⁷⁶⁰ 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.

² ...⁷⁶¹

³ The following provisions are inserted in the Federal Act of 25 June 1891:

Art. 7a–7i

...

Art. 60⁷⁶²

L. Repeal of federal civil law

¹ When this Code comes into force, any provisions of federal civil law which contradict it are repealed.

² In particular, the following are repealed: the Federal Act of 24 December 1874⁷⁶³ on the Determination and Documentation of Civil Status and Marriage; the Federal Act of 22 June 1881⁷⁶⁴ on Personal

⁷⁵⁵ 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).

⁷⁵⁶ 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).

⁷⁵⁷ SR **281.1**

⁷⁵⁸ For text, see the federal act referred to. For the wording of Art. 132^{bis}, 141 para. 3 and 258 para. 4, see AS **24** 233 Final Title Art. 60.

⁷⁵⁹ 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).

⁷⁶⁰ [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**).

⁷⁶¹ 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).

⁷⁶² 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).

⁷⁶³ [AS **1** 506]

⁷⁶⁴ [AS **5** 556]

Capacity to Act; the Federal Act of 14 June 1881⁷⁶⁵ on the Code of Obligations.

³ 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 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. 61⁷⁶⁶

M. Final
Provision

¹ This Code comes into force on 1 January 1912.

² Subject to the Federal Assembly's approval, the Federal Council is authorised to declare individual provisions effective at an earlier date.

⁷⁶⁵ [AS 5 635, 11 490; BS 2 784 Art. 103 para. 1]

⁷⁶⁶ 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 Provisions⁷⁶⁷ of Title Six
Title Six: Marital Property Law

⁷⁶⁷ 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 Six⁷⁶⁸**Title Six: Marital Property Law**

⁷⁶⁸ 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.

