

LAW

5/2006, of 10 May, on the Fifth Book of the Civil Code of Catalonia, relating to real rights.

Preamble

I

Purpose

Civil law has a key role in the configuration of Catalonia as a modern society because it permits the adaptation of the legal framework to today's reality and satisfaction of the day-to-day needs of citizens, who, in accordance therewith, can fully exercise their freedom in the private field. This is why it also has a special significance as an element of national identification and as an instrument of social cohesion.

The recovery of the political institutions in 1980 by the Statute of Autonomy has allowed the Parliament of Catalonia to accomplish an intensive legislative task within a quarter of a century. This process of modernisation of the traditional civil law has been widely participative, progressive and persevering, giving it the soundness it needed to overcome the restrictive interpretations of the exclusive competences of the Generalitat in matters of the conservation, modification and development of Catalan civil law.

This process began with Law 13/1984, of 20 March, on the reform of the 1960 Compilation of civil law, and has continued throughout several legislatures. The most important milestones have been the approval of the Code of Succession, by Law 40/1991, of 30 December; of the Code of the Family, by Law 9/1998, and Law 10/1998, on unmarried couples, both of 15 July, and Law 29/2002, of 30 December, the first law of the Civil Code of Catalonia, which establishes its structure and drawing up in the form of an open code, which must be built following a continuous process, and which can be flexibly adapted in the future to the social needs and advances of legal science at all times. The purpose of this law is to approve the Fifth

Book of the Civil Code of Catalonia, relating to real rights, as one further step in the construction of the new Catalan private legal system and in its codifying process.

II

Principles

This code brings in a new regulation, specifically for Catalonia, of basic institutions in the law of things, such as possession, property and situations of community, particularly that known as *property in condominium*, and introduces the regulation of air rights and mortgage rights.

Apart from this, it redrafts and partly modifies the legislation approved by Parliament in matters of the law of things and gives it internal unity. This legislation comprises a total of six laws, from Law 6/1990, of 16 March, on leases, to Law 19/2002, of 5 July, on real security rights.

The regulation of the Fifth Book maintains, thoroughly updated, traditional institutions in Catalan law, some of Roman origin, like usufruct and its derivatives or easement, and others of medieval origin, like rights of lease or party walls. However, it emphasises more innovative aspects, like a brief and orderly regulation of the fact of possession and its legal consequences, the regulation of the limits and limitations of property in line with current legal culture, the regulation of property in condominium as an instrument that facilitates access to the basic right to housing or the regulation of rights of building, air or option.

This code starts from the basic principles of civil liberty, which take the form of leaving to independent judgement a very wide field of action in the constitution and configuration of limited real rights and situations of community, in the limitation of legal rights to preemption and buyout to indispensable cases, and in the establishment of a regulation for limited real rights that is almost always subsidiary to agreement between the parties; of protection of consumers and, in general, persons in a situation of need, taking the form above all of the regulation of property in condominium and everything related to the regulation of buildings containing several dwellings; of good faith, which is always presumed and that takes the form of the

regulation of possession, deeds of acquisition and disposal and, in general, in the fact that legal protection is never granted to anyone acting in bad faith; of promotion of preventive legal certainty, shown in the balanced use of notary deeds and public registers in situations where public interest and the transcendence of the interests of third parties makes their use advisable; and of the social function of property, taking the form of the general regulation of restrictions to the right of ownership and neighbourly relations and in overcoming the principle of unanimity in the management of community situations.

Finally, this code clearly bears in mind that its provisions have the nature of common law in Catalonia. So when appropriate, it emphasises its considerable overlap with the regulations, often described as administrative, that configures modern property, so imbued with its social function, for example planning or housing, agrarian, forestry and environmental, and cultural heritage regulations.

III

Structure and content

This law, with a single article, approves the Fifth Book of the Civil Code of Catalonia, relating to real rights, and contains twenty transitory provisions, one derogatory provision and one final provision.

The Fifth Book consists of 382 articles. In accordance with the First law of the Civil Code, the Fifth Book is organised into titles, specifically into six, which establish general provisions on property (Title I) and regulate possession (Title II), the acquisition and lapsing of real rights (Title III), the right of ownership (Title IV), situations of community (Title V) and limited real rights (Title VI). Every title except the first is divided into chapters, twenty-five in all, which are subdivided into sections and subsections.

Title I consists of some introductory and general articles on the legal system of property, whose concept is taken in a broad sense to include rights and, in accordance with most recent Catalan legal tradition, establishes that animals are not considered as things and come under the protection of the laws.

Title II contains the regulation of possession, considered as a primary mechanism for advertising rights that this code protects by preserving civil peace, on the basis that possession must have as its main effect the right to continue in possession. It also regulates the criteria of payment of the possessory situation, in cases where possessors with effective possession lose it in favour of other persons who establish that they have a better right. Finally, it configures acquisition of property in good faith as a mechanism transferring the right over the property possessed.

Title III regulates the acquisition and lapsing of the real right. It regulates delivery in concordance with titles of acquisition, configuring the transfer-acquisition system in accordance with the theory of title and tradition in force in Catalan legal system. It also regulates donation, in which it recognises the consideration of title of acquisition, jointly with succession, the contract, occupancy, disposal and usucapio. However, donations due to marriage or between spouses and donations due to death are currently retained in the Code of the Family and the Code of Succession. As regards usucapio, this title reduces the terms of possession for usucapio to three years for movable property and twenty for real estate property and regulates its interruption and suspension.

In this same title, Chapter II regulates the lapsing of real rights of a general nature due to total and unforeseeable loss, consolidation and surrender.

Title IV establishes a general regulation of the right of ownership that, when legally acquired, grants owners the full and exclusive right to use the property concerned and to enjoy and possess it, but always in accordance with its social function and within the limits and restrictions established by law.

Title IV also regulates the exclusive acquisitive titles of the right of ownership, with considerable simplification of the text of Law 25/2001, of 31 December, on disposal and occupancy, and the exclusive title of loss of this right, that is, its abandonment. It also establishes the civil regulations of replevin, as exponent of protection of this right in the event of spoliation, and of negatory actions, of closing estates and demarcation and survey and marking of boundaries, as actions relating to the power of exclusion.

Finally, Chapter V regulates restrictions of the exercise of the right of ownership depending on its social function. When the laws so establish, limits of the right of ownership are constituted if they are in the interest of the community, and its limitations are constituted if they are in the interest of indefinite private individuals, normally residents, including in this case the co-proprietors of the real estate subject to the system of property in condominium. In both cases, the restrictions affect the availability or exercise of the right, they do not require an express act of constitution, and do not grant a right to indemnification. On the other hand, the restrictions established by autonomy of intention in private interest constitute limited real rights and are governed by autonomy of intention. Given that the limits are governed by reference to special laws, to special situations of community and to limited real rights, Chapter VI of this title regulates relations of contiguity, the state of need and emissions, updating and simplifying Law 13/1990, of 8 July, on negatory action, emissions, easements and the neighbourhood relations as legal doctrine and practice have made advisable.

Title V regulates the so-called *situations of community*, both as regards ordinary community, in other words, the undivided condominium of Roman origin, with respect to which it establishes some innovations, above all on the division of the community of property, like the situations arising from the voluntary legal system of property in condominium.

This regulation is precisely one of the Code's most significant social innovations, given that in the last fifty years property in condominium has allowed an extraordinary generalisation of the right of ownership, to the point that it has become one of the basic legal instruments guaranteeing access of citizens to the property of housing. The regulation, which is based on the existence of a unitary piece of real estate in which more than one owner concurs and which comprises simultaneously private property and common property, inseparably interrelated by the quota or coefficient, adopts and updates the model of the Compilation of the civil law of 1960, in force at the time when this law was approved, but introduces several improvements, among which the systematic improvement is not the most important. Chapter III, regulating property in condominium, is divided into four sections. The first contains the general provisions, with the configuration of the community, the title of constitution, whose regulation as far as possible guarantees the rights of future purchasers of flats or premises and the functioning of the committee of proprietors, detailed, clear and adapted to the needs that the experience of the

years and evolution of legislation make essential, outstanding among which is the limitation of the principle of unanimity to very occasional cases. The second and third sections regulate simple and complex property in condominium, the latter adapted to real estate complexes, with several buildings but with community areas like swimming pools or recreation areas. Also significant is the regulation of the common areas in exclusive use and exclusive elements in common use, the establishment of the action of cessation over particular activities and exclusion of the rights or preemption and buyout for premises with garages and other similar uses. The fourth section regulates property in condominium by plots and, in accordance with legal practice, extends the principles of the regulations to the misleadingly named *private estates*.

Chapter IV contains a regulation of the special community of time-sharing, which is different from the regulation of time-sharing apartments for holidays regulated by Directive 94/47/EC, of 26 October, and which is compatible therewith, because this chapter is limited to unitary property, and expressly excludes the application to the circumstances to which the European regulations refer. The title closes with the regulation of party walls.

Title VI, by far the longest in the book, regulates the limited real rights of usufruct, use and habitation; of partial exploitation, building, emphyteutic and lifelong lease, easement, air, option, preemption and buyout, including legal buyout of adjoining properties and the special circumstance of the Vall d'Aran known as 'torneria'; rights of retention, lein and antichresis, and, finally, some specialities of mortgage law resulting from the special features of Catalan law.

The rights of usufruct, use and habitation are governed in accordance with Law 13/2000, of 20 November, regulating the rights of usufruct, use and habitation, although introducing improvements of legal technique, introduces the usufruct of the proprietor and changes the system of usufruct of shares in investment funds and other group investment instruments to adapt them to the reality of a market that does not always produce increases in value. The regulation of the rights of partial exploitation, a real jumble of usufructs that can be useful for promoting the conservation of woods and natural spaces by means of a rational exploitation, brings together personal easements. The right of building is regulated in accordance with Law 22/2001, of 31 December, on the regulation of the rights of building, easement and voluntary or

preferential purchase, although the need for public deed for its constitution is established and it emphasises that, on their discharge, the buildings or plantations revert to the owners of the land.

The rights of emphyteutic and lifelong leases are governed by Law 6/1990, which introduces a regulation of procedure for claiming annuities, harmonises the terms and sets the value of redemption in a more comprehensible manner. Easements are governed in accordance with Law 22/2001, whose only modifications deal with systematic changes required to harmonise the text in the Code, while the regulation of the right of air, as a real right on a private building or built plot that attributes to the owners the power to build one floor or more over or under the real estate affected and to take over the new buildings, is new and aims to clearly limit the distinction between the rights of building, which involve property separated temporarily, and the latter, which is an instrument to facilitate the building of floors or buildings subject to the system of property in condominium, and involves a definitive division of the property.

The regulation of the rights of acquisition introduces technical and systematic changes to that of Law 22/2001, to respond to some issues that the latter left open both in relation to the conservation and loss of the object over which the acquisition devolves and in relation to the cancellation of charges constituted between the constitution and exercise of the right of option. Chapter VIII also incorporates the rights of buyout of adjoining properties, to which only proprietors of adjoining estates with surface area below the minimum unit of cultivation considered to be a direct and personal grower have the right, and that of 'torneria', exclusive and unique to the territory of Vall d'Aran, which is only applied to rural estates and country houses.

Finally, the regulation of the real security rights of Chapter IX is carried out following Law 19/2002, although simplifying the regulations on the right of retention, and introducing mortgage regulations for specific circumstances of Catalan law to which the mortgage legislation had not given a proper solution. This includes the case of property subject to trusts, of mortgage in guarantee of compensatory annuities arising from sentences of separation or divorce and alimony, or from subrogation in the payment of the periodic or lease-based annuity in the case of an estate mortgaged as security for the latter.

The transitory provisions of this law establish the system of usucapios started before the entry into force of the Fifth Book of the Code; the subsistence of negatory action originated and

not exercised earlier; the adaptation of properties in condominium constituted earlier, including estates, in the least formal and least costly way possible, and the system of limited real rights before it came into force. The transitory regulations for leases and strong bases constituted before the entry into force of Law 6/1990 and Law 22/2001 are maintained, on the understanding that the regulations that these laws established to facilitate the lapsing and redemption of these rights are their main practical asset.

Equally, this law contains a derogatory provision and a final provision. The first repeals several laws and the second establishes the entry into force of this law.

Single article

Approval of the Fifth Book of the Civil Code of Catalonia

The Fifth Book of the Civil Code of Catalonia is approved, with the following content:

TITLE I

On property

Article 511-1. *Property*

1. Considered as property are proprietary things and rights.
2. Considered as things are physical objects that can be appropriated, also energies, as far as their nature permits.
3. Animals, not considered things, come under the special protection of the laws. The rules of property are only applied to them as far as their nature allows.

Article 511-2. *Real estate property and movable property*

1. Property, by its nature or destination, can be real estate property or movable property.
2. Real estate property is considered to be:
 - a) Land, buildings and permanent works.
 - b) Water, vegetation and minerals, when not separated or extracted from the ground.
 - c) Movable property incorporated in a fixed manner to a real estate property from which it cannot be separated without its deterioration.

d) Real and administrative rights with assignments that devolve on real estate property, ports and nautical shelters, and also the rights of urban exploitation.

3. Considered as movable are things that can be transported and other property that the laws do not expressly qualify as real estate property.

Article 511-3. *Proceeds*

1. The proceeds of a thing are their products and the other benefits that are obtained in accordance with their destination.

2. The proceeds of a right are the benefits obtained in accordance with their destination and produced in virtue of a legal relationship.

TITLE II

On possession

CHAPTER I

Acquisition and discharge

Article 521-1. *Concept*

1. Possession is the power in fact over a thing or a right, exercised by a person, as owner, or through another person.

2. The exercise of a power in fact over a thing or a right without the apparent external will to act as owner of the right or the possession with the sufferance of the owners are circumstances of retention, which only causes the effects that the laws establish for each particular case.

Article 521-2. *Acquisition of possession*

1. Possession is acquired:

a) When the possessors subject the thing or right to the ambit of their power.

b) When the thing or right has been made available to the new possessors, as deduced from the legal relationship existing between the old and new possessors.

2. Possession may not be clandestine. Nor can it ever be acquired with violence while the previous possessors so oppose.

Article 521-3. *Capacity*

1. All persons with natural capacity can acquire possession.
2. Minors and handicapped persons can exercise their own powers of possession with the assistance of their legal representatives.

Article 521-4. *Plurality of possessions*

1. Different persons can possess the same item or property if the concepts of possession are compatible.
2. If two or more persons claim the possession and the concepts of possession are not compatible, the person having possession at the time of the claim has preference; if there are two or more possessors, the oldest; if the dates of possession coincide, the one with a title, and if all these conditions are equal, the object of the possession is deposited judicially while the possession or property is determined in accordance with the laws.

Article 521-5. *Co-possession*

In the event of division of an item of property in a community situation, it is considered that each co-owner had exclusive possession during the time that the coparceny lasted, of the part that corresponded thereto in the award.

Article 521-6. *Continuity in possession*

1. It is presumed that possessors have possessed a piece of property continuously since they acquired their possession and that they can unite their possession with that of their principals.
2. It is presumed that the possessors maintain the same possessory concept that they had when they acquired the possession.
3. It is understood that the possession is continuous even if its exercise is prevented or interrupted temporarily, without prejudice to the provisions of Article 521-8.e.

Article 521-7. *Possession in good and bad faith*

1. Good faith in possession is the justifiable belief of property of the right. If not, the possession is in bad faith.
2. Good faith is always presumed.
3. The effects of good faith cease from the time when the possessors know, or can reasonably know, that they do not have the right to possess.

Article 521-8. *End of possession*

Possession is lost for the following reasons:

- a) The voluntary assignment of the property that is the object of same to another person, in a concept incompatible with the possession of the person who makes the assignment.
- b) Abandonment.
- c) Loss or total destruction.
- d) The fact of remaining outside legal transactions.
- e) The possession by another person, even when acquired against the will of the previous possessors, if the new possession lasts more than one year.

CHAPTER II

Effects

Article 522-1. *Presumption of property*

1. It is presumed that the possessors are owners of the right in whose concept they possess the item of property.
2. The presumption of property lapses when the thing or the right possessed are recorded in the Property Register or, if appropriate, in the Movable Property Register in favour of another person, except if the possessors presumed to have property oppose another title that justifies the possession.

Article 522-2. *Dissolution of the situation of possession*

If the possessors lose the possession in favour of another person who has a better right to possess, for any reason, the dissolution of the situation of possession is adapted by the provisions of articles from 522-3 to 522-5, except by agreement or provision to the contrary.

Article 522-3. *Proceeds*

1. The possessors in good faith take over their proceeds and must assume the expenses caused in producing them. Whoever has a better right to possess may take over the pending proceeds, but must pay the expenses caused in producing them.

2. Possessors in bad faith must restore the proceeds produced from the day when the possession in bad faith began or their value, but they have right to compensation of the expenses necessary to obtain them, without prejudice to the indemnification for damages that, if appropriate, corresponds to whoever has a better right to possess.

Article 522-4. *Useful expenses*

1. Whoever has a better right to possess must pay the extraordinary expenses of conservation made on the property both by the possessors in good faith and those in bad faith.
2. Whoever has a better right to possess must pay the useful expenses incurred in the property by the possessors in good faith if the improvements or increase in value they have caused exist at the time of dissolution.
3. The possessors, both in good and bad faith, can opt to withdraw the improvements made provided that the object over which they devolve is not damaged. In spite of this, in the case of the possessors in bad faith, whoever has a better right to possess can take over the improvements for themselves by paying their value.

Article 522-5. *Deterioration or loss*

1. Possessors in good faith are not responsible for the deterioration or loss of the thing or right they possess, except if they have acted with negligence or fraud from the time when they were notified of the claim based on the possible existence of a better right to possess.
2. Possessors in bad faith are always responsible for the deterioration or loss of the thing or right possessed from the time when they are notified of the claim referred to in Section 1, even if said deterioration or loss occurs by chance if the delivery of the thing to the legitimate possessors is delayed maliciously.

Article 522-6. *Possession and usucapio*

Possession in accordance with the requirements established in Article 531-24 permits the usucapio of the right of ownership or of other real possessory rights.

Article 522-7. *Protection*

1. The possessors and holders have a claim for retention and recovery of their possession against any disturbances or usurpations, in accordance with the provisions of procedural law.

2. Possessors can recover the possession of the thing or the right by means of *actio publiciana*, before possessors without right or with worse right. The acquirer by *usucapio* must prove that he or she has a better right to possess, must take action against the possessors who have the effective possession, and must identify the thing or the right that is the object of the possession.

Article 522-8. *Acquisition in good faith of movable property*

1. Acquisition of the possession of movable property in good faith and for financial consideration involves the acquisition of the right on which the concept of possession is based, even if the previous possessors did not have sufficient power of disposal over the property or right.

2. The acquirers must facilitate to the initial proprietors, if they so require in an irrefutable manner, the data they have to identify the persons who transferred the property to them. Otherwise, they must answer for the indemnification for damage and prejudice they have occasioned.

3. The proprietors of a movable property that is lost, stolen, robbed or unduly appropriated can claim effective possession from the possessors who have it, except if they have acquired it in good faith and for financial consideration in a public auction or in an establishment devoted to the sale of similar objects to said property and legally established.

TITLE III

On the acquisition, transfer and lapsing of the real right

CHAPTER I

Acquisition

SECTION ONE

General provision

Article 531-1. *System of acquisition*

To transfer and acquire property, as well as title of acquisition, the realisation, if appropriate, of the delivery or events or formalities established by the laws is required.

SECTION TWO

Delivery

Article 531-2. *Concept*

Delivery consists of the handover of the possession of a property by the former to the new possessors.

Article 531-3. *Grounds of delivery*

The delivery, carried out as a result of certain contracts, involves the transfer and acquisition of the property and other real rights of possession.

Article 531-4. *Classes of delivery*

1. The delivery of a property occurs when it is handed over to the acquirers and these take possession of it with the agreement of the transferors.
2. The power and possession of a property is handed over, as well as the provisions of Section 1, by:
 - a) Awarding the corresponding public deed, if the same document does not require otherwise.
 - b) The agreement in which the transferors declare that they remove the property from their power and possession and they transfer it to the acquirers, authorising them to take it and to constitute themselves in the interim in the possessors in their name.
 - c) The handover of the keys of the place where the acquirers' property is stored or kept.
 - d) The agreement between the transferors and the acquirers when the movable property which is the object of disposal can not be transferred to the power and possession of the acquirers.
 - e) The expression in the contract of the fact that the acquirers already have the property in their power due to another title.

Article 531-5. *Delivery of intangible property*

The delivery of intangible property occurs by the handover of titles, by instrumental delivery or by the use made by the acquirers with the consent of the transferors.

Article 531-6. *Expenses*

The expenses of handing over the property transferred are payable by the transferors. The expenses of granting a deed and issuing the first copy and other expenses after the transfer are payable by the acquirers, except if a special provision or agreement establishes otherwise.

SECTION THREE

Donation

Article 531-7. Concept

Donation is the act by which the donors freely dispose of a piece of property in favour of the donees, who acquire it if they accept it in life.

Article 531-8. Irrevocability

1. The donation is irrevocable from the time when the donors know of the acceptance of the donees or, in the case of verbal donation of property, from the handover of the property if done at the time of the verbal expression of the donation, without prejudice to the causes referred to in Article 531-15.1
2. The donors cannot revoke donations motivated by public or charitable collections from the time when they publicly state their intention to donate.

Article 531-9. Types

1. Donations can be between the living or due to death.
2. Donations between the living are those that donors make without considering the fact of their death.
3. Donations due to death are those that the donors make considering their own death. Adjourment of the handover of the property given until the time of the death of the donors or the reservation in their favour of lifelong usufruct does not confer on the donation the nature of donation due to death.
4. Donations due to marriage and between spouses and donations due to death are governed, respectively, by the regulations of the Code of the Family and the Code of Succession due to Death.

Article 531-10. Capacity of donors

Anyone with sufficient capacity to act to have the use of the given object and power of disposal thereover can donate.

Article 531-11. *Object*

1. They can donate a certain and determined property or more than one.
2. The donation of a total estate of things, businesses and other unitary sets or groups of property is extended to all elements integrated or attached thereto.

Article 531-12. *Form*

1. Donations of real estate property are only valid if the donors do so and the donees accept by public deed. Acceptance made in a later deed or by accession proceedings must notify the donors authentically.
2. Donations of movable property must be made in writing. Verbal donations are only valid if the property donated is handed over at the same time. An exception are donations made due to public collections of a charitable nature, in which the handing over of the property may be deferred.

Article 531-13. *Compensation*

1. Donors are not responsible for the eviction nor the hidden vices of the property given.
2. Notwithstanding the provisions of Section 1, donors, if handing over the property in the knowledge that it is private or knowing the vices or hidden defects, must indemnify donees in good faith for the prejudice suffered.
3. Notwithstanding the provisions of Section 1, if the donation is modal or at a fee, the donors must compensate the property, in the event of eviction or hidden vices, up to the value of the encumbrance.

Article 531-14. *Creditors of the donors*

Creditors of the donors are not prejudiced by donations they grant after the date of the fact or act originating the credit if there are no other resources to pay it.

Article 531-15. *Revocation*

1. Once they discover the acceptance of the donation by the donees, the donors can only revoke the donation for any of the following reasons:

- a) The survival of children of the donors, even if they had children before the event.
 - b) The survival of the children of the donors when they believed they were dead.
 - c) Non-compliance with the charges imposed by the donors on the donees.
 - d) The ingratitude of the donees. Reasons for ingratitude are events penally convictable committed by the donor against the person or the property of the donee, their children, spouse or other member of the unmarried couple, and also, in general, any that represent a behaviour with relation to the same persons not socially accepted.
 - e) The poverty of the donors, without prejudice to the right to alimony that they legally possess. *Poverty* is understood as the lack of economic means of the donors for their minimum maintenance.
2. Donations awarded in marriage chapters and remunerative donations are only revocable due to non-compliance with charges.
 3. Revocatory proceedings expire at the end of one year counted from the time when the fact occurs that causes it or, if appropriate, from the time when the donors know the ungrateful fact. The early surrender of the revocation is null. When the revocatory cause constitutes a penal offence, the year starts to be accounted from the firmness of the sentence that declares that offence.
 4. Revocatory proceedings can be tried against the heirs of the donees and can be exercised by the heirs of the donors, except, in this latter assumption, if the cause of revocation was the poverty of the donors. In revocation due to ingratitude, proceedings may not be tried against the heirs of the donees and can only be exercised by the heirs of the donors if the latter have not been able to do so.
 5. Disposals for a financial consideration and charges made by the donees before the donors had notified in an irrefutable manner the intention of revocation, in the circumstances of occurrence and survival of children, ingratitude and poverty, preserve the validity, without prejudice to the obligation to restore the value at the time of the donation of the property disposed of or of which the donors were deprived due to the charges imposed by the donees. In the circumstance of non-compliance with charges, the third parties owning the rights over the property given are affected by the revocation in accordance with the general regulations of effects of rights vis a vis third parties.

Article 531-16. *Conditional and temporary donation*

1. In the donation subject to a suspended condition, the proceeds and rents of the property given while the latter is pending compliance belong to the donors. In this case, the successors of the donees do not acquire any right over the property if the latter die in the interim.
2. In the donation subject to a term or resolutive condition, until the expiration of the term or until compliance with the condition, the donors or their successors acquire the proceeds and rents of the property or right donated.
3. The charges, conditions and reversions imposed by the donors and, in general, the determinations that, with a real nature, configure or limit the right of the donees, even when they have not been accepted by the favoured party, produce effects, in accordance with the general regulations of effects of rights vis a vis third parties.

Article 531-17. *Remunerative donation*

Donations are remunerative if made as a reward or in recognition, not legally due, from the merits contracted or the services rendered by the donees. Donations of a beneficiary nature are governed by the regulations on remunerative donations.

Article 531-18. *Donation with charge or modal donation*

1. Donors can impose on donees the encumbrances, charges or modes, in favour of the donors themselves or third parties.
2. If the encumbrances, charges or the modes consist of the prohibition or limitation of disposing of the property given, Article 166 of the Code of Succession will be applicable.

Article 531-19. *Donation with reversion clause*

1. The donor can establish, at a term or conditionally, that the property reverts to the donor itself, its spouse, the other member of the unmarried couple or its heirs. The reversion that depends on the simple intention of the donors is understood to be conditional.
2. Under the resolutive condition or terms, the acquisition by a third party of the property given can be ordered. By the express intention of the donors, the donees themselves or the persons they indicate may designate the third party. If there is any doubt about the scope of the reversion clause, it is understood as made only in favour of the donors and established for the case where the donees predecease the donors without leaving children.
3. The donor can revoke or change, at any time, the reversion established in his or her favour, of the spouse, the other member of the unmarried couple or his or her heirs, leaving it without

effect or designating a new acquirer of the property given. Except by express determination, once the donors have died without ordering the reversion or having complied with the condition or terms established, the property given remains free from the resolutive encumbrance.

4. While the condition or the term established are not complied with, the donors can revoke or change the reversion ordered in favour of third parties. If the reversion was established under term or the condition of the effective birth of the beneficiary children due to be born, conceived or otherwise, of the first donee, the donors lose this power once they know of the acceptance by the donees encumbered with the reversion clause.

5. Once the reversion has occurred, the property given is free of the charges or encumbrances imposed by the donees or by the successive owners, who are answerable for the amount lost by their negligence and the damage and prejudice caused in bad faith.

6. Reversions established in favour of the donor, the spouse, the other member of the unmarried couple or his or her heirs, in everything not established in this article, are governed by articles 87 to 89 of the Code of Successions, and the provisions in favour of third parties, by the precepts relating to trusts.

Article 531-20. *Donation with reservation of the power to dispose*

1. The donation with reservation of the power of disposal is governed by its constituting title and, if this does not establish otherwise, the reservation of disposal is understood only for acts with financial consideration.

2. Exercise of the power to dispose resolves the property of the donees and acquiring third parties or owners of rights, except for the good faith of these ones and the provisions of mortgage legislation.

3. Exercise of the power to dispose, if conditioned by the state of need of the donor, of his or her family or of the other member of the unmarried couple, or the by authorisation or consent of particular persons, must abide by what is established for usufruct with the power to dispose in relation to these cases.

Article 531-21. *Capacity of the donees*

1. Persons who have natural capacity may accept donations.

2. Donations made with encumbrances, charges or modes to persons subject to legal authority or to a system of wardship or protection must be accepted with the intervention or attendance of the persons established by the Code of the Family.

3. The persons who would be the legal representatives of the conceived if they were already born can accept the donations made in the latter's favour.
4. Donations made in favour of the un-conceived will be understood as made under suspended condition.

Article 531-22. *Plurality of donees*

1. Donations made and reversions envisaged jointly and simultaneously in favour of various persons will be understood as made in equal parts, with proportional accretion with respect to the part corresponding to the persons who do not accept them, except if the donors arrange otherwise.
2. Once the donation has been revoked due to ingratitude, the quota belonging to the ungrateful donees accrues to that of the other donees in the corresponding proportion.

SECTION FOUR

Usucapio

Article 531-23. *Type of acquisition*

1. Usucapio is the acquisitive title deed or a real right of possession based on the possession of the property for the time established by law, in accordance with the provisions of this section.
2. The acquisition effect occurs without the need for the person acquiring by usucapio to take any action.
3. The acquisitive effect does not prejudice real or possessory rights compatible with possession to usucapt if the owners of the real right have no knowledge of the usucapio.

Article 531-24. *Possession to usucapt*

1. To usucapt, the possession must be in the concept of the owner of the right, public, pacific and uninterrupted and does not need title nor good faith.
2. Mere retention does not permit usucapio.
3. It is presumed that the person usucapting has possessed the property continuously since they acquired the possession.
4. The usucaptor can join his or her possession to the possession to usucapt from its principals.

Article 531-25. *Interruption*

1. Possession to usucapt is suspended in the following cases:

- a) When possession ceases.
- b) When the usucaptor expressly or implicitly recognises the right of the owners of the property.
- c) When the owners of the property or an interested third party judicially oppose the current usucapio and when the owners of the property and the usucaptor agree to submit the questions relative to the usucapio to arbitration.
- d) When the owners of the property require the possessors before a notary to recognise the title of possession.

2. The interruption of possession to usucapt makes the term of this possession begin to run again and completely. In the cases of Section 1.c, the new term starts from the firmness of the act that put an end to the procedure.

Article 531-26. *Suspension*

1. Possession to usucapt is suspended in cases where the usucapio occurs:

- a) Against persons who cannot act for themselves or through their representatives, while this situation prevails.
- b) Against recumbent inheritance.
- c) Against the spouse or the other member of the unmarried couple, while the cohabitation lasts.
- d) Between persons linked by the legal authority of the parents or by a guardian institution.

2. The time of suspension of the possession is not calculated in the term for usucapio established by the laws.

Article 531-27. *Terms*

1. The terms of possession to usucapt are three years for movable property and twenty years for real estate property.

2. The terms of possession to usucapt a stolen or robbed property, or one subject to undue appropriation do not start to be calculated until the offence, fault, its penalty or action arising therefrom to demand civil liability has prescribed.

3. The surrender of the time gone by of an usucapio in progress is equivalent to the interruption of the possession to usucapt.

Article 531-28. *Plea*

The following persons can plead usucapio:

- a) The person who has usucaptured or his or her heirs.
- b) All persons interested in the fact that it be declared that the person who usucapts has acquired the property.

Article 531-29. *Surrender*

1. Surrender requires the capacity to dispose of the right usucaptured.
2. Surrender of the right usucaptured does not prejudice the creditors of those who have usucaptured, nor the owners of rights constituted over the property usucaptured.
3. Surrender does not impede anyone who has usucaptured from starting the usucapio of the same right again.

CHAPTER II

Lapsing of real rights

Article 532-1. *Lapsing of real rights*

Real rights lapse when established by this code or the title of constitution and by the loss of the property, the consolidation and the surrender of its owner.

Article 532-2. *Loss of the property*

1. Real rights lapse due to the total and unforeseeable loss and of the property that constitutes its object. The loss is total if the conditions of the property make it impossible for the owners to enforce its function or economic use.
2. If the loss affects only part of the property, the real right continues over the surviving part.
3. The real right exists in cases of real subrogation over other property, over certain indemnifications arising from insurances or from compulsory expropriation or over other similar indemnifications.

Article 532-3. *Consolidation*

1. The real right lapses when the union of ownerships between the proprietors and the owners of the real right occurs. Lapsing also occurs with the union of ownerships relating to different real rights when one encumbers the other.

2. The cases in which this code establishes or permits the separation of assets or the autonomous survival of real rights are exempt from the provisions of Section 1.

Article 532-4. *Surrender*

1. The real right lapses if the owners, unilaterally and spontaneously, surrender it.
2. The surrender made to defraud creditors of those surrendering or in prejudice of the rights of third parties is ineffective.

TITLE IV

On the right of ownership

CHAPTER I

General provisions

SECTION ONE

Property and its social function

Article 541-1. *Concept*

1. Property acquired legally grants to the owners the right to the full use of the properties that constitute its object and to possess and dispose thereof.
2. The proprietors preserve the residual powers not attributed to third parties by law or by title.

Article 541-2. *Social function*

The powers granted by the right of ownership are exercised, in accordance with their social function, within the limits and with the restrictions established by law.

SECTION TWO

Proceeds

Article 541-3. *Property*

1. The proceeds belong to the proprietors of the property, except if there is a right that attributes their payment to a different person.
2. Every person who is paid proceeds from a property must pay the expenses that a third party has incurred to produce them. The recipients of the proceeds may pay their value or leave them at the disposal of the third parties.

Article 541-4. *Acquisition*

1. Proceeds in kind are acquired by their production when separated from the property that produces them.
2. Proceeds in money are acquired by their accrual and are understood as paid day-to-day.

CHAPTER II

Titles of exclusive acquisition of the right of ownership

SECTION ONE

Disposal

Subsection one

General provisions

Article 542-1. *Concept*

1. The property of a property attributes the right to acquire, by disposal, what joins it thereto, with the obligation to pay, if appropriate, the corresponding indemnification.
2. Disposal, if voluntary, is artificial. Otherwise, it is natural.

Article 542-2. *Regulation*

Disposal is governed by the regulations of this code, without prejudice to the classes of disposal that have a specific regulation, when the special legislation is applied and, supplementarily, the regulations of this code.

Subsection two

Immovable disposal

Article 542-3. *Acquisition*

The plantations, crops and buildings included in an estate belong to the proprietors of the estate by right of immovable disposal.

Article 542-4. *Presumption*

It is presumed that plantations, crops and buildings made on an estate have been made by the proprietors at their expense.

Article 542-5. *Plantations on private land*

The proprietor of the estate on which another person makes a plantation in good faith can opt to:

- a) Take over the plantation and pay the expenses of the planter.
- b) Compel the planter to leave the estate in the state in which it was before the plantation.

Article 542-6. *Crops on private land*

The proprietor of the estate where another person cultivate in good faith can opt to:

- a) Take over the harvest and pay the expenses of the cultivator.
- b) Compel the cultivator to pay the equivalent to the rent of the estate until the harvest ends.

Article 542-7. *Building on private land with higher value of the land*

1. The proprietor of the land on which another person has fully or partly built, in good faith, when the value of the land invaded is higher than that of the building and the private land, can opt to:

- a) Take over all the building and part of the private land paying the expenses incurred in the building and the value of the private land.
- b) Compel the builder to acquire the part of the land invaded or, if the land invaded cannot be divided or the rest is not fit for construction, to acquire the whole plot.

2. The power of option that Section 1 grants to the proprietors of the land prescribes at three years after the work ends. Once this term has gone by without the proprietors exercising it, the builders can only be compelled to accept the option referred to in letter *b*.

Article 542-8. *Indemnification for damage and prejudice*

The proprietor of the estate, in the cases regulated by articles 542-5, 542-6 and 542-7, has the right to be indemnified for damage and prejudice.

Article 542-9. Construction on private land with higher value of the building

1. The proprietor of the land on which another person has built fully or partly, in good faith, when the value of the land invaded is lower than or equal to that of the building and the private land, must make over the property of the part of the land invaded to the builders if they indemnify him or her for the value of the land plus the damage and prejudice caused and if the building constitutes an architectural unit that is not materially divisible.
2. The proprietors of the land invaded can compel the builders to buy the whole plot when the land invaded cannot be divided or the rest of the land is not fit for construction.
3. The proprietors of the land invaded can opt for indemnification in kind consisting of the award of flats or premises if the builders have constituted the system of property in condominium, or if this system can be physically constituted in the building constructed.

Article 542-10. Presumption of good faith

1. The good faith of the person who plants, cultivates or builds on private land consists of the reasonable belief that he or she has a title to do so.
2. Good faith is presumed except if proved to the contrary and ceases due to the mere opposition of the owners of the land.

Article 542-11. Action in bad faith

1. The persons who plant, cultivate or construct on private land in bad faith lose, in benefit of the proprietors of the land, everything they have planted, cultivated or built and, in addition, have to indemnify them for damage and prejudice caused.
2. In cases of unauthorised buildings in bad faith, the proprietors of the land invaded can require the demolition by their builders, at their own expense, of everything built on private land, and indemnification for damage and prejudice, without prejudice to the powers granted them by articles 542-7 and 542-9. The power to demand the demolition lapses if it causes a disproportionate prejudice to the builders according to the specific circumstances of the case found by the court.

Article 542-12. Compensation for bad faith

If both the proprietors of the land and the builder act in bad faith, the case is resolved as if they had acted in good faith.

Article 542-13. Building with private materials

The builders of a work or building that, in good faith, use private material take them over, but must compensate their proprietors for having used them. If they act in bad faith, they must also indemnify for the damage and prejudice caused.

Article 542-14. Building on a private estate with private materials

1. The proprietors of the materials take action against the third parties who have built on a private estate with private materials for their value and, if appropriate, for the prejudice caused. Subsidiarily, they take action against the proprietors of the estate for the enrichment produced.
2. If the proprietors of the estate have had to pay their proprietors and builders for the materials, they can take action for compensation against the builders.

Subsection three

Movable disposal

Article 542-15. Concept

The accessory property attached, naturally or artificially, to the main property forming a single property indivisibly, inseparably, in a stable and lasting manner belongs, by right of disposal, to the proprietors of the main property.

Article 542-16. Union in good faith

The proprietors of the main property acquire the property of the accessor who attaches it, and are compelled to compensate the owners for its value.

Article 542-17. Action in bad faith

1. If the proprietors of the main property have acted in bad faith, the proprietors of the accessory property can acquire the main property if they pay its value or can force the proprietors of the main property to acquire the accessory property paying its value and, in this last case, with indemnification for the corresponding damage and prejudice.

2. If the proprietors of the accessory property have acted in bad faith, they have no right to compensation.
3. If both proprietors have acted in bad faith, the case is resolved as they had acted in good faith.

Article 542-18. *Voluntary union*

1. If two or more properties are united by the intention of their proprietors or of only one in good faith, or casually, and a new property or a property that is a mix of the previous ones, indivisible and inseparable in both cases, the property corresponds to their proprietors in ordinary community proportionally to the value of the united property.
2. If the proprietors of the resulting property do not want to continue in ordinary community, the property corresponds to the proprietor with the larger participation. If he or she does not want it, it devolves to the next in order of participation, and so on. The final proprietor of the whole must pay the other the differences. If none of the proprietors wants the resulting property, it must be sold and the price shared.
3. If the union occurs by the intention of a single proprietor in bad faith, the other or others can opt to acquire the property of the resulting property by paying the proportional part of the corresponding value or by indemnification for damage and prejudice resulting from the union.

Article 542-19. *Use of private materials*

1. The person who, in good faith, uses private materials, fully or partly, to make a new movable property takes it over, but must compensate its proprietors for having used them.
2. The person who uses private materials, if acting in bad faith, as well as compensating the proprietors, must indemnify them for the damage and prejudice caused.

SECTION TWO

Occupancy

Article 542-20. *Acquisition by occupancy*

The following can be acquired by occupancy:

- a) The physical property undoubtedly abandoned by their proprietors that can be appropriated by means of a material act.
- b) Animals that can be hunted and fished.

Article 542-21. *Discovery of objects of extraordinary value*

1. Objects of extraordinary value that have remained concealed and whose proprietors are unknown, belong to the proprietors of the estate where they are found.
2. Anyone discovering the concealed object by chance has the right to receive in cash a quantity equivalent to half its value.
3. The discovery of objects of cultural, historical, archaeological or artistic value and the discovery of objects by prospecting or excavation is governed by the applicable special legislation.

Article 542-22. *Finds*

1. Domestic animals and physical movable objects that, due to their characteristics, possibility of identification, state of conservation, function or economic use, are usually possessed by someone, cannot be acquired by occupancy, except if they comply with the requirements established in this article.
2. If the proprietors are unknown, the find must be notified to the Town Council of the place where they were found, which must make this public by means of an edict, must deposit the thing during the term of six months in the establishment determined, and must notify the pertinent public bodies if the characteristics of the find so requires.
3. If the proprietors appear within the term established in Section 2:
 - a) The object lost will be released to them once they have paid the expenses occasioned by the custody, conservation and handing over.
 - b) They must pay the finders in good faith 10% of the value and, if this is equal to or higher than six times the amount of the national minimum wage, 4% of the excess over same.
4. The same right as is established by Section 3.b corresponds to finders in good faith if they return the thing directly to the proprietors, except that, if appropriate, they prefer the reward that the proprietors have publicly offered.
5. If the term established in Section 2 has gone by and the proprietors have not appeared:
 - a) The object is released to the finder, who must previously pay the expenses caused by the custody, conservation and handing over.
 - b) If the value at appraisal of the thing is higher than six times the national minimum wage, it is sold at public auction at the expense of the Town Council, and the finders have a right to this quantity and, in addition, to a quarter of the excess obtained in the auction. The rest remains at

the disposal of the Town Council. If in the auction a quantity equivalent to six times the national minimum wage is not obtained, the finders have the option to take over the thing.

c) The proprietors do not take action against the finders in good faith or the successful bidder to claim the thing lost.

CHAPTER III

Abandonment

Article 543-1. *Abandonment*

The property expires by surrender of the proprietors if, in addition, they abandon the possession of the thing that is object of same.

Article 543-2. *Non-presumption of abandonment*

The intention to abandon must be express and is not presumed due to mere dispossession.

CHAPTER IV

Protection of the right of ownership

SECTION ONE

Making a claim

Article 544-1. *Revindicative action*

Revindicative action permits proprietors not in possession to obtain the restitution of the property from possessors who are not proprietors, without prejudice to the possessory protection that the laws recognise to possessors.

Article 544-2. *Effects*

1. Revindicative action involves the restitution of the property, except in cases when the laws determine it cannot be claimed.
2. The restitution of the property implies the dissolution of the situation of possession with relation to the proceeds, expenses and deterioration or loss of the property.

Article 544-3. *Lapsing*

Revindicative action does not prescribe, without prejudice to the provisions of this law as regards usucapio.

SECTION TWO

Exclusion

Subsection one

Negatory action

Article 544-4. *Legitimation*

1. Negatory action permits the proprietors of an estate to put an end to the illegitimate disturbances and emissions in its right that do not consist of the undue privation or retention of the possession, and also to demand that no future and foreseeable disturbances of the same kind occur.
2. The same real action referred to in Section 1 can be taken by the owners of limited real rights that involve possession to put an end to the disturbances that affect them.

Article 544-5. *Exclusion of action*

Negatory action is not appropriate in the following cases:

- a) If the disturbances or emissions it is intended to put an end to or future disturbances or emissions that it is claimed to prevent do not prejudice any legitimate interest of the proprietors in their property.
- b) If the proprietors must support the disturbance due to a provision of this code or due to legal businesses.

Article 544-6. *Content*

1. Negatory action is aimed at the protection of the freedom of domain of the real estate property and the re-establishment of the thing to the state prior to a legal or material disturbance.
2. In the exercise of negatory action, the corresponding indemnification for the damage and prejudice produced can be claimed. In this case, the actors do not have to prove the illegitimacy of the disturbance.

Article 544-7. *Prescription*

1. Negatory action can be exercised while the disturbance lasts, except that, as a usucapible right, the usucapio has been completed.
2. The action for claiming indemnification for damage and prejudice produced prescribes after three years, counted from when the proprietors learn of the disturbance.

Subsection two

Closing of estates

Article 544-8. *Closing of estates*

The proprietors can close their estates except for the easements that are constituted therein.

Subsection three

Demarcation and survey and marking of boundaries

Article 544-9. *Concept*

1. The proprietors can demarcate and establish boundary stones or boundaries for their estate, either totally or partially.
2. Actions of demarcation and surveying and marking of boundaries correspond both to the proprietors and to the other owners of real rights of possession.

Article 544-10. *Requirements*

The action of demarcation and surveying and marking of boundaries demands:

- a) Notification of the proprietors of the adjoining estates.
- b) Proof of the rights of property and building of the estate.

Article 544-11. *Criteria of demarcation*

1. If a different surface area from the sum of the surfaces that arise from the titles of the right of ownership occurs, the difference is distributed proportionally.
2. If there is no title that serves as proof, the demarcation must be made in accordance with the respective possessions and, in the last instance, by dividing up the surface area under dispute or in doubt in equal parts.

Article 544-12. *Expenses*

The expenses of demarcation and surveying and marking of boundaries are charged to the interested persons, except if said demarcation and surveying and marking of boundaries arises from an administrative-contentious trial, in which case it must abide by the provisions of the procedural regulations.

CHAPTER V

Restrictions to right of ownership

Article 545-1. *Restrictions*

The restrictions to right of ownership are as established by the laws, in public or private interest, or those established due to the autonomy of intention in private interest.

Article 545-2. *Restrictions in the public interest*

1. Restrictions in the public interest affect the availability or exercise of the right, constitute the ordinary limits of the right of ownership in benefit of the whole community and are governed by the regulations of this code and other laws.
2. Considered as ordinary limits of the right of ownership, among others, are the following restrictions established by legislation:
 - a) Of land and spatial planning compensation and landscape guidelines, and, in application thereof, on the plans of urban organisation.
 - b) On housing.
 - c) Agricultural and forestry.
 - d) Of protection of cultural heritage.
 - e) Of protection of natural spaces and the environment.
 - f) Of building and protection of roads and infrastructures of communication.
 - g) Of coasts and continental waters
 - h) Of encouragement of telecommunications and transport of energy.
 - i) Of use and circulation of motor vehicles, ships and airplanes.
 - j) Of protection and defence of animals.
 - k) Of national defence.

Article 545-3. *Restrictions in the private interest*

1. Restrictions in the private interest affect the availability and exercise of the right, constitute ordinary limits of the right of ownership in benefit of neighbours and are governed by the provisions of this code.
2. Restrictions that result from neighbourhood relations and the existence of situations of community have the consideration of restrictions in the private interest.

Article 545-4. *Voluntary constraints*

1. The owners of the right of ownership can voluntarily establish the constraints that they consider convenient for the exercise of the powers involved, without other limits than those established by the laws.
2. Voluntary constraints constitute limited real rights and are governed by the autonomy of intention in the terms and with the effects established in this code.

CHAPTER VI

Neighbourhood relations

SECTION ONE

Relationships of contiguity

Article 546-1. *Party wall enclosures*

1. The proprietors of adjoining patios, market gardens, gardens and plots have the right to build a party wall to serve as an enclosure or separation at the boundary and on the land of both estates to a maximum height of two metres or as established by spatial planning regulations.
2. The party wall enclosure, which is compulsory, involves the existence of a relationship of community and is governed by the regulations of Title V.

Article 546-2. *Non party wall enclosures between estates*

1. The proprietors of estates can enclose them with rows of living trees or shrubs, dry plant species, canes, nets or wire netting to a maximum height of two metres or as established by spatial planning regulations.

2. The fences referred to in Section 1 of this article must respect the regulations in force and existing easements, must be planted or secured within the own land and, if appropriate, must keep the distances with respect to the neighbouring estate established in articles 546-4 and 546-5.
3. The fences referred to in Section 1 of this article are only party walls if so agreed by the proprietors of the adjoining estates.

Article 546-3. Adjoining wall and rain partitioning

1. The proprietors of an estate can build a load-bearing wall or fence and pillars and other building structures and, throughout or through the estate, bring them close to or abut the neighbouring wall without damaging it and with the obligation to build it with the soundness appropriate to its function and respecting spatial planning regulations and existing easements.
2. The proprietors of a built estate whose exterior walls border on a lower plot or construction can, using ideal materials, build to a maximum thickness of thirty centimetres, an exterior partition, which may not be an element of support, from one end to the other of the wall over the neighbouring space. This partition must be demolished at the cost of the proprietors of the higher estate and without compensation when the neighbours erect the construction that makes this unnecessary.

Article 546-4. Distances of trees from neighbouring fences or balconies

1. No owner may keep a tree or an element of construction between estates separated by a fence that, by proximity to same, make the function to obstruct access useless.
2. The prohibition established by Section 1 affects the proprietors of gardens or patios located on the ground floor with relation to the balconies or windows of dwellings located on higher floors.
3. In accordance with sections 1 and 2, the action to demand the uprooting or pruning of a tree or the demolition of a building prescribes after ten years.
4. Fruits that fall naturally into the enclosed estate from the tree planted in the neighbouring estate belong to the proprietors of the fenced estate.

Article 546-5. Distance of plantations

1. The proprietors who plant shrubs or trees between estates used for plantations or crops must plant them at a minimum distance with respect to the boundary of one metre in the case of shrubs and two metres in the case of trees.
2. Action to demand the uprooting of the trees or shrubs planted in contravention of the provisions of Section 1 prescribes after three years of their being planted.
3. As regards forest plantations, the provisions of special legislation must be abided by.

Article 546-6. Branches and roots from neighbouring estates

The proprietors of an estate can cut the branches or roots of a tree or shrub planted in a neighbouring estate that have invaded their estate and retain their ownership, but must do so in a way generally accepted in the exercise of gardening, farming or forestry exploitation.

Article 546-7. Distances of swimming pools, excavations and wells

1. Without prejudice to the provisions of planning regulations, no one may excavate swimming pools, tanks, ramps, basements or other holes at less than sixty centimetres from the boundary of a neighbouring estate or party wall. Proprietors carrying out excavation must in all cases consolidate the land sufficiently to ensure that the neighbouring estate has technically adequate support for existing buildings or that the spatial planning regulations permit for building.
2. No one may open up a well at less than sixty centimetres from the boundary of a neighbouring estate or a party wall, without prejudice, in all cases, to the provisions of legislation on water and to the obligation to adequately consolidate land.
3. Action to prevent excavation or to adjust the distance established in Section 2 prescribes after ten years of the work ending.

Article 546-8. Margins between estates at different levels

1. It is presumed that margins, slopes and supporting walls between neighbouring estates whose land is at different heights are owned by the owners of the higher estate.
2. The proprietors of the margins or walls referred to in Section 1 must maintain them in a good state and the proprietors of the lower estate must permit access for this purpose.

Article 546-9. Passage of water

1. The proprietors of the lower estate must receive the rain water that arrives naturally from the higher estate. The proprietors of the higher estate may not establish obstacles in the water course nor alter its system to make it more burdensome.
2. If receiving water proceeding from an excavation, from the surplus of other exploitations or from artificial alterations of the natural courses, the proprietors of the lower estate may refuse to receive it and, in addition, have the right to be indemnified for damage and prejudice.
3. If the lower estate has defence works against the water, the proprietors of the higher estate must permit access to the proprietors of the lower estate to carry out the conservation works required.
4. The rain water originating from the roofs of the buildings may in no circumstances have an outlet over the neighbouring estate.

Article 546-10. *Light, view and windows*

1. No one may have view or light over the neighbouring estate nor open up any window or build any projection into one's own wall that borders that of a neighbour without leaving on one's own land a passage of a width established in spatial planning regulations, local bylaws or local custom or, if none, of at least one metre, in a straight angle, counted from the wall or the most projecting line if there is a projection.
2. Except if the title of constitution establishes otherwise, if an estate has constituted an easement of light and view in its favour, the proprietor of the subordinate estate who wishes to build must leave a passage in front of the opening, but can open up windows that receive light through said passage. If the easement is only of light, the proprietor can build within the space of the passage up to the lower edge of the opening that gives light.
3. No one may open up any window in a wall contiguous to that of a neighbour if they do not leave a minimum distance of forty centimetres between the window and the boundary of the estate. If the walls and balconies form an acute angle, the minimum distance between the balcony and the line of union of the two walls must be one metre.

Article 546-11. *Buildings in a poor state and hazardous trees*

1. If in a wall or other built element of a construction there are landslides, if there is a risk of collapse and a rational danger of prejudice to the neighbouring estate or persons passing near said construction, or if its state may affect the salubrity of the neighbouring estate, the proprietors of this estate may demand those of the estate causing the danger or damaging the

salubrity to adopt adequate measures to put an end to the situation of danger or even to demolish the built element that is causing it.

2. The same guideline established in Section 1 is applicable if the danger is caused by a dead, twisted or split tree.

SECTION TWO

State of need

Article 546-12.

State of need

1. The proprietors of the property must tolerate the interference of other persons if necessary to prevent a present, imminent and serious danger, and if the damages that could reasonably occur is disproportionately high in relation to the prejudice that the interference may cause to the proprietors.

2. The proprietors referred to in Section 1 have the right to be indemnified for damage and prejudice caused them.

SECTION THREE

Emissions

Article 546-13. *Illegal emissions*

Emissions of smoke, noise, gases, vapours, smell, heat, trembling, electromagnetic waves and light and other similar emissions produced by illegal acts of neighbours and which cause damage to the estate or the persons that inhabit it are prohibited and generate liability for the damages caused.

Article 546-14. *Legitimate emissions*

1. The proprietors of an estate must tolerate emissions coming from a neighbouring estate that are innocuous or that cause prejudice that is not substantial. In general, prejudice is considered substantial when it exceeds the limit or indicative values established by the laws or regulations.

2. The proprietors of an estate must tolerate emissions that cause substantial prejudice if they are the result of the normal use of the neighbouring estate, according to the regulations, and if putting an end to them involves an expenditure that is economically disproportionate.
3. In the case referred to in Section 2, the proprietors affected have the right to receive indemnification for damage caused in the past and economic compensation, set by common agreement or judicially, for any that may be caused in the future if these emissions excessively affect the produce of the estate or its normal use, according to local custom.
4. Depending on the kind of the emissions referred to in Section 2, the proprietors affected can demand, as well as that established in Section 3, that these are produced on the least prejudicial day and time, and may adopt the appropriate measures for attenuating the damage at the expense of the neighbouring proprietors.
5. Substantial emissions that come from administratively authorised installations give the neighbouring proprietors affected the right to request the adoption of technically possible and economically reasonable measures to prevent the damaging consequences and to request indemnification for the damage caused. If the consequences can not be prevented in this way, the proprietors have the right to economic compensation, established by common agreement or judicially, for damage that may occur in the future.
6. No proprietor is obliged to tolerate emissions directed particularly or artificially at his or her property.
7. Action for claiming indemnification for damage and prejudice or the economic compensation referred to in sections 3 and 5 prescribes after three years, counted from the time when the proprietors learn of the emissions.

TITLE V

On the situations of community

CHAPTER I

General provisions

Article 551-1. *Situations of community*

1. There is community when two persons or more jointly and concurrently share the ownership of the property or another real right over the same property or the same assets.

2. Situations of community are never presumed, except as established in an express legal provision.
3. In situations of community, undivided ordinary community is assumed if it is not proved otherwise.
4. Common expenditure can be claimed for the summary procedure, in accordance with procedural law.

Article 551-2. *Regulation*

1. Undivided ordinary community is governed by the regulations of independent judgement and supplementarily the provisions of Chapter II.
2. Community in the system of property in condominium is governed by the title of constitution, which must meet the provisions of Chapter III.
3. Timeshare community is governed by its title of constitution, which must meet the provisions of Chapter IV and supplementarily the regulations of property in condominium, depending on its specific kind.
4. Party walls are governed by the provisions of Chapter V.

CHAPTER II

Undivided ordinary community

SECTION ONE

Legal system

Article 552-1. *Concept*

1. Undivided ordinary community involves the existence of as many rights as there are co-owners. The right of each co-owner is limited by the rights of the other co-owners.
2. Each right determines the quota of participation in the use, enjoyment, performance, expenses and liabilities of the community.
3. The rights in the community and, therefore, the quotas are presumed equal except if it is proved to the contrary.

Article 552-2. *Constitution*

The community can be constituted by means of:

- a) Legal business, whether by joint acquisition of the property by more than one person or by the real right over which it devolves, whether by disposal of an undivided part with reservation of another part.
- b) Usucapio
- c) Provisions for death.
- d) Law.

SECTION TWO

Individual rights over the community

Article 552-3. Provision

1. Each co-owner may freely hold his or her right in the community, dispose of it and encumber it.
2. Each co-owner may hold the indeterminate object that will be his or hers at the future time of division. In this case, while the situation of coparceny lasts, the acquirer does is not part of the community and, therefore, may not demand the division.

Article 552-4. Rights of acquisition

1. The disposal for a financial consideration of the right of co-owners in favour of third parties outside the community, except if otherwise agreed in the title of constitution, grants to the others the right of preemption to acquire it for the same price or value and on the conditions agreed therefor.
2. The co-owners who act to make the transfer must notify the other co-owners, in an irrefutable manner, of the decision for disposal, and the circumstances of the transfer. The preemption can be exercised within the term of one month counted from the time when the notification is made. If there is no notification or if the transfer is carried out for a different price or in different circumstances from that stated, the preemption involves buyout, which can be exercised within the term of three months counted from the time when the other co-owners know of the disposal and its circumstances or from the date when the transfer was recorded in the corresponding register.
3. If more than one co-owner acts to exercise the preemption or buyout, this will occur in proportion to their respective rights in the community.

4. The right of preemption and the right of buyout can be surrendered and the title of constitution of the community may exclude them. If the community has the aim of property or another real right over real estate property, the early exclusion or surrender can only be done in a public deed.

Article 552-5. *Surrender*

1. Each co-owner may renounce his or her right in the community.
2. The surrender involves the accretion of the other co-owners in proportion to their rights, without the need of express acceptance but without prejudice to being able to surrender same.
3. The surrender does not exempt the surrenderers from compliance with obligations prior and pending by reason of the community.
4. The surrender must consist of a public deed if the community has as its object property or a real right over a real estate property or over holdings in companies.

SECTION THREE

Rights and duties over the object of the community

Article 552-6. *Use and enjoyment*

1. Each co-owner can make use of the object of the community in accordance with its social and economic purpose and without prejudicing the interests of the community nor that of the other co-owners, whose use thereof he or she may not impede.
2. The proceeds and performance correspond to the co-owners in proportion to their quota. If only one co-owner has received them, he or she must render account thereof to the others in accordance with the regulations of public administration on private property.
3. No co-owner may change the object of the community, even to improve it or make it more profitable, without the consent of the others. If a co-owner carries out works that improve said object without the others stating express opposition within a year following their execution, he or she can demand compensation with the legal interests accrued from the time when they were claimed in an irrefutable manner.

Article 552-7. *Administration and system for adoption of agreements*

1. The administration of the community corresponds to all co-owners.

2. The majority of the co-owners, according to the value of their quota, agree the acts of ordinary administration, that bind the dissident minority.
3. The acts of extraordinary administration are agreed with the majority of three quarters of the quotas. If imposed by law, these can be taken by any co-owner, even with the opposition of the others, with a right to compensation and to the legal interests accrued from the time they were claimed.
4. The dissident co-owners who consider themselves prejudiced by the agreement of the majority can turn to the legal authority that can resolve and even appoint an administrator.
5. The liability of the co-owners for the obligations resulting from their administration is jointly bound proportionally to their respective quotas.
6. Acts of disposal are agreed unanimously.

Article 552-8. *Participation in expenses*

1. Each co-owner must contribute in proportion to his or her quota to the expenses necessary for the conservation, use and performance of the object of the community, and also to the reform and improvement agreed by the majority.
2. The co-owners who have advanced expenses may demand reimbursement from the others of the corresponding part plus the legal interests accrued from the time when they are claimed in an irrefutable manner.

SECTION FOUR

Discharge

Article 552-9. *Winding up*

The community is wound up for the following reasons:

- a) Division of the common thing or asset.
- b) Meeting in a single person of all the rights.
- c) Destruction of the common thing or loss of the right.
- d) Conversion into a special community.
- e) Unanimous agreement or surrender of all co-owners.
- f) Expiry of the terms or compliance with the resolutive condition agreed.

Article 552-10. *Power to demand division*

1. Any co-owner can at any time and without expressing their reasons demand the division of the object of the community.
2. The co-owners can unanimously agree coparceny for a term that may not exceed ten years.
3. If any of the co-owners is a minor or incapacitated and the division may prejudice them, the legal authority can reasonably establish the coparceny for a term not longer than five years.
4. Division cannot be demanded when the object on which the community devolves is a warehouse or premises used as a car park or lumber rooms, so that each co-owner has the use of one or more places, except if previously agreed to change the use and this is possible.

Article 552-11. *Procedure of division*

1. If they do not agree to divide the community or to submit the division to arbitration, any of the owners can request the legal authority to make the division.
2. If the property is suitable for adopting the system of property in condominium, this system can be established by awarding the exclusive elements proportionally to the rights in the community, and compensating the surplus in cash, which in no circumstances has the consideration of surpluses from the award, distributing the works and the expenses required proportionally.
3. The division can be made by awarding to one or more co-owner the real right of usufruct over the property that is the object of the community, and awarding to another co-owner or co-owners the bare legal title.
4. The co-owner who is among the four fifths of the quotas or more can demand the award of all the property that is the object of the community, paying in cash the expert valuation of the participation of the other co-owners.
5. The object of the community, if it is indivisible or undoubtedly loses value on division, or is a collection that includes artistic, bibliographical or documentary heritage, is awarded to the co-owner who has an interest therein. If there is more than one, to whoever has the largest participation. In the event of equal interest and participation, it will be decided by chance. The successful bidder must pay the others the expert valuation of their participation, which in no circumstances can have the consideration of price or surplus from the award. If no co-owner has an interest, it is sold and its price shared out.
6. In the procedures of separation, divorce or annulment of marriage, the ordinary communities between spouses can be divided considering as one single division the whole or part of the

property subject to this system, in accordance with Article 43 of the Code of the Family. The same criterion is applied in cases of de facto separation and the rupture of unmarried couples.

Article 552-12. *Effects of the division*

1. The division attributes exclusively to each successful bidder the property of the property or right awarded.
2. The division does not prejudice third parties, who wholly preserve their rights over the object of the community or those that result after the division.
3. The owners of credits against any of the co-owners can concur to the division and, if carried out in abuse of their rights, contest but not impede it.
4. The co-owners are bound reciprocally and in proportion to their rights to compensation for eviction and hidden vices.

CHAPTER III

Legal system of property in condominium

SECTION ONE

General provisions

Subsection one

Configuration of the community

Article 553-1. *Definition*

1. The legal system of property in condominium confers on proprietors the right of exclusive property over the exclusive elements and in community with the others in common elements.
2. The legal system of property in condominium involves:
 - a) The existence, present or future, of two owners or more of the property of a unitary immovable comprising exclusive and common elements, which are linked by the quota.
 - b) The configuration of an organisation for the exercise of the rights and compliance with the duties of the proprietors.

c) The exclusion of the action of division and of the rights of preferential acquisition of a legal nature between proprietors of different apartments. This exclusion does not affect the situations of the joint heirship property of a particular apartment.

Article 553-2. *Object*

1. The object of property in condominium can be buildings, even under construction, in which exclusive elements made up of dwellings, premises or physical spaces that can have functional independence and exclusive attribution to different proprietors coexist with common elements, necessary for the proper use and enjoyment of the private, the property of which is registered inseparably.

2. A system of property in condominium can be constituted in cases of marinas in relation to mooring points, markets in relation to stalls, housing developments in relation to plots, and cemeteries in relation to graves and in other similar cases, governed by the general regulations of this chapter adapted to the specific nature of each case and by the administrative regulations applicable thereto.

Article 553-3. *Quota*

1. The quota of participation:

a) Determines and specifies the relationship of the rights over private property with the rights over common property.

b) Serves as a module for establishing the participation in the charges, profits, management and government of the community and the rights of the proprietors in the event of lapse of the system.

c) Establishes the distribution of expenses and the shareout of income, except by agreement to the contrary.

2. The quotas of participation corresponding to the exclusive elements are specified in hundredths and are allocated proportionally to their surface areas, taking into account the use and destination and other physical and legal data of the property comprising the community.

3. As well as the general quota, special quotas for particular expenses can be established.

4. The quotas are determined and modified by unanimous agreement of the proprietors or, if this is not possible, by the legal authority if the laws or bylaws do not establish otherwise.

Article 553-4. *Credits and debts*

1. All proprietors are joint owners both of the credits constituted in favour of the community and of the obligations validly contracted in its management, in accordance with the respective quotas of participation.
2. The amount of the contributions of each proprietor to the common expenditure is that resulting from the agreement of the committee and of the settlement of the debt according to the quota of participation.

Article 553-5. Real affectation

1. The exclusive elements are affected with real character and are answerable for the payment of the quantities owed by the owners, and also previous owners, by reason of common, ordinary or extraordinary expenditure, that correspond to the part of the year gone by when they are transferred and of the immediately previous natural year, without prejudice to the liability of the person who transfer.
2. In the deed of transfer of an exclusive element for a financial consideration, the transferors must declare that they are up to date with their corresponding payments or, if appropriate, must deposit any pending, and must contribute a certificate on the state of their debts with the community, issued by the person acting as secretary, which must also state the ordinary expenses approved but pending shareout. Without this demonstration and this contribution the deed cannot be awarded, except if the acquirers expressly renounce them.
3. The president does not have to approve the certificate referred to in Section 2 if a professional who handles the administration of the estate exercises as secretary of the community.

Article 553-6. Reserve funds

1. A quantity of not less than 5% of the common expenditure budgeted for use for the constitution of a reserve fund must figure in the budget of the community.
2. Ownership of the reserve fund corresponds to all proprietors, but is charged to the community.
3. The reserve fund is deposited in a special bank account. The administrators can only dispose of it, with authorisation from the president, to meet expenses envisaged for urgent repair or, with authorisation of the committee, for contracting insurance.
4. The remainder of the reserve fund of one year is included in that of the following year, so that the contributions the proprietors have to make are reduced to those required to reach 5% of

the budgeted common expenditure, except if bylaws provide that the remainder increases the amount of the funds or the committee so agrees.

Subsection two

Constitution of the community

Article 553-7. Establishment of the system

1. A building is subject to the system of property in condominium since the award of the title of constitution, even if not completed.
2. The title of constitution must be recorded in the Property Register in conformance with the provisions of mortgage legislation and with the purposes established thereby.

Article 553-8. Legitimation

1. The title of constitution of the community is awarded by the proprietors of the real estate.
2. The developers of the real estate cannot make use of the power conceded by Article 552-11.4 if they have started the sale of the exclusive elements in a private document without having awarded title of constitution. In this case, any acquirer can demand the immediate execution of the title in accordance with the architectural project that obtained the works permit.
3. It is understood that the owners of the exclusive elements ratify the title at the moment when the deed of transfer is granted if the grantor of the title has been the sole proprietor of the real estate and has disposed of the exclusive elements in a private document and if the said title and the regulations of the community are sufficiently described in said deed.

Article 553-9. Deed of constitution and recording in the Property Register

1. The title of constitution of the system of property in condominium must be stated in a public deed, which must contain, at least, the following circumstances:
 - a) The description of the building as a whole, which must indicate if it is finished or not, and its common elements, installations and services.
 - b) The descriptive list of all exclusive elements, with their internal numeration in the building, the general quota of participation and, if appropriate, the special ones that correspond to them, and also the useful surface area, boundaries, floor or floors where they are situated, the use and, if appropriate, any annexed or linked physical spaces or rights.
2. As well as what is established in Section 1, the title of constitution may contain:

- a) The bylaws.
 - b) The reserves established in favour of the developer or constituents of the system.
 - c) The prevision, if appropriate, for the future formation of subcommunities.
 - d) A descriptive plan of the building.
3. In anything not envisaged by the title of constitution the regulations of this chapter are applicable.
 4. To be awarded the title, in the deed of constitution itself or in another previous deed, the new work of the building must be declared in accordance with the provisions of mortgage legislation and the applicable regulations on habitability and construction.
 5. The deed of constitution is recorded in the Property Register in accordance with mortgage legislation, by means of a general registration for the whole and as many registrations as there are exclusive estates.

Article 553-10. Modification of the title of constitution

1. To modify the title of constitution, it is essential to have the consent of the committee of proprietors and for the deed to comply with the same requirements observed for awarding the title of constitution.
2. The consent of the committee of proprietors is not required for the modification of the title of constitution if the reasons are the following:
 - a) The raising or lowering of new floors, if this is agreed when constituting the system or the right.
 - b) The groups, aggregations, segregations and divisions of the exclusive elements or the dissociation of annexes, if the bylaws so establish.
 - c) The alterations of use of the exclusive elements, except if the bylaws so prohibit.
3. The execution of the operations of modification, even of the sum or redistribution of the quotas affected, corresponds to the owners of the rights or proprietors of the exclusive elements involved, even if this implies a new description of the building.
4. Considered null are the stipulations established by the developer or the sole proprietor of the real estate that imply a reservation of the unilateral power of modification of the title of constitution, or that allow them to decide on future matters that are within the competence of the committee of proprietors.

Article 553-11. Bylaws

1. The bylaws regulate aspects referring to the real legal system of the community, and may contain rules on the following issues, among others:
 - a) The destination, use and exploitation of the exclusive and common property.
 - b) The limitations of use and other charges of the exclusive elements.
 - c) The exercise of rights and compliance with obligations.
 - d) The allocation of expenses and income and the distribution of charges and profits.
 - e) The additional organs of government to those established in this code and their competences.
 - f) The form of management and administration.
2. The following statutory clauses, among others, are valid:
 - a) Those that allow the operations of grouping, aggregation, segregation and division of exclusive elements and those of dissociation of annexes with creation of new entities without the consent of the committee of proprietors. In this case, the quotas of participation of the resulting estates are set by the sum or distribution of the quotas of the exclusive elements affected.
 - b) Those that exonerate certain exclusive elements from the obligation to pay the expenses of conservation and maintenance of the doorway, stairs, lift, gardens, recreational areas and other similar spaces.
 - c) Those that establish the exclusive use and, if appropriate, the closing of a part of the plot, or of the roofs or of any other common element or particular part thereof in favour of any exclusive element.
 - d) Those that allow the use or enjoyment of part of the façade by means of the placing advertising posters in the premises on the ground floor.
 - e) Those that restrict the activities that can be carried out in the exclusive elements.
3. The regulations of the bylaws can be opposed by third parties from the time they are recorded in the Property Register.

Article 553-12. Regulation of the interior system

1. The regulation of the interior system, which may not oppose the bylaws, contains the internal rules referring to the relationships of coexistence and good neighbourhood between the proprietors and the use of the elements in common use and the installations.
2. The regulation always governs the proprietors and users of the exclusive elements.

Article 553-13. Reservation of the right of raising, lowering and construction

1. The constitution or the express reservation of the right to raise, lower or build on the building plot itself in favour of the developers or third parties is valid if so established in the title of constitution.
2. The owners of the reserved right are empowered to build at their expense in accordance with the title of constitution, to take over the exclusive elements resulting therefrom, and can award, themselves and at their expense, the successive declarations of new works. The successive exercise of the right with the building of floors involves the redistribution of the quotas of participation made by the owners of the reserved rights in accordance with this code and with the title of constitution, without the need for the consent of the committee of proprietors.
3. The reservation referred to in Section 1 is only valid if shown in a separate and specific clause in accordance with Article 567-2.

Article 553-14. *Discharge of the system*

1. The system of property in condominium is discharged voluntarily by unanimous agreement for conversion into ordinary community, and compulsorily in the circumstances of the destruction of the building, declaration of ruin and compulsory expropriation.
2. The agreement for conversion requires the consent of the owners of real rights that devolve on the exclusive elements that are affected or, if they cannot give it or do not give it without a reason, that of the legal authority.
3. In the title of constitution it can be stipulated that, in the circumstances of destruction and declaration of ruin, the system is not discharged and the building must be restored or rebuilt at the expense of the proprietors, who must contribute to the expenses according to their general quota.

Subsection three

Organs of the community

Article 553-15. *Organs of government*

1. The organs of government of the community are the presidency, the secretariat, the administration and the committee of proprietors. The first three, which are unipersonal, can devolve on the same person if this is established in the bylaws or the committee so agrees.
2. The posts, which are re-electable, last for one year and will be understood as extended until the ordinary meeting following the expiry of the term for which they were designated.

3. Exercise of the posts is compulsory and free, although the committee of proprietors can consider the plea of well-founded reasons for being excused and that the persons who hold these have the right to compensation for the expenses that their exercise occasions.
4. If there are no candidates, the designation is decided by a rotating turn or by a draw between the persons who have not held the post.
5. The secretariat and administration of the community may devolve on a single person external to the community with the proper professional qualification. In this case, the exercise of the post is remunerated. When the persons who hold the posts have been designated by the developers of the building, they hold them until the first meeting of the committee of proprietors.
6. The bylaws can envisage the creation of organs in addition to the organs established in Section 1.

Article 553-16. *Presidency*

1. The committee of proprietors must designate the president from among the proprietors of exclusive elements.
2. The presidency has the following functions:
 - a) Calls and chairs the meetings of the committee of proprietors.
 - b) Represents the community judicially and extra-judicially.
 - c) Makes public the agreements, if appropriate.
 - d) Ensures the good conservation and functioning of the common elements and services.
 - e) Ensures that the proprietors and owners of the secretariat and administration comply with their duties.

Article 553-17. *Secretariat*

The committee of proprietors designates a secretary, who draws up the minutes of the meetings, makes notifications, issues certifications and keeps the documentation of the community, particularly the notices of a meeting, communications, powers and other important documents of the meetings for two years. The minutes book is governed by Article 553-28.

Article 553-18. *Administration*

1. The committee of proprietors designates an administrator, who manages the ordinary interests of the community and has, at least, the following functions:

- a) Takes the appropriate measures and carries out the actions necessary to preserve the property and correct functioning of the community services.
 - b) Ensures that the proprietors comply with the obligations and issues them with the appropriate notices.
 - c) Prepares the annual accounts of the preceding year and the budget.
 - d) Executes the agreements of the committee and makes or receives the appropriate payments.
 - e) Decides on execution of works of conservation and repair of an urgent nature, for which they must account immediately to the presidency.
 - f) With the authorisation of the presidency, pay the expenses of an urgent nature that may be charged to the reserve funds.
2. The administrators are responsible for their action to the committee.

Article 553-19. *Committee of proprietors*

1. The committee of proprietors, consisting of all the proprietors of exclusive elements, is the highest organ of the community.
2. The committee of proprietors has the competences not expressly attributed to other organs and, at least, the following:
 - a) The appointment and removal of the persons who must occupy or occupy the posts of the community.
 - b) Modification of the title of constitution.
 - c) Approval of the bylaws and regulations of the internal system and their reform.
 - d) Approval of the budget and the annual accounts.
 - e) Approval of carrying out repairs of an ordinary nature not budgeted, and of an extraordinary nature and for improvement, of their amount and of the imposition of contributions or portions for its funding.
 - f) Establishment or modification of the general criteria for setting quotas.
 - g) Voluntary discharge of the system of special community.

Article 553-20. *Meetings*

1. The committee of proprietors must meet once a year to approve the accounts and the budget.
2. The committee of proprietors may meet when the president considers it necessary. If the proprietors request the president to call a meeting and he or she does not do so, the committee of

proprietors can meet whenever requested, indicating the points that must be included in the agenda, by a quarter of the proprietors, who must represent a quarter of the quotas.

3. The bylaws can establish calling special meetings to deal with issues that affect only certain proprietors or, if appropriate, the subcommunities.

4. The committee of proprietors can meet without notice of a meeting if all proprietors concur and agree unanimously to hold the meeting and on its agenda, which must be approved before the meeting starts.

Article 553-21. Notices of a meeting

1. The presidency calls the meetings of the committee of proprietors. In the case of inactivity or a negative response, the vice president, if any, or the secretariat or, in the event of their absence, negation or inactivity, those who move the meeting may call it.

2. The notices of a meeting, summons and notifications must be sent to the domicile designated by each proprietor or, if not so designated, to the exclusive element of which he or she is owner with a minimum advance notice of eight natural days. In addition, the notice of a meeting must be pinned to the notice board of the community or placed in a visible place provided for the purpose. This announcement must show the date of the meeting and must be signed by the secretary of the community, with the approval of the president. This announcement has full legal effect three natural days after its having been made public if the notification cannot be made personally.

3. In the case of extraordinary meetings to deal with urgent matters, the proprietors need only be told of the notices of a meeting, summons and notifications before the date when the meeting must be held.

4. The notice of the meeting of the committee of proprietors must express clearly and in detail:

a) The agenda. If the meeting is called at the request of developer proprietors, the points they propose must be given.

b) The day, place and time of the meeting, at the first and second calling, between which there must be an interval of at least thirty minutes.

c) The place where the meeting is held, which must be in a municipality of the county where the real estate is located.

d) The warning that the votes of proprietors not attending the meeting are counted as favourable, without prejudice to their right of opposition

e) The list of proprietors with debts pending with the community and the warning that they have speaking but not voting rights.

5. The documentation relating to the matters to be dealt with can be sent to the proprietors or the administrators may hold them at their disposal from the time when the notice of a meeting is made, which must be recorded.

Article 553-22. Attendance

1. The proprietors attend the meeting personally or by legal, organic or voluntary representation, which must be accredited in writing.

2. In the event of an ordinary community, a single co-owner will be nominated to attend the meeting of proprietors.

3. If there is a real right of enjoyment or use constituted on an exclusive element, the right to attendance corresponds to the proprietors.

4. If there is a usufruct, the rights of attendance and vote correspond to the bare proprietors, who are understood to be represented by the usufructuaries if there is no manifestation against this of the bare proprietors. The delegation must be expressed if agreements on extraordinary or improvement works have to be adopted.

Article 553-23. Constitution

1. The committee is validly constituted at the first calling if at least half the proprietors concur, who must represent half the quotas of participation, and at the second calling whatever the number concurring and the quotas of which they are owners.

2. If not attended by the president or vice president, the committee designates the owner who must take the chair.

3. If the secretary does not attend, the committee designates a temporary secretary.

Article 553-24. Right to vote

1. The proprietors who do not have debts pending with the community have the right to vote at the meeting. The proprietors who have debts pending with the community have the right to vote if they accredit that they have judicially contested the accounts and that they have paid the amount judicially or by notary.

2. The right to vote is exercised as follows:

a) Personally or by representation.

b) By delegation to the president or any other proprietor, by means of a notice that records the designation of the person delegated.

3. The notices of delegation, which must refer to a specific meeting of the committee of proprietors, must be received before the start of the meeting.

Article 553-25. *Agreements*

1. Agreements may only be adopted on the matters included in the agenda. Notwithstanding this, even if these are not shown on the agenda, the committee of proprietors may agree the dismissal of the president, administrator or secretary and take actions against them, and also the appointment of persons to hold these posts.

2. The favourable vote of four fifths of the proprietors, who must represent four fifths of the quotas of participation, is required to adopt agreements to modify the title of constitution and the bylaws, except if the title establishes otherwise.

3. The favourable vote of four fifths of the proprietors, who must represent four fifths of the quotas of participation, is sufficient to adopt agreements relating to physical innovations in the building if they affect the structure or the exterior configuration and the construction of swimming pools and recreational installations.

4. Agreements that decrease the powers of use and enjoyment of any proprietor require their express consent.

5. The favourable vote of the majority of proprietors, who must represent the majority of the quotas of participation, at first notice, or the majority of the quotas of those present and represented, at the second notice, is sufficient to adopt agreements that refer to:

a) Execution of work or establishment of services that have the purpose of suppressing architectural barriers or the installation of lifts.

b) Innovations essential for the viability or security of the real estate, depending on their kind and characteristics.

c) Execution of work necessary to install common infrastructures, to connect broad-band telecommunications services or to individualise the metering of consumption the water, gas or electricity.

d) The regulations for regulating the interior system.

e) The agreements not referred to in sections 2 and 3.

6. If the agreements referred to in letters *a* and *b* of Section 5 do not reach the majority necessary, proprietors with physical disability or persons who live with them can ask the legal

authority to compel the community to suppress architectural barriers or make the essential innovations to make the real estate passable.

Article 553-26. *Counting of votes*

1. To calculate the majorities, the votes of the proprietors present, of representatives and of those delegating their vote are counted. Not counted are the votes of proprietors in debt with the community, who do not have the right to vote.
2. Counted as favourable are the votes that correspond to proprietors who, after proper notice of a meeting, do not attend the meeting, if they do not oppose the agreement afterwards.
3. The proprietors who have not attended the meeting can oppose the agreements adopted within the term of one month counted from the time when these have been notified. The written notice of opposition must be sent to the secretary in any irrefutable manner.

Article 553-27. *Minutes*

1. Once all points of the agenda have been dealt with, the secretary must draw up and read the agreements adopted and, if approved, must draw up the minutes and transcribe them in the minute book. The minutes must be authorised with the signatures of the secretary and the president within the term of five days counted from the day after the meeting.
2. The minutes must be notified to all proprietors within the term of ten days counted from the day after the meeting of the committee of proprietors in the same way as the meeting notification and at the same domicile.
3. The minutes of the meeting must be drawn up at least in Catalan and must contain the following data:
 - a) The date and place of holding the meeting, its ordinary or extraordinary nature, the name of the person making the notice of the meeting, and whether it was held at the first or second calling.
 - b) The agenda.
 - c) The indication of the persons who have acted as president and secretary.
 - d) The list of the persons who attended in person or by representation and the indication of the total quota of presence.
 - e) The agreements adopted, with the indication of the result of the vote, if appropriate, and, if any of those present so request, the indication of who voted in favour or against.

4. The president, on his or her own initiative or on written application presented at least five days before the date of the meeting by a quarter of the proprietors or less if they represent a quarter or more of the quotas, may require a notary to take minutes of the meeting, which does not need approval. In this case, there must be a clear note in the minute book referring to the date of holding the meeting and the name and residence of the notary attending.

Article 553-28. *Minute book*

1. The agreements of the committee of proprietors must be transcribed into a minute book that must be legalised, at least in Catalan, or in Aranese in the Vall d'Aran, by the property registrar who corresponds to the district where the real estate is located.
2. The secretaries must keep the minutes books of the committee of proprietors, which must be preserved for thirty years while the real estate exists. Similarly, the notices of a meeting, communications, powers and other important documents of the meetings must be preserved for ten years.

Article 553-29. *Execution*

The agreements adopted validly by the committee of proprietors are executed immediately after the minutes have been notified to the proprietors.

Article 553-30. *Binding nature of agreements*

1. The agreements compel and bind all proprietors, even those in disagreement, without prejudice to the provisions of Section 2.
2. If the total value of the expenditure agreed is higher than a quarter of the annual budget of the community, the agreements relating to new installations or common services do not compel nor bind the proprietors in disagreement.
3. The agreements relating to the suppression of architectural barriers or the installation of lifts and those that must guarantee the adequate accessibility, habitability, use and conservation and safety of the building are governed by the provisions of Section 1.
4. The proprietors in disagreement who cannot have the use or enjoyment of the improvement may come to enjoy it if they pay the amount of the expenses of execution and maintenance with the corresponding updating, applying the general consumer price index.

Article 553-31. *Contest*

1. The agreements can be contested judicially in the following cases:
 - a) If they are contrary to the law, to the title of constitution or to the bylaws or if, given the circumstances, they imply an abuse of law.
 - b) If they are against the interests of the community or are seriously prejudicial to a proprietor.
2. Proprietors who have voted against the agreement, those who were absent and who have not given support to the agreement, and those who have been illegitimately deprived of the right to vote, are legitimised to contest. If the agreement is against the law, every proprietor can contest it.
3. The action of contesting must be exercised within the term of two months counted from the notification of the agreement or within the term of one year if it is against the title of constitution or the bylaws.

Article 553-32. *Suspension*

1. The contest does not suspend the executability of the agreement.
2. The legal authority can adopt the precautionary measures it considers convenient, even provisionally decreeing the suspension of the agreement contested, if it understands that it is manifestly illegal or when its reparation would involve damage due to a disproportionate economic cost.

SECTION TWO

Simple property in condominium

Article 553-33. *Exclusive elements*

The only elements of a building that can be configured as exclusive are the dwellings, premises and physical spaces which can be the object of separate property and which have functional independence because they have their own access to a public way, whether directly or through a common element whose enjoyment is not restricted.

Article 553-34. *Exclusive elements of common benefit*

1. The title of constitution or the committee of proprietors can establish that one or more exclusive elements be earmarked for the common benefit, whether for direct services lent to the proprietors or for the economic benefit that granting its use brings. The owners of the other

exclusive elements are owners of the exclusive elements of common benefit in proportion to their quota, and inseparably from the property of their specific exclusive elements.

2. The administration of an exclusive element of common benefit is governed by the general regulations. The disposal or encumbrance of said elements requires the unanimous agreement of the committee of proprietors.

Article 553-35. *Annexes*

1. The annexes are determined in the title of constitution as physical spaces linked inseparably to an exclusive element, do not have a special quota and are for all purposes held in exclusive ownership.

2. Isolated granting is only allowed of the use of annexes that consist of parking spaces, boxes or lumber rooms, although the bylaws can limit this granting. This limitation does not affect the persons who cohabit with the owners of the use of the main exclusive element.

Article 553-36. *Use and enjoyment of the exclusive elements*

1. The proprietors of an exclusive element can carry out works of conservation and reform on same provided that they do not prejudice the other proprietors nor the community, and do not diminish the soundness of the building nor alter the composition or exterior aspect of the whole.

2. The proprietors who propose to carry out works in their exclusive element must communicate this previously to the president or, if appropriate, to the administrators of the community. If the works involve the alteration of common elements, this must be approved in accordance with the majority as established in Article 553-25.

3. The community can demand the restitution to their original state of common elements altered without its consent. Notwithstanding this, it is understood that the community has given consent if the existence of works that do not diminish the soundness of the building nor involve the occupancy of common elements, is well-known, and the community has not shown its opposition within the term of six years since they finished.

Article 553-37. *Disposal of exclusive elements*

1. The proprietors of exclusive elements can exercise all the powers of the right of ownership without any other limitation than that arising from the system of property in condominium. As a result, they can modify, dispose of and encumber them and carry out all kinds of acts of ordinary

and extraordinary disposal. If easements are established to the benefit of other estates, these easements expire in the event of the building being destroyed or demolished.

2. In cases of renting or any other transfer of the enjoyment of the exclusive element, the proprietors are answerable to the community and third parties for obligations arising from the system of property in condominium.

3. The person who acquires an exclusive element must communicate the change of property to the secretariat of the community and designate a domicile for communications.

Article 553-38. Obligations of conservation and maintenance of the exclusive elements

1. The proprietors of exclusive elements must preserve them and keep their interior in a good state, and maintain the services and installations located therein.

2. Ordinary and extraordinary expenses of conservation and maintenance of the common elements of restricted use are chargeable to the proprietors of the exclusive elements who enjoy them. Repairs that are due to structural defects or defects of construction, original or unforeseen, or to repairs that affect and benefit the whole building, are communal except if they are the result of improper use.

3. The community must carry out the necessary works for the integral conservation of the real estate and its services, so that it complies with the structural, habitability, accessibility, waterproofing and safety conditions necessary.

Article 553-39. Legal limitations and easements

1. For the benefit of others and of the community, the exclusive elements are subject to the limitations essential for carrying out the works of conservation and maintenance of the common elements and the other exclusive elements when there is no other way to do so, or the other way is disproportionately expensive or burdensome.

2. The community can demand the constitution of permanent easements over the elements of exclusive use other than strictly the dwelling, if these are indispensable for the execution of the agreements for improvement adopted by the committee or for access to common elements that have no other access.

3. The proprietors of exclusive elements can demand the constitution of the easements, permanent or temporary, that are absolutely essential to carry out works of conservation and supply of their exclusive element.

4. The owners of the easements must compensate the damage caused to the private or common elements affected and, if appropriate, the detriment produced.

Article 553-40. Limitations of use of exclusive elements

1. The proprietors and occupants of the exclusive elements may not carry out activities there that are contrary to normal coexistence in the community or that damage or endanger the building. Nor may they carry out activities that the bylaws or spatial planning regulations of the sector where the building is located expressly exclude or prohibit.

2. If the activities referred to in Section 1 are carried out, the president on his or her own initiative or at the request of a quarter of the proprietors must demand in an irrefutable manner of those so acting that they cease to act. If the person demanded persists in his or her activity, the committee may lodge action for cessation against the proprietors and occupants of the common element, which must be processed in accordance with the regulations of ordinary proceedings. Once the lawsuit, which must be accompanied by the demand and the certification of the agreement of the committee of proprietors, has been presented, the legal authority must adopt the precautionary measures that they consider convenient, among them the immediate cessation of the forbidden activity.

3. The community has the right to indemnification for prejudice caused and, if the prohibited activities continue, to judicially urge privation of the use and enjoyment of the exclusive element for a period that may not exceed two years and, if appropriate, the discharge of the rental contract or of any other that attributes a right over the exclusive element to the occupants.

Article 553-41. Common elements

Common elements are the plot, gardens, swimming pool, structures, façades, roofs, halls, stairs and lifts, aerials and, in general, the installations and services located outside the exclusive elements that are assigned for community use or to facilitate the use and enjoyment of said exclusive elements.

Article 553-42. Exploitation of common elements

1. The use and enjoyment of common elements corresponds to all proprietors of exclusive elements, and must be adequate for the destination established in the bylaws, or which are normal and appropriate to their nature, without prejudicing the interests of the community.

2. The title of constitution or the unanimous agreement of the committee of proprietors may link the exclusive use of patios, gardens, terraces, roofs of the building or other common elements to one or several exclusive elements. The exclusive and inseparable allocation to exclusive elements of the use and enjoyment of part of the common elements does not make them lose this nature.

3. The proprietors of the exclusive elements who have the exclusive use and enjoyment of the common elements, in the case referred to in Section 2, assume the ordinary expenses of their conservation and maintenance, and must adequately preserve and keep them in a good state. The structural, refurbishment and other extraordinary expenses are common.

Article 553-43. Disposal of common elements

1. The committee of proprietors can unassign common elements by unanimous agreement to link their exclusive use to exclusive elements, or to confer them with the nature of exclusive element, which has the consideration of exclusive element in common benefit.

2. The agreement referred to in Section 1 must determine the quota of participation of the exclusive element created and the redistribution of the quotas of the others.

Article 553-44. Maintenance of common elements

1. The community must preserve the common elements of the real estate and keep the services and installations in correct working order. The proprietors must assume the necessary works of conservation and repair.

2. The proprietors in disagreement are only exonerated from contributing to the expenses that a new service or installation involves if they have judicially contested the agreement of the committee and have obtained a favourable sentence, and also in the circumstances of Article 553-30.

3. All proprietors must necessarily defray the expenses involved in the suppression of architectural barriers and the establishment of the lift service, in accordance with the housing regulations, and of the services essential for the passability and safety of the building. The proprietors can demand to pay by monthly instalments for a year.

Article 553-45. Common expenditure

1. The proprietors must defray the common expenditure in proportion to their quota of participation, in accordance with the special conditions established in the title of constitution and the bylaws.
2. The lack of use and enjoyment of specific common elements does not exempt from the obligation to defray the expenses that arise from their maintenance, except if a provision of the bylaws, which can only refer to services or elements specifically specified, establishes to the contrary.
3. The contribution to the payment of certain expenses on which the bylaws establish special quotas of participation, among which are included the different stairs, swimming pool and gardened zones, must be made in accordance with the specific quota.
4. The title of constitution can establish an increase of the participation in common expenditure that corresponds to a specific exclusive element in the case of disproportionate proven use or enjoyment of common elements or services as a result of the exercise of business or professional activities in the flat or premises. This increase can also be agreed by the committee of proprietors by a majority of four fifths of proprietors and quotas. In neither of the two cases may the increase be higher than double what would be due by quota.

Article 553-46. Liability of the community

1. The community of proprietors is answerable for debts that it contracts with its funds and credits and with the exclusive elements of common benefit.
2. The exclusive elements of common benefit can only be confiscated by issuing an order to the proprietors and suing them in person.
3. Exclusive elements can only be confiscated for debts of the community if payment is ordered of all proprietors of the real estate and they are sued in person.

Article 553-47. Prohibited activities

The proprietors and occupants of flats or premises cannot carry out, in the exclusive element or in the rest of the real estate, activities that the bylaws prohibit, that are prejudicial for the estates or that go against the general provisions on activities that annoy, are insalubrious, harmful, hazardous or illicit.

SECTION THREE

Complex property in condominium

Article 553-48. *Configuration*

1. The situation of complex community in condominium permits the coexistence of subcommunities integrated within a building or a real estate complex formed by different stairways or doorways or by a plurality of independent and separate buildings that are interconnected and share garden and recreation areas, swimming pools or other similar common elements.
2. Each stairway, doorway or building, in the system of complex property in condominium, constitutes a subcommunity that is governed by the regulations of Section 1.
3. One or several premises used as parking spaces or storage rooms and other exclusive elements of one building or of more than one when interconnected, provided with unity and functional or economic independence, can be configured as subcommunities.

Article 553-49. *Quotas*

The particular quota of participation must be allocated to each of the exclusive elements that make up the subcommunity, independently of the general quota in the property in condominium as a whole.

Article 553-50. *Constitution*

1. Complex property in condominium can be constituted initially in a single community with subcommunities, if appropriate, or by the association of different preexisting communities.
2. The single proprietors of the diverse buildings or the presidents of the respective communities of proprietors authorised by an agreement of the respective meetings can award the title of constitution of the complex property in condominium in the event of association of different preexisting communities. In this case, the title, which must be recorded by public deed and must be recorded in the Property Register, must describe the complex real estate as a whole, the elements, roads, garden and recreation areas and common services and the quota of participation that corresponds to each community. The amount of the expenses for conservation, maintenance and repair of the common elements must be passed on to the different communities in accordance with their quota, and these must pass it on to the proprietors of the exclusive elements in accordance with their corresponding quota in each community.

Article 553-51. *Regulation and agreements*

1. Each subcommunity can have their specific organs and adopt the agreements that concern them irrespective of those of other subcommunities, if possible in accordance with the title of constitution, the existence of exclusive common elements of a community, and the physical reality of the whole.
2. If the complexity of the whole real estate and its common elements, services and installations, the number of exclusive elements or other circumstances so advise, the bylaws can regulate a committee of presidents of a stairway or building, which must act collectively for the ordinary administration of the elements common to the whole and must be governed by the regulations of the committee of proprietors adapted to the specific nature of the case.

Article 553-52. Communities and subcommunities for garages and lumber rooms

1. Except for statutory prevision to the contrary, the community of garage or lumber rooms functions independently from the general community as regards matters of their exclusive interest in the following cases:
 - a) If it is configured as a system of community as an exclusive element of a system of property in condominium and the acquisition of an undivided quota attributes the exclusive use of parking spaces or lumber rooms and the use of access and exit ramps, stairs and areas of manoeuvre. In this case, the owners of the premises cannot exercise the action of division of the community nor enjoy rights of preferential acquisition.
 - b) If the different parking spaces or lumber rooms of a premises in real estate under the system of property in condominium are constituted as exclusive elements. Each space is allocated both its corresponding ordering and quota number corresponding to the condominium division, and also a number or letter for its specific identification. In this case, the ramps, stairs and access, manoeuvre and exit ways for vehicles are considered common elements of the garage or lumber room.
2. There is no special subcommunity for garage or lumber room premises in the following cases:
 - a) If the different parking spaces or lumber rooms are configured as inseparable annexes of the exclusive elements of the community. In this case, Article 553-35 applies.
 - b) If the premises used as a garage or lumber room is configured as a common element of the condominium division. In this case, the specific use of the parking spaces or lumber rooms cannot be granted to third parties irrespective of the use of the respective exclusive element.

3. A special subcommunity must be constituted for premises used as a garage or lumber room if several buildings subject to systems of property in condominium share their use. In this case, the premises also forms part of each property in condominium in the corresponding single building. If any specific statutory regulations do not establish to the contrary, the owners of the parking places have the right to use all the access, distribution, manoeuvre and exit areas for vehicles located in the premises independently of the specific building in the vertical or façade of which they are located.

SECTION FOUR

Property in condominium by plots

Article 553-53. Concept and configuration

1. Property in condominium can be established, by plots, over a group of physically independent neighbouring estates that have the consideration of plot, built on or not, form part of a housing development, and participate inseparably in some elements in common property, among which are other estates or common services, and also in limitations on their enjoyment in favour of all or some of the other estates in the complex.
2. The system of property in condominium by plots affects with a real nature the estates or private plots and is governed by the specific regulations of this section and supplementarily by this chapter, in accordance with their specific nature and with the provisions of the applicable spatial planning regulations.

Article 553-54. Estates in exclusive ownership

1. The exclusive estates and, if appropriate, their inseparable annexes, belong exclusively to their owners in the property system that is applicable thereto.
2. The acts of disposal and encumbrance and confiscation of the exclusive estates are inseparably extended to their corresponding participation in the common elements.
3. The disposal of an exclusive estate does not, in itself, give any right to preferential acquisition of a legal nature.

Article 553-55. Elements of common property

1. Common elements are the estates, the immovable elements and the services and installations destined for the common use and enjoyment mentioned in the title of constitution, included

among which are the garden and recreation areas, sporting installations, social premises, surveillance services and, if appropriate, other similar elements.

2. The common elements are inseparable from the exclusive estates, to which they are linked by means of the quota of participation, expressed in hundredths, that corresponds to each estate in the complex.

Article 553-56. *Limitations*

The limitations to the exercise of the rights of property over exclusive estates imposed by the title of constitution or the bylaws, spatial planning or laws have the consideration of common elements.

Article 553-57. *Title of constitution*

1. The title of constitution of the system of property in condominium must be stated in a public deed, that must contain, at least:

a) The description of the complex in general, which must include the name and location, size, administrative approval of the spatial planning process of which it forms part, the essential data of the licence or agreement of division of land into plots, the number of plots and the reference and description of the common estates and installations.

b) The relationship of spatial planning works and installations of the complex and the system envisaged to preserve and carry out their maintenance, also the information on the provision of non-planning services and other circumstances that result from the plan of urban organisation.

c) The descriptive list of all plots and other exclusive elements, which must include the ordering number; the general quota of participation and, if appropriate, any corresponding special quotas; the surface area; limits and, if appropriate, physical spaces or rights that constitute their annexes or that are linked thereto.

d) The general or specific rules on the destination and edificability of the estates and information on whether or not they are divisible.

e) The bylaws, if any.

f) The list of land reserved for urban organisation systems and those declared as of public use and public, if any, in the event of the development coinciding territorially with a spatial planning process.

g) A descriptive plan of the whole, in which the private estates and common elements must be identified.

2. The spatial planning determinations contained in the title of constitution have merely an informative purpose.

3. It is not necessary to describe all the plots if the exclusive housing development system is established by the agreement of all or part of the proprietors of the plots, built on or not, located in a consolidated spatial planning unit which are already recorded in the Property Register as independent estates, but at least their corresponding number in the housing development, the registry identification, the cadastral reference and the names of the proprietors must be given.

Article 553-58. Registration

1. The deed of constitution of the system of property in condominium by plots is recorded in the Property Register in accordance with mortgage legislation. A general registration must be made for the complex and a registration for each exclusive estate and, if appropriate, for the estates destined for the common use and enjoyment or services, for each of which a special separate sheet must be started.

2. Registration must be carried out on the sheet of the estate in which it located. If the development devolves wholly or partly over several estates, the registry operations necessary must be made to form a single unit. If the estates belong to several proprietors, an undivided ordinary community can be established over the grouped community, which can be maintained in the exclusive estates, or each owner can be directly awarded their corresponding exclusive estates. In this case, it is considered, to all purposes, that no community has ever existed.

3. The registration of the system of the development must be made in favour of the person or persons who do so on the estate or the estates in their ownership and must contain, as well as the data required by mortgage legislation, that established in Article 553-57 as a minimum content of the deed and the reference to the file of the plan. In all cases, marginal notes of reference must be made referring to the registrations of the exclusive estates.

4. As well as the data required by the mortgage legislation, the inscriptions of the exclusive estates must contain the following:

- a) Their plot number, location, surface area, borders and, if appropriate, annexes.
- b) The quota or quotas of participation.
- c) The special system or limitations that may particularly affect them.
- d) The reference to the general registration.

5. The estates destined for common use and enjoyment or services are recorded in favour of the present and future owners of the different exclusive estates, without mentioning them explicitly nor stating the corresponding quotas.

6. In the event of unforeseeable establishment of property in condominium by plots, a separate and independent sheet must be opened for the housing development as a whole, which must state the circumstances established by this article and must make reference by a marginal note to each inscription of estates that become exclusive, in which the corresponding quota must be stated.

Article 553-59. *Voluntary discharge*

1. The voluntary discharge of the property in condominium by plots occurs by agreement of three fifths of the proprietors, who must represent three fifths of the quotas of participation.

2. Once the discharge has been agreed, the obligations to third parties and, if appropriate, to the proprietors must be totally settled. In the process of settlement, the committee of proprietors must maintain its functions, must be paid any delayed quotas and other credits in favour of the housing development, must if appropriate dispose of the real estate in common use that it has been agreed to dispose of and, once all operations are complete, account must be rendered to all proprietors.

CHAPTER IV

Special community by time-sharing

SECTION ONE

Legal system

Article 554-1. *Definition*

1. The owners, in the community by time-sharing have the right to enjoy the property on which it devolves exclusively by discontinuous and periodic time units.

2. The system of community by time-sharing involves:

a) The existence of the time-share, which defines the participation of the owners in the community.

- b) The configuration of an organisation for the exercise of the rights and compliance with the duties of the time share owners.
- c) The exclusion of the action of division and of the legal rights of acquisition between owners.

Article 554-2. *Object*

1. The buildings destined for use as single family dwellings fitted with sufficient furniture and installations that, by their nature, can be used repeatedly and divisibly in time sharing.
2. The ships, non-commercial airplanes and clearly identified and properly equipped movable property that are suitable for repeated and divisible use as time sharing.
3. Neither buildings divided under the system of property in condominium nor exclusive elements that form part thereof, can be the object of community by time-sharing, except if they are buildings with less than seven exclusive elements and constitute a community by time-sharing for each unit or element.
4. The exploitation by time-sharing that is established over a building or a real estate complex or a sector other than these for exploitation for tourism or seasonal holidays must be governed by the regulations of the contract for exploitation by time-sharing.

Article 554-3. *The time-share*

1. The time-share consists of the discontinuous and periodic time unit, not less than weekly, that serves as a module to attribute the exclusive exploitation of the property and the contribution to the general expenses.
2. The ownership of a time-share, whatever its value, attributes one vote on the committee of the community.

SECTION TWO

Constitution

Article 554-4. *Establishment of the system*

1. A community by time-sharing only exists if, once the title of constitution has been awarded, the construction of the property over which it devolves is complete and this has been properly furnished and equipped.
2. The title of constitution must consist of a public deed and must be recorded in the Property Register.

Article 554-5. Title of constitution

1. The title of constitution must state at least the following data:

a) The identification of the property, the construction of which must have started. If it is not finished when the deed is awarded, the system of community by time-sharing remains suspended until it is complete and furnished.

b) The duration of the community.

c) The establishing of the time-share, to which a correlative numeration is assigned, with its duration and periodicity.

d) The determination of the quota of contribution, proportional to the value of the time-share, which is determined by the length of time of use allocated and by the time of year when it can be used.

e) The system of management, administration and representation, which must comply with the regulations of Section 1 of Chapter III, in accordance with the characteristics of the community by time-sharing.

f) The furnishings and services inherent to the property that is object of the community by time-sharing.

2. In the title of constitution, at the very least two weeks per year must be reserved, which cannot be configured as time shares, for repairs, cleaning, maintenance and other purposes of common utility.

3. The title of constitution may contain bylaws, to which the regulations of Article 553-11 are applicable, and a regulation of the interior system, to which Article 553-12 is applicable, with suitable adjustments to the community by time-sharing.

Article 554-6. Legitimation

The title of constitution of the community by time-sharing is awarded by the proprietors of the property on which it devolves.

Article 554-7. Registration

1. The system of community by time-sharing must be recorded in the Property Register or, if appropriate, in the corresponding register of movable property.

2. The system of community by time-sharing must be recorded by means of the system with plurality of sheets, in accordance with the provisions of mortgage legislation.

Article 554-8. *Discharge of the system*

1. The system of community by time-sharing is discharged voluntarily by unanimous agreement of the owners and compulsorily due to the passing of the term set by the title of constitution, which may not be less than three years or more than fifty, and also due to the loss or destruction of the property.
2. The discharge of the community by time-sharing determines a situation of ordinary community, participation in which by each of the owners is established in accordance with the value of their time-share.

SECTION THREE

Content

Article 554-9. *Rights*

The time-share empowers its owner to:

- a) Take advantage of the property that is object of the community exclusively during the period of time that it represents, or to grant the exploitation to another person.
- b) Participate in the management, administration and representation of the community in accordance with the provisions of the title of constitution.
- c) Dispose of the time-share, between the living or due to death, for financial consideration or free.

Article 554-10. *Obligations*

The time-share compels its owner to:

- a) Pay the corresponding general expenses and those inherent in time-sharing, that are determined by taking its value into account.
- b) Use the property in accordance with its destination, respect the rights of other owners and act in the interests of the community.
- c) Pay any detriment he or she causes in the property for the week or weeks when they enjoy it, without prejudice to any corresponding actions against third parties.

Article 554-11. *General expenses and contributions of the time shares*

1. The time-share specifies the payment of the expenses and charges of the property and its services, which must be settled annually, without prejudice to the periodification of the payment.
2. Failure to pay the expenses leads to the suspension of exploitation of the property and the right to vote in the community, except if they accredit the legal contesting of the amount and that this is recorded.
3. Failure to use the time-share does not exempt its owners from paying the corresponding expenses.
4. To determine the general expenses, their distribution between owners, the precedence of credits and other related issues, the regulations of Chapter III apply, in accordance with the nature of the community by time-sharing.

Article 554-12. *Supplementary system*

1. The regulations that govern property in condominium apply to those of the community by time-sharing.
2. The regulations that govern the property in condominium are applicable in everything not regulated by this chapter, in accordance with the specific nature of the community by time-sharing.

CHAPTER V

Special community by reason of party walls

SECTION ONE

Party walls

Article 555-1. *Legal concept and system*

1. A party wall is one that is built at the boundary between and on the land of two or more estates to serve as the element of support for buildings constructed, or to serve as a partition or separation.
2. A party floor is the horizontal structure that has the purpose of serving as an element of support and division for constructions at different levels of height or in the basement.

3. The existence of a party wall or a party floor implies a situation of community between the proprietors of the two adjoining estates that are governed by the agreement and, supplementarily, by the regulations of this chapter.

SECTION TWO

Loadbearing party wall

Article 555-2. Voluntary constitution

1. There is a loadbearing party wall if the party wall or party floor is built on the boundary of two or more estates to serve as a supporting element of the buildings or other works of construction made thereon.
2. The loadbearing party wall is a voluntary constitution and is never presumed.
3. The proprietors of adjoining estates can agree to establish the loadbearing party wall and build the party wall if they have the corresponding administrative authorisation for building both estates up to the common boundary.

Article 555-3. Characteristics

1. The party wall or party floor must be an adequate type, must have the required foundations, strength, thickness and height in relation to the projects or the purpose of the buildings agreed and must have the appearance of an exterior or façade wall, in accordance with the provisions of the spatial planning regulations.
2. If there are no specific descriptions in the agreement for constitution, the building characteristics of the party wall or party floor must be those usual in the place where it is constructed, and adequate for the work to be done, according to generally accepted building standards. The proprietors who first build the party wall must do so in accordance with their requirements. This wall must have the corresponding thickness, half on their own land and the other half on the land of the interested neighbours.

Article 555-4. Right of build against a party wall

1. No one may build against the party wall that the neighbour has built without paying the part of the cost established in the agreement constituted for a party wall system.

2. Except by agreement to the contrary, the interested persons can request the legal authority to rectify the amounts that must be paid taking into account the nature, age, state of conservation and conditions of work of the party wall.
3. The processing of the procedure corresponding to the exercise of the power established in Section 2 does not in the meanwhile impede neighbours who have paid the amount agreed from building against the party wall.

Article 555-5. Expenses

1. The expenses for construction and conservation of the party wall, until the neighbour builds against it, are payable by the proprietor who builds it. From this time on, each proprietor must contribute in the proportion agreed or, if not agreed, in proportion to the use made thereof.
2. The person who demolishes a construction built against the party wall must leave it in a proper state for future use and with the appearance corresponding to an exterior wall or façade, in accordance with its original configuration.
3. The provisions of sections 1 and 2 are understood without prejudice of what has been agreed.

Article 555-6. Payment

The neighbour who builds without making use of the party wall must pay his or her corresponding part of the cost as agreed and in accordance with the provisions of Article 555-4. In addition, they must take proper measures of construction to prevent prejudice to the proprietor who built it. If said prejudice occurs, they must be indemnified.

Article 555-7. Right of demolition

1. The proprietor who first built and paid for the party wall can demolish it at any time before the start of the works of construction of the adjoining building to be built against it.
2. The party wall can only be demolished if the neighbour has not paid their corresponding part of the cost and if, once the neighbour has been notified in an irrefutable manner of the intention to demolish it, the latter has not opposed paying their part of the cost or consigning the payment therefor within the term of one month.

SECTION THREE

Party agreement for partitioning

Article 555-8. Party agreement for partitioning

1. A party agreement for the partitioning walls of patios, market gardens, gardens and plots is compulsory to a maximum height of two metres or as established by applicable spatial planning regulations.
2. The floor of the partitioning wall is a party floor, but the neighbour is not compelled to contribute to half the expenses of building and maintaining the wall until he builds or encloses his or her estate.
3. The partitioning wall between two estates is always presumed to be a party partition, except if there are external signs that it has been built over only one of the plots.

TITLE VI

On limited real rights

CHAPTER I

The right of usufruct

SECTION ONE

Constitution and system of the usufruct

Article 561-1. Applicable system

1. The right to usufruct is governed by the title of constitution and by the modifications introduced therein by the owners of the right.
2. The right to usufruct, in everything not arising from the title of constitution or its modifications, is governed by the regulations of this code and by regulations established by the Code of Succession and the Code of the Family with relation to this right.

Article 561-2. Concept

1. Usufruct is the real right to use and enjoy another's property respecting its form and substance, except in what the law or the title of constitution establish otherwise.

2. The usufructuaries have the right to possess the property that are the object of usufruct and to be paid all profits not excluded by the law or the title of constitution. It is presumed that they have the right to the profits not excluded.
3. The usufructuaries must respect the economic destination of the property encumbered and, in the exercise of their right, must behave in accordance with the rules of good administration.

Article 561-3. *Constitution*

1. Usufruct can be constituted for any title in favour of one or several persons, simultaneously or in succession, on the whole or part of the property of one person, on one or more specific property or on all or part of their profits.
2. It can be established, in the title of constitution, that:
 - a) The constituents reserve the right of reversion in their own favour or in that of third parties in the terms or with the conditions established.
 - b) The usufructuaries have the right to the earnings or profits created by the property that are the object of the usufruct free of any expenses and charges, or that Article 561-12 be applied.
 - c) The usufruct is constituted as a guarantee or warranty of a monetary obligation, when the profits of the property encumbered are assigned to the payment of the debt.
3. The usufruct constituted in favour of a natural person is lifelong, except if the title of constitution establishes otherwise.
4. The usufruct in favour of a legal person cannot be constituted for a time longer than ninety-nine years. If the title of constitution does not establish otherwise, it is presumed to be constituted for thirty years.

Article 561-4. *Right of use of property subject to deterioration*

If the usufruct devolves on property that is subject to deterioration, the usufructuaries can use it according to its destination and must restore it, when the usufruct expires, to the state in which they found it, indemnifying the proprietors for any deterioration it has suffered due to fraud or blame.

Article 561-5. *Quasi-usufruct*

1. If the usufruct devolves, wholly or partly, on consumable property, property of the same quantity and quality must be restored or, if this is not possible, their value at the time of the lapsing of the right.

2. If the usufruct devolves on money, the provisions of Article 561-33 as well as those of Section 1 are applied.

Article 561-6. Proceeds and improvements

1. The usufructuaries have the right to be paid all the proceeds and profits of the property enjoyed that are not excluded by the title of constitution.

2. In voluntary usufruct, the usufructuaries have the right to the proceeds pending at the start of usufruct, with an obligation to pay reasonable expenses for producing them, and the proprietors, to the proceeds pending at the end in proportion to the degree of maturity, with obligation to pay the corresponding quota of the expenses for their production.

3. The proceeds of a right are understood as paid day-to-day and belong to the usufructuaries in proportion to the time that the usufruct lasts.

4. The usufructuaries can introduce improvements to the property that are the object of the usufruct, within the limits of their right, with power to remove them at the end of the usufruct if this is possible without the object deteriorating.

Article 561-7. Inventory, security, determination of the condition and appraisal of the property

1. Except if the title of constitution establishes otherwise, before taking possession of the property, the usufructuaries must take an inventory, notifying the bare proprietors, and must provide security in guarantee of compliance with their obligations.

2. The usufructuaries can have an expert inspection of the state and condition of the property used and evaluate them, and must pay any expenses that arise. The bare proprietors have the same right.

Article 561-8. Damage to the property used

1. The usufructuaries who cause the property used to deteriorate are answerable for the damage caused before the bare proprietors, who can request the legal authority to adopt the measures necessary for preservation of the property, including its receivership.

2. The usufructuaries must notify the proprietors of every action of third parties of which they have notice that may prejudice the property used. If they do not, they are answerable for the damage and prejudice imputable to this omission.

Article 561-9. Disposal

1. The usufruct is available under any title.
2. If the usufructuaries propose to transfer their right, the bare proprietors have the right to preferential acquisition, except if the title of constitution establishes otherwise.
3. The contracts made by the usufructuaries are discharged at the end of the usufruct.
4. The bare proprietors can dispose of the property used and introduce modifications therein that do not alter the shape or substance and that do not prejudice the usufructuaries. To carry out construction or building, they must notify the usufructuaries, who can oppose these if they understand that they will damage their interests.

Article 561-10. Right to preferential acquisition

1. The usufructuaries who propose to transfer their right, if regulated by Article 561-9.2, must notify this in an irrefutable manner to the bare proprietors, indicating the name of the acquirers, the price agreed, in the case of transfer for a financial consideration, or the value given to the right, in the case of free transfer, and the other important circumstances of the disposal.
2. Without prejudice to their right to judicially contest the price or the value notified, the bare proprietors have the right of preemption on the usufruct within the term of one month counted from the notification established in Section 1, that they can exercise by paying the price or, if none, the value notified by the usufructuaries.
3. If the disposal has not been notified in an irrefutable manner or if it has been carried out in circumstances different from those notified, without prejudice to their right to contest, the bare proprietors can exercise the right of buyout within the term of three months counted from the date when they became aware of the disposal and its circumstances or counted from the date of the registration of the disposal in the corresponding register.

Article 561-11. Usufruct in situations of co-ownership

1. The bare proprietors of a quota of a property in condominium can carry out the division, without the need for consent from the usufructuaries. However, they must notify said division and the usufructuaries have the right to contest it if they understand that it damages their interests.
2. The usufructuary of a quota of a property held in community can exercise their rights without the need for intervention of the bare proprietor in matters of administration and payment of proceeds and interests.

3. Once the community has lapsed by division, the usufruct is specified on the part awarded to the former owner of the quota.

Article 561-12. Expenses of the usufruct

1. The private charges existing at the time of constituting the usufruct, the expenses of conservation, maintenance, ordinary repair and supply of the property used, and the annual taxes and rates are payable by the usufructuaries.

2. If the usufructuaries do not assume the charges or pay the expenses, taxes or rates referred to in Section 1 after the bare proprietors have so required, the latter can settle at the cost of the usufructuaries.

3. The expenses of extraordinary repairs not arising from any non-compliance of the usufructuaries are payable by the bare proprietors, as do the special contributions that imply a permanent improvement of the property used. In all these cases, the bare proprietors can demand from the usufructuaries the interest of the quantities invested.

Article 561-13. Usufruct of mortgaged estate

1. The usufructuaries of mortgaged estates do not have to pay the debt guaranteed with the mortgage.

2. If the bare property of a mortgaged estate is compulsorily sold to pay the debt, the bare proprietors must answer to the usufructuaries for any prejudice caused.

Article 561-14. Co-ownership in the usufruct

1. The lifelong usufruct constituted jointly and simultaneously in favour of spouses, unmarried couples or children or siblings of the constituent does not lapse, except if the title of constitution establishes otherwise, at the death of all owners, so that the quota or the right of those who predecease increases that of the survivors by the corresponding proportion.

2. If the usufruct is constituted in express consideration to the married or unmarried couple favoured, in the event of divorce, annulment or judicial or de facto separation of the spouses or expiry of the relationship, it lapses completely, except if it is shown that the constituent intends otherwise.

Article 561-15. Successive usufructs

The limit of summons that Article 204 of the Code of Succession establishes for the substitution of trustees is applied to the successive usufructs.

SECTION TWO

Discharge, settlement and actions in defence of the usufruct

Article 561-16. Discharge

1. The right of usufruct is discharged for the general reasons of discharge of real rights and, in addition, for the following reasons:

- a) Death of the usufructuary or of the last such in the cases referred to in Article 561-14.1, on lifelong usufructs.
- b) Discharge of the legal person who is a usufructuary, if he or she does not succeed another, which occurs before the expiry of the term of the usufruct, without prejudice to the bankruptcy legislation applicable.
- c) If the object of the usufruct is a movable property, except if the usufructuaries have an interest in the continuity of their right.
- d) Total loss of the property used, without prejudice to the real subrogation if appropriate.
- e) Compulsory expropriation of the goods used, without prejudice to the real subrogation if appropriate.
- f) Annulment or termination of the right of the transferors or the constituents of the usufruct without prejudice to third parties.
- g) Discharge of the monetary obligation in whose guarantee or assurance the usufruct was constituted.

2. The term of the usufruct established depending on the date when a third party reaches a particular age expires on the day indicated even if this person dies before that.

3. Voluntary discharge of the right to usufruct does not involve discharge of the real rights that affect it until the term expires or the fact or the cause that brings the lapsing occurs.

4. Once the usufruct has been discharged, the property used must be restored to the bare proprietors, without prejudice to the right of retention of the former usufructuaries or their heirs by reason of the expenses of extraordinary repairs they are due.

Article 561-17. Partial loss

If the property used is only partly lost, the right continues on the remaining part.

Article 561-18. Right of use of property insured

1. The usufructuaries must insure the property object of their right if the insurance is due by the rules of orderly and usual economic administration. If they were already insured at the time of constituting the usufruct, the usufructuaries must pay the premiums.
2. In the event of a claim event at the property, the bare proprietors and the usufructuaries must take over the indemnification in proportion to the insurance premium that they have paid, except if the usufructuaries opt to invest it in the reconstruction or substitution of the property.

Article 561-19. Compulsory expropriation of property used

In the event of the compulsory expropriation of the property that is object of the usufruct, the rules of right of use of money of Article 561-33 will be applied to the fair price, except if the persons interested agree otherwise.

Article 561-20. Actions of defence of the usufruct

The usufructuaries can exercise the actions corresponding to the protection of their right and demand that the bare proprietors provide the elements of proof they possess.

SECTION THREE

Right of use with power of disposal

Article 561-21. General rule

1. The usufructuaries can dispose of the property used if this is established in the title of constitution.
2. The awarding of the simple power of disposal includes the disposals for a financial consideration. The power to dispose of the title of sale comprises the power to do so due to any other title for financial consideration.
3. The free award of the power of disposal must be expressed clearly.

Article 561-22. Provision with the consent of the other

1. If the power of disposal is subject to the consent of other persons, majority agreement is sufficient, except if the title of constitution establishes otherwise.

2. If those who must give consent to the power of disposal are bare proprietors, it is sufficient to have the agreement of those who represent the majority of quotas or rights.
3. If the power of disposal is taken due to need and consent is not obtained, the usufructuaries can request legal authorisation.

Article 561-23. *Disposal in the event of need*

1. If it is established that the property used can only be disposed of in the event of need, the usufructuaries may do so provided that this is personal or family need or, if appropriate, that of another member of the unmarried couple, except if the title of constitution establishes otherwise.
2. The usufructuaries cannot exercise the power of disposal if they have not previously disposed of their own property that is not necessary for food or to exercise their profession or trade.
3. The usufructuaries must notify the act of disposal to the bare proprietors within the term of one month counted from its granting.
4. The consent of the bare proprietors is not required to exercise the power of disposal, but the usufructuaries are answerable for any prejudice caused if there was no need or if they did not act in accordance with the provisions of Section 1.

Article 561-24. *System of consideration*

1. Once the power of disposal for financial consideration has been exercised, the consideration is at the free disposition of the usufructuaries.
2. In the circumstances of power of disposal for a case of need, the part of the consideration that must not be applied to pay this is subrogated in the usufruct.

SECTION FOUR

Right of use of woods and plants

Article 561-25. *Legal system*

Where no reference is made in the title of constitution, the custom of the county is applied to the usufruct of woods and plants.

Article 561-26. *Woods*

The usufructuaries of woods that, by their nature, are destined for wood have the right to cut and prune the trees making a rational exploitation, in accordance with a technical plan.

Article 561-27. *Groups of trees that are not woods*

1. The usufructuaries of groups of trees destined for a recreational or ornamental function of an estate, to create shade, to increase the agglutination of the plot, to fix the soil, to protect the estates from the wind, to channel the waters, to give fertility to the soil or for other uses accessory to the land other than obtaining wood, must respect the original destination.
2. The limitation established in Section 1 also affects groups of trees destined to obtain resin, sap, bark or other different products of wood. In this case, the usufructuaries only have the right to said products.

Article 561-28. *Trees or shrubs that self-propagate or regrow*

1. The usufructuaries can cut and take over the trees and shrubs that self-propagate or regrow due to the capacity for regeneration of the species involved and provided that they are not covered by the cases referred to in Article 561-27.1.
2. The provisions of Section 1 are applicable to the trees on a riverbank and quick-growing trees, but the usufructuaries must replant any they cut down.
3. The usufructuaries can dispose of shoots or nursery shrubs with the obligation to restore any they have removed.

Article 561-29. *Trees or shrubs that do not self-propagate or do not regrow*

The usufructuaries of trees or shrubs that, once cut, do not self-propagate or do not regrow can only prune the branches and, if the bare proprietors so authorise, cut off them.

Article 561-30. *Dead and damaged trees*

The usufructuaries take over trees that die, even if these are fruit trees, and the bare proprietors take over any that are uprooted, shredded or those destroyed by wind or fire if the usufructuaries do not use them as firewood for domestic consumption or for repairing buildings that are part of their usufruct.

Article 561-31. *Thickets*

Usufructuaries may use thickets by doing regular trimming according to the custom of the county.

SECTION FIVE

Usufruct of money and participations in investment funds and other group investment instruments

Article 561-32. Applicable system

The usufructs of money and participations in investment funds and other group investment instruments are governed, firstly, by the title of constitution and by the agreements between the usufructuaries and the bare proprietors and if there is no title or agreement, by the regulations of this chapter.

Article 561-33. Usufruct of money

1. The usufructuaries of money have the right to the interests and other profits produced by the capital.
2. The usufructuaries who have provided sufficient guarantee can use the capital as they see fit. Otherwise, they must place the capital to earn interest in conditions that guarantee its integrity.

Article 561-34. Usufruct of participations in investment funds

1. In the usufruct of participations in investment funds, the usufructuaries have the right to any capital gains from the time the right is constituted until it expires.
2. These capital do gains not create obligations for the usufructuaries towards the bare proprietors.
3. The bare proprietors enjoy, exclusively, the condition of participants for the purpose of demanding the total or partial reimbursement of the participations.
4. In the event of reimbursement of participations before the expiry of the usufruct, the capital obtained must be reinvested in accordance with the provisions of the title of constitution or according to the agreement of the persons interested. If there is no title or agreement, the rules of the usufruct of money apply.
5. The bare proprietors of participations in guaranteed investment funds can only ask for their reimbursement once the term of the guarantee has expired.

Article 561-35. Nature of the proceeds

The rules of civil proceeds apply to the profits and to any capital gains.

Article 561-36. Rights of usufructuaries

1. The usufructuaries of participations in accumulative investment funds have the right to any capital gains produced between the date of constitution of the right and the date of expiry or date of reimbursement if so requested before the expiry of the usufruct.
2. The usufructuaries have the right to any capital gains at the time when the usufruct expires, but can only request payment thereof when the reimbursement occurs.
3. The action for demanding compliance with the obligation of the payment of the profits of the usufruct prescribes after ten years, counted from the day when the reimbursement occurs.
4. If the fund management entity does not facilitate it directly, the usufructuaries can demand from the bare proprietors all the information that the management entity gives them relating to the fund and to the participations enjoyed.
5. Except for provisions to the contrary of the testators, the usufructuaries who are so by the execution of a will, and those who are so by intestate succession can opt to be paid the capital gains of the usufruct in accordance with the provisions of sections 1 and 2 or demanding that the bare proprietors guarantee them returns equivalent to a usufruct of money for a capital equal to the value of the fund at the time of exercising the option. The usufructuaries must notify their option to the bare proprietors within the term of six months from acceptance of the inheritance. If they do not, the general rules of sections 1 and 2 apply.

Article 561-37. Commissions

1. The commissions for the acquisition or subscription of participations in investment funds are allocated to the bare proprietors, except if the usufruct is constituted simultaneously, when they are payable by the bare proprietors and usufructuaries in the corresponding proportion in accordance with the valuation of the usufruct.
2. While the usufruct lasts, the commissions for the management of the fund, are payable by the usufructuaries.
3. The commissions for reimbursement for expiry of the fund or for early reimbursement are payable by the bare proprietors, except when the usufructuaries exercise the option regulated by Article 561-36.5 when they are allocated to the latter.

CHAPTER II

The right of use and the right of habitation

SECTION ONE

Common provisions

Article 562-1. *Legal system*

The rights of use and habitation are governed by what is established in their title of constitution, this chapter and, subsidiarily, the regulation of the usufruct.

Article 562-2. *Presumably lifelong nature*

The right of use or habitation constituted in favour of a natural person is presumed lifelong.

Article 562-3. *Diversity of owners*

1. The rights of use and habitation can be constituted in favour of several persons, simultaneously or in succession, but in the latter case, only if these are persons living at the time when they are constituted.
2. In the two cases referred to in Section 1, the right lapses at the death of the last owner.

Article 562-4. *Unavailability of the right*

1. Users and those with a right to habitation can only encumber or dispose of their right if the proprietors so consent.
2. The execution of a mortgage on the property involves the lapsing of the rights of use and habitation if their owners consented to their constituting, without prejudice to the provisions of Article 83 of the Code of the Family in matters of use of the family home.

Article 562-5. *Lapsing*

The rights of use and habitation lapse by legal termination in the event of being exercised in serious contradiction to the nature of the property, without prejudice to the provisions of Article 561-8.1.

SECTION TWO

Right of use

Article 562-6. *Content*

The users can possess and use another's property in the way established in the title of constitution or, if none, in a way sufficient to attend to their needs and the needs of those who live with them.

Article 562-7. Use of housing

The use of a dwelling extends to its entirety and comprises the use of the buildings and the annexed rights.

Article 562-8. Special uses

1. The right of use constituted on an estate that produces proceeds gives the right to be paid as much as is required to attend to the needs of the owners of the right and of the persons who cohabit with them.
2. The right of use constituted on livestock gives the right to be paid, to attend to the needs referred to in Section 1, the stock bred and other produce.
3. The right of use constituted on a wood or on plants gives the right to cut down the trees and to cut the thickets as required to attend to the needs referred to in Section 1, and even to sell the produce, in accordance with the provisions of Section 3 of Chapter I.

SECTION THREE

Right of habitation

Article 562-9. Content

The right of habitation involves the right to occupy the buildings and annexes of a dwelling indicated in the title of constitution or, if there is no such indication, any required to attend to the housing needs of the owners and persons who cohabit with them, even if their number increases after the constitution.

Article 562-10. Owner

The right of habitation can only be constituted in favour of individuals.

Article 562-11. Expenses

The person with right to habitation must pay the housing expenses that can be paid on an individual basis and that arise from the use made thereof, and also expenses corresponding to the services installed or contracted therein.

CHAPTER III

The rights of partial exploitation

Article 563-1. Legal concept and system

The rights of partial exploitation established with real nature in favour of a person on another's estate irrespective of any relationship between estates, which include that of managing and obtaining their forest exploitations in exchange for refurbishing and preserving the natural and landscape resources or for preserving the fauna and ecosystem, that of grazing livestock and flocks, that of pruning trees and cutting thickets, that of setting up advertising posters, that of a theatre box, a balcony and other similar, are governed by the regulations of this chapter and in anything not opposed, by its title of constitution, by the custom and the regulations that govern the right to usufruct, in as far as is compatible.

Article 563-2. Constitution

1. The proprietors of the estate encumbered and the owners of real rights of possession constituted thereon can constitute a right of partial exploitation. In this last case, the right to partial exploitation has the scope and length of said real rights of possession.
2. The constitution by means of legal businesses of the partial exploitation must necessarily be stated in writing and can only be opposed before third parties if stated in a public deed and recorded in the Property Register.
3. It is understood that the term of the right to partial exploitation is thirty years, except if the parties set a different term.
4. The term of the rights to partial exploitation may not in any circumstances exceed ninety-nine years.

Article 563-3. Redemption

1. The rights of partial exploitation can be redeemed by the exclusive intention of the proprietors of the estate encumbered once twenty years have gone by since the constitution of the right.
2. Notwithstanding the provisions of Section 1, the non-redeemability can be agreed for a maximum term of sixty years or during the life of the person who owns the right of partial exploitation and for one more generation.
3. The price of the redemption, except for agreement to the contrary, is the result of the capitalisation of the annual value of exploitation, determined by experts, taking as base the legal interest on money at the time of the redemption.

Article 563-4. Right to preferential acquisition

The proprietors and owners of a real right of possession on an encumbered estate have the right to preferential acquisition of the right to partial exploitation on the same terms as the bare proprietors in the case of transfer of the usufruct.

CHAPTER IV

The right of building

Article 564-1. Concept

The right of building is the real limited right on another's estate that temporarily allocates the property separated from the buildings or plantations included therein. In virtue of the right of building, a separation is maintained between the property of what is built or planted and the land or ground on which this is carried out.

Article 564-2. Classes

1. The right of building may devolve on buildings or plantations prior to the constitution of the right. The buildings may be at or below ground level.
2. The right of building may devolve on buildings or plantations after the constitution of the right, when this right allocates to its owner the active legitimation to do the building or planting.

Article 564-3. Constitution

1. The proprietors and other owners of real rights of possession who have free disposal of the estate affected can constitute the right of building .

2. The constitution of the right of building must be stated in a public deed, that must contain at least the following circumstances:

- a) The term of the right to build or plant, that may in no circumstances exceed ninety-nine years.
- b) The essential characteristics of the existing or future building or planting and, in the latter case, the term for carrying it out.
- c) If the constructions or the plantations that are the object of the right of building do not comprise the whole estate encumbered, the specific demarcation and the measurement and location of the land affected by the right, which must be described in accordance with mortgage legislation and without prejudice to applicable spatial planning restrictions.
- d) The price or entry fee and rate that, if appropriate, the holder of building rights must pay to the proprietors.

3. The constitution and modifications of the right of building can be opposed by third parties in good faith from the time they are recorded in the Property Register in the way and with the effects established by mortgage legislation or from the time when the third parties have become aware of same.

Article 564-4. *Voluntary legal system*

1. The owners of building rights and proprietors of the estate can establish, at all times, the system of their respective rights, even as regards the use of the land and of the construction or plantation.

2. With respect to the rights of building, the following agreements, among others, are admitted:

- a) The restriction of the availability of the owners of building rights on their right, specifically, submitting it to the consent of the proprietors of the estate.
- b) The establishment of a regular annuity in favour of the proprietors that cannot be guaranteed with the right of building itself if the owners of building rights build a new construction.
- c) The system of settlement of the possession once the right lapses.

3. With respect to the right of building on a new building or plantation, the following agreements, among others, are admitted:

- a) The setting of the term for carrying out the building or planting, attributing expiry and, if appropriate, resolutive effectiveness for non-compliance with said terms. Anything constructed or planted reverts to the owner or proprietor of the estate, except for agreement to the contrary.

b) In the event of new building the allocation of the estate to the owner or proprietor of a right of use, for any concept, over dwellings or premises that are part of the new construction.

c) The allocation to the owners of building rights of the power to establish the system of property in condominium, in the event of new construction of a building to which this system can be applied. Except by agreement to the contrary, this power is understood as being for the time the right lasts, and within the restrictions established in the title of constitution of the right of building.

4. With respect to the right of building on a preexisting construction or plantation, the expiry or, if appropriate, the termination in the event of failure to pay the annuity, improper use or a destination other than that agreed that endangers the very existence of the construction or plantation, can be agreed.

5. The proprietors and owners of building rights can establish, in the title of constitution or other later title, rights of preferential acquisition, reciprocal or not, to which the system that this code establishes for 'fadiga' in relation to the transfer of the right of lease or of the estate encumbered with an emphyteutic lease can be applied supplementarily.

Article 564-5. *Legal system*

The agreement that establishes the confiscation for failure to pay of the annuity agreed, if this is a right established on a building or plantation made by the owners of building rights after the right was constituted, is null and taken as not done.

Article 564-6. *Lapsing*

1. The right of building lapses for the general reasons of the lapsing of real rights.

2. Except by agreement to the contrary, lapsing of the right of building involves the reversion of the building or plantation to the persons who at the time of the lapsing were owners of the property of the encumbered estate, without these having to pay any indemnification to the owners of building rights.

3. Lapsing of the right of building does not prejudice the rights constituted thereon, except if the cause of lapsing was the expiry of the term of the right or, in the case of preexisting buildings or plantations, their total loss.

4. The right does not lapse if the construction or plantation was made by the owners of the right of building and it is lost. In this case, the owners can rebuild or redo.

CHAPTER V

Rights of lease

SECTION ONE

General provisions

Article 565-1. The lease

1. The lease is a regular annual monetary benefit, of a perpetual or temporary nature, that is linked with real nature to the property of an estate, which guarantees its payment directly and immediately.
2. The person who is obliged to pay the annuity of the lease is known as the *annuitary* and is proprietor of the estate, and the person who has right to receive the annuity is known as the *annuitant* and is the owner of the right of lease.

Article 565-2. Classes of lease

1. The lease is emphyteutic if it is constituted with a perpetual and redeemable nature at the will of the annuitary, in accordance with the requirements established by articles 565-11 and 565-12.
2. The lease is lifelong if it is constituted with a temporary and irredeemable nature at the will of the annuitary, without prejudice to the possibility of expressly agreeing the redeemability.

Article 565-3. Constitution of the lease

The titles of constitution of the lease can be:

- a) The contract of establishment. The contractual constitution of a lease can be made:

First.- By the transfer of the ownership of the right of ownership of the estate to the annuitary, in exchange for the constitution of the right of being paid the annual regular benefit in favour of the annuitant. In this case, the payment can be determined in favour of the annuitant, only once, in one or several payments, of a quantity that is called *deposit*.

Second.- By a 'revessejat', in virtue of the constitution of the lease by the proprietor of the estate and the assignment to a third party of the right to receive the regular annual benefit.

- b) The provision for death.
- c) Usucapio.

Article 565-4. Form of constitution of the lease

The constitution or establishment of a lease must be declared in a public deed, which must state the annuity and quantity agreed for the redemption.

Article 565-5. Transferability of the estate and of the lease

1. The annuitary can dispose of the encumbered estate with the lease. The annuitant may also do so with respect to his or her right of lease.
2. The right of 'fadiga' only recognises the annuitary. By reason of the right of 'fadiga', the annuitary can exercise the right of preemption and, if appropriate, the right of buyout to acquire the right of a lease disposed of for a financial consideration, for the same price and on the conditions agreed between the annuitant and the acquirer.
3. The right of 'fadiga' referred to in Section 2 must be exercised in accordance with the provisions of Subsection 3 of Section 2.

Article 565-6. The division of the lease

1. Leases are essentially divisible. The division of an encumbered estate with a lease, which devolves on the annuitary, involves the division of the encumbrance, so that there are as many leases as encumbered estates.
2. The annuitary, in dividing the estate, must distribute the annuity between the resulting estates in proportion to the surface area, without taking into account differences of value or quality. If the system of property in condominium is constituted on the encumbered estate, the annuity is distributed between the exclusive elements that configure said community in proportion to the quota of participation corresponding to each element.
3. The annuitary must notify the division to the annuitant by notary at his or her domicile within the term of three months. If the domicile is not known, this circumstance must be conveyed in a public deed of division of the estate, that involves the division of the lease, and the registrar of the property, once recorded, must publish an edict that announces for three months said division on the notice board of the Town Council of the municipal area where the divided estate is located.
4. The annuitant has a term of expiry of one year counted from the notification or, if appropriate, from the registration to judicially contest the division.

Article 565-7. Registration of the lease

1. Registrations of leases in the Property Register must indicate the following circumstances:
 - a) The class of the lease and the title of constitution.
 - b) The annuity it implies.
 - c) The quantity agreed for the redemption.
 - d) The procedure for execution, laudemium and 'fadiga', if agreed.
 - e) Others established by mortgage legislation.
2. Groups of estates subject to lease cannot be recorded in the Property Register without the corresponding description of all the estates or plots encumbered and of the leases they affect while they are not redeemed.

Article 565-8. *Annuity*

1. The annuity or regular annual contribution constitutes of the essential content of the right of lease.
2. The annuity can only consist of money. The title of constitution of the lease or a later agreement between the annuitant and the annuitary may include a clause of stabilisation of the value of the annuity.
3. The annuity must always be annual, without prejudice that by stipulation or by express clause, the payment of instalments can be determined.
4. The annuitant has the right to receive the annuity in retrospective annualities or, in the case of the lifelong lease, in advanced annualities, if not determined to the contrary. If there is no express determination, the place of payment is the domicile of the annuitary.
5. At the time of handing over the receipt of the annuity, the annuitant has the right to receive from the annuitary a receipt stating that the payment has been made.
6. The estate guarantees the payment of the annuities due and not paid and, if appropriate, the payment of the laudemiums. In relation to a third party, the provisions of mortgage legislation must be abided by.
7. Failure to pay the annuities does not make the estate liable to confiscation. The confiscation cannot be agreed in the title of constitution of the lease nor in any later lease that refers thereto.

Article 565-9. *Summary legal proceeding*

1. For the reclamation of payment of the annuities due and not paid and, if appropriate, the laudemiums, the procedure for demanding the payment of due debts by instalments guaranteed by mortgage is applied, if it has been so expressly agreed in deed of constitution of the lease and

if, in addition, a domicile for the annuitary has been agreed for the purpose of the requirements, the amount of the laudemium, if appropriate, has been agreed, and the estate has been valued for the purpose of the auction.

2. The person who acquires the estate in an auction acquires it encumbered with the lease and assumes the obligation to pay the annuity until this expires.
3. In relation to a third party, the provisions of mortgage legislation must be abided by. The estate only guarantees the last laudemium, the annuity of the current year and the two previous years. In the event of agreement the payment of the five last annuities can be guaranteed in prejudice of a third party.

Article 565-10. Unenforceable nature of the annuity

1. The reclamation of annuities due may not exceed the last ten.
2. The payment of three consecutive pensions without reservation of the annuitant exempts from payment of the previous annuities.

Article 565-11. Lapsing of the lease

1. The lease is lapsed for the general reasons of lapsing of the real rights and, in addition, by redemption.
2. The loss or partial expropriation of the estate does not exempt from paying the annuity, except if the loss affects most of the estate, when the annuity is reduced proportionally.
3. The lease must be redeemed in the case of total compulsory expropriation.
4. To cancel leases constituted for a set term in the Property Register, the provisions of mortgage legislation in relation to the cancellation of mortgages constituted in guarantee of rents or regular benefits is applied.

Article 565-12. The redeemability of the lease

1. The perpetual and the temporary leases constituted expressly as redeemable can be redeemed by the unilateral intention of the annuitant.
2. In the perpetual and temporary leases constituted as redeemable, the annuitary may not impose the redemption until twenty years have gone by since the constitution of the lease, if not agreed otherwise.

3. In perpetual leases, the redeemability of the lease can be agreed for a maximum term of sixty years or during the life of the annuitant and for one further generation. The generation is considered discharged on the death of the last of the annuitant's first-degree descendants.

Article 565-13. *The redemption of the lease*

1. The redemption may not be partial, and necessarily and integrally must comprise the annuity and, if appropriate, the other rights inherent in the lease.
2. The annuitary may not impose the redemption if it is not up to date in the payment of everything owed to the annuitant under the lease.
3. The redemption is executed in a public deed and, if there is no agreement to the contrary, is effected by the handing over of the quantity agreed in the title of constitution. If laudemium was stipulated, the price of redemption must also include the amount of a laudemium. If the lease was acquired by usucapio, the quantity to be paid for redemption is, except if agreed otherwise, the equivalent of capitalising the annual annuity payment by 3% and, if appropriate, adding a laudemium calculated on the value of the estate at the time of starting said usucapio.
4. The deposit must be deducted from the price of redemption if the payment is so stipulated in the title of constitution.
5. If not agreed to the contrary, the price of redemption must be paid in money and in cash.

SECTION TWO

Emphyteutic lease

Subsection one

General provisions

Article 565-14. *The emphyteutic lease*

1. As well as the right to the regular annual benefit, the emphyteutic lease can award the annuitant the right of laudemium and the right of 'fadiga', or only one of these rights, if so stipulated in the title of constitution.
2. The stipulation to which Section 1 refers must be express, and the content of the rights established must comply with the regulations of this section.

Subsection two

Laudemium

Article 565-15. The accrual of the laudemium

1. If so agreed, the annuitant has the right to be paid the laudemium for every transfer of the estate, except in cases regulated by Article 565-16.
2. The right to be paid the laudemium, in the event of usufruct, corresponds to the usufructuaries.

Article 565-16. Exceptions to the accrual of the laudemium

The laudemium is never accrued in the following cases:

- a) In disposals made by forcible expropriation, by the contribution of the estate to compensations boards or by awards of the estate made by the boards of compensation to their members.
- b) In free disposals between the living or due to death, in favour of any person.
- c) In awards of the estate due to dissolution of matrimonial communities of property, of undivided ordinary communities between spouses or unmarried couples or by substitutive assignment of annuity, in cases of divorce, separation or annulment of the marriage and the dissolution of the unmarried couple.
- d) In the recognition of good faith, understood as the declaration that, within the year of the signature of the contract, the buyers must have made the acquisition in the interest and with the money of the persons designated.
- e) In transfers of estates located in the Vall de Ribes and Moià.

Article 565-17. The quota of the laudemium

1. The quota of the laudemium is as agreed, and may never be higher than 10% of the price or value of the estate transferred at the time of the transfer.
2. The quota of the laudemium, if not agreed, is 2% throughout Catalonia.

Article 565-18. Accrual of the laudemium in special cases

1. In sales with letter of grace, half the laudemium in the sale is accrued and the other half in the buyout or when the right of redemption lapses.

2. In exchanges and contributions to society or awards to partners, in the case of reduction of capital or dissolution, the laudemium must be calculated on the value of the estate at the time of transfer.

Article 565-19. The restitution of the laudemium

If the transfer of the estate becomes ineffective as a result of a lawsuit presented within the four subsequent years, the laudemium must be restituted within the term of six months counted from the date of the judgement.

Article 565-20. The prescription of laudemium

The right to claim the laudemium prescribes after ten years from the day when it was accrued.

Article 565-21. The guarantee of the laudemium

The estate directly and immediately guarantees the payment of the laudemiums accrued and not paid, whoever the owner. In relation to a third party, the provisions of mortgage legislation must be abided by.

Article 565-22. The payment of the laudemium

1. Except for agreement otherwise, the laudemium must be paid to the acquirers and is effected at the domicile of the debtors.
2. The laudemium is presumed paid or surrendered if the annuitant pays three consecutive pensions of the lease to the new annuitary without making any express reservation.

Subsection three

'Fadiga'

Article 565-23. The right of 'fadiga'

1. The right of precedence known as 'fadiga', which by law is only recognised for the annuitary, can be awarded to the annuitant if so expressly determined in the title of constitution.
2. The annuitary and, if appropriate, the annuitant by reason of the right of 'fadiga', can exercise the right of preemption or the right of buyout, to acquire, respectively, the right of lease or the encumbered estate that was disposed of for a financial consideration, for the same price and conditions agreed with the acquirer.

Article 565-24. *Exercise of the right of 'fadiga'*

1. The preemption can be exercised, by reason of the right of 'fadiga', within the term of one month counted from the unequivocal notification of the decision of disposal, of the identity of the acquirer, of the price and of the other circumstances of the transfer that the annuitant must make to the annuitary or viceversa.
2. If there is no notification or the transfer is carried out for a price or in circumstances different from those stated therein, the preemption involves buyout, which can be exercised within the term of three months counted from the date when the annuitary or annuitant became aware of the disposal and of its circumstances or, if appropriate, from the registration of the transfer in the Property Register.

Article 565-25. *Untransferability of the right of 'fadiga' and estate*

1. The rights of 'fadiga' can never be transferred separately from the estate or lease.
2. The annuitant who has acquired the property of the encumbered estate by making use of the right of 'fadiga' may not transfer it for financial consideration within six years from its acquisition, except if the purchaser was a public body.

Article 565-26. *Exceptions to the right of 'fadiga'*

The right of 'fadiga' cannot be exercised in the following cases:

- a) In exchanges.
- b) In buyouts.
- c) In transactions.
- d) In other disposals where the owners of the right cannot carry out or give any of the obligations of the acquirers.

Article 565-27. *Loss of the right of 'fadiga'*

The right of 'fadiga', in any of its forms of preemption or buyout, is lost in the following cases:

- a) If the corresponding laudemium has been paid.
- b) If the right of redemption is exercised, provided that it was before the dictation of the sentence that caused the 'fadiga'.

Article 565-28. *The co-ownership of the right of lease*

1. The right of 'fadiga' cannot be exercised if the lease that encumbers the estate disposed of belongs to different persons in ordinary or undivided community and they do not exercise jointly either one or a few by assignment of the others.
2. If the right of lease is encumbered with a usufruct, the right of 'fadiga' always corresponds to the bare proprietors.
3. If the lease is encumbered with a trust, the right of 'fadiga' corresponds to the trustees, who can pay the price of acquisition on behalf of the trust or on their own behalf, although in this last case they can reclaim the amount paid and the interest from the trustees when the trust expires.

SECTION THREE

Lifelong lease

Article 565-29. The lifelong lease

The lifelong lease awards the annuitant the right to receive a regular annual benefit during the life of one or two persons who are alive at the time of the constitution of the lease.

Article 565-30. Irredeemability

The lifelong lease is irredeemable, except by mutual agreement or provision to the contrary.

Article 565-31. The ownership of the right of lease

1. The lease can be constituted in favour of any person or persons, even if it is not those who transfer the estate that is encumbered.
2. The lease constituted is without effect if the person or the persons on the life of whom it was constituted die within the two months following the constitution due to a disease that already existed at the time of said constitution.
3. In the event of co-ownership of the right of lease, if the designation of the beneficiaries was joint and one of these did not accept, having accepted, dies, his or her quota in the right of lease increases that of the other beneficiaries.

Article 565-32. Payment of the annuity

1. Aside from the form of payment by instalment agreed, if the payment of the annuities is made by retrospective annualities, it must be carried out so that the payment for the year when the last person in favour of whom the lease was constituted dies, must be paid to his or her heirs in

proportion to the number of days they lived that year. Conversely, if it is paid by advanced annualities, the payment for the year of the death must be paid in whole, without the annuitary having the right to return.

2. The payment of the annuity cannot be demanded without accreditation that the person on whose life it was established is alive.

Article 565-33. The enjoyment of the estate encumbered

It can be validly agreed that the person who transferred the estate in exchange for the annuity, with lifelong or temporary nature, retains a right to usufruct or habitation on the same estate, which must be consolidated with the property when the lease has lapsed.

CHAPTER VI

Easements

SECTION ONE

General provisions

Article 566-1. Concept

1. Easement is the real right that partly encumbers one estate, the subordinate estate, in benefit of another, the dominant estate, and may consist of awarding the latter a determined use of the subordinate estate, or of a reduction of the powers of the owner of the subordinate estate.
2. The owners of the right of easement can benefit from the subordinate estate as far as is determined in the title of constitution or this code.

Article 566-2. Constitution

1. Easements are only constituted by title, awarded voluntarily or compulsorily.
2. The proprietors of the dominant estate or the subordinate estate and the owners of real possessory rights thereon may constitute an easement. In the latter case, the easement, if voluntary, has the scope and term of their rights. The references that this section makes to the proprietors of an estate should be understood as made also to the owners of real possessory rights in the estate.

3. Easements whose content consists of a future utility, among which are included those referring to the construction or demolition of real estate, is considered constituted conditionally.
4. No easement can be acquired by usucapio.

Article 566-3. Easement on own estate

1. The proprietor of more than one estate can constitute between these the easements that he or she considers appropriate.
2. The easement on own estate published only by the existence of an apparent sign, if the dominant or subordinate estate are disposed of, only survive if established expressly in the act of disposal.
3. An easement does not lapse due to the single fact that the property of the dominant and subordinate estates is held by a single person, but the single owner of the two estates can lapse it and obtain its cancellation in the Property Register, without prejudice to third parties.

Article 566-4. General content of the right of easement

1. The right of easement is constituted for the exclusive utility of the dominant estate, from which it is inseparable. Equally, reciprocal easements can be constituted between dominant and subordinate estates.
2. The easement is exercised in the most adequate way to obtain the utility of the dominant estate and also the way that is least uncomfortable and damaging for the subordinate estate.
3. If the exercise of the easement becomes excessively burdensome and uncomfortable, the proprietors of the subordinate encumbered estate can demand, at their expense, the modifications they consider convenient in the form and place of providing the easement, provided that its value and utility are not decreased.

Article 566-5. Easements of openings and views

1. In accordance with the title of constitution, the easement of openings permits the receiving of light that enters through the subordinate estate and passes to the dominant estate through windows or skylights.
2. The easement of views necessarily comprises that of openings and permits windows to be opened in the way and to the measurements as agreed or usual according to best building practices.

Article 566-6. Content accessory to the easement

1. The works and activities necessary to establish and preserve the easement are the responsibility of the owner, except if the title of constitution establishes otherwise. The proprietors of the subordinate estate must, if necessary, tolerate its partial occupancy for the execution of said works.
2. If the easement brings an effective utility to their estate, the proprietors of the subordinate estate must contribute proportionally to the establishment and conservation expenses, except for agreement to the contrary.
3. The proprietors of the subordinate estate cannot carry out any work that prejudices or makes difficult the exercise of the easement.

SECTION TWO

Compulsory easements

Article 566-7. Easement of passage

1. The proprietors of an estate without exit or with an inadequate exit to a public way can demand that the neighbours establish an easement of passage for access of a sufficient width and adequate characteristics so the dominant estate can be exploited normally.
2. The passage must be occur at the least prejudicial or uncomfortable point for the estates encumbered and, if compatible, at the most beneficial point for the dominant estate.

Article 566-8. Easement of access to a general network

1. The proprietors of an estate without connection to a general sanitary network or one that supplies water, energy, communications, new technologies or other similar services, can demand that the neighbours establish an easement of access of adequate characteristics to obtain the services, and with the most adequate connection.
2. The easement can only be demanded if the connection to the general network cannot be carried out in any other place without disproportionate expense, and if the prejudice occasioned is not substantial.
3. Access to the general network must be given by the technically most suitable system and at the point least prejudicial or uncomfortable for the encumbered estates and, if compatible, at the most beneficial point for the dominant estate.

Article 566-9. Easement of aqueduct

1. The proprietors of an estate that are also owners of water resources external to said estate can demand that the neighbours establish an easement of aqueduct of a sufficient width and adequate characteristics for the dominant estate to be able to be exploited normally.
2. The easement of aqueduct permits the owner to carry out all the works necessary to carry the water, among them the pipes, irrigation ditches, water mines, dams and other similar. The said owner must, at their own expense, keep these installations in a good state of repair.
3. The passage of the water must occur at the point and by the system of pipes that is technically most suitable and in addition, if compatible, least prejudicial or uncomfortable for the estates encumbered.

Article 566-10. Indemnifications for establishment of compulsory easements

1. Compulsory easements can only be established with the prior payment of an indemnification equal to the decrease of the value of the subordinate estate affected by the passage or the pipework.
2. The proprietors of the dominant estate must indemnify those of the subordinate estate for the prejudice that the exercise of the right of access causes to their estate.
3. The indemnification is reduced proportionally if the proprietors of the subordinate estate also use the passage, connection to the network or the water transported or if, in general, they obtain some benefit from the works executed for exercise of the easement.
4. No indemnification need be paid if an estate remains without any exit to a public way, without connection to a general network or without access to water as a result of an act of disposal on one or more parts of the original estate or a division of the common property made by those who have the right to claim this.

SECTION THREE

Discharge of the easements

Article 566-11. Reasons for lapsing of easement

1. The easement lapses for the general reasons of lapsing of real rights and, in addition, for the following reasons:
 - a) The lack of use for ten years counted from the time when the disuse or obstatative act was noted, except in the case of easement on one's own estate.

- b) The total loss of the subordinate or dominant estate.
 - c) The impossibility to exercise it.
 - d) The lapsing of the right of grantors or of the real right of the owners of the easement.
 - e) The assumption referred to in Article 566-3.2, if the express declaration of the existence of the easement has not been made.
2. If the easement expires due to the impossibility to exercise it, it is not reestablished even if it is later again possible to exercise it.
 3. The owners of a compulsory easement that is reestablished in the ten years following its lapsing for any of the reasons established in letters *a* and *c* of Section 1 do not have to pay any indemnification, except when said easement was suppressed by the act of the owners of the dominant estate themselves.

Article 566-12. *Modifications of the estates and expiry of the easement*

1. The formal modifications of the dominant estate, among which are division, segregation, grouping or aggregation, do not extinguish the easement nor make its exercise more burdensome, with the exceptions established by this article.
2. If the easement is only useful for one of the resulting estates in cases of division and segregation, the proprietors of the subordinate estate can demand the suppression of the easement with respect to the other estates.
3. If the structure of the resulting estate means that the easement does not bring any utility in cases of aggregation and grouping, the proprietors of the subordinate estate can demand the suppression of the easements.
4. If the subordinate estate is divided or a part is segregated, the owners of the resulting estates who do not bring any utility to the dominant estate can demand the suppression of the easement with respect to the dominant estate.

SECTION FOUR

Protection of the right of easement

Article 566-13. *Actio confesoria*

1. The owners of the easement have real action to keep and restore the exercise of the easement against any person who opposes this, who disturbs it or threatens to do so.
2. Actio confesoria prescribes after ten years of the obstative act.

CHAPTER VII

The right of air

Article 567-1. *Concept*

1. Air is the real right over a building or edificable plot that allocates to someone the power to build one or more floors over the encumbered real estate and take over the property of the new constructions. The precepts of this chapter are applicable to the right of lowering.
2. Exercise of the right of air involves the legitimation to make constructions, in accordance with the title of constitution and spatial planning.

Article 567-2. *Constitution*

1. The right of air must be stated in a public deed, and must contain, at least, the following data:
 - a) The maximum number of floors, buildings, if appropriate, and exclusive elements that can be built, in accordance with the spatial planning and property in condominium regulations in force at the time of the right being constituted.
 - b) The criteria that must apply in the determination of the quotas of participation that correspond to the exclusive elements placed on the new floors or buildings and those that correspond to those placed on preexisting floors or buildings, that must guarantee proper proportionality among them all.
 - c) The term for exercising it, which may in no circumstances exceed thirty years including any extensions.
 - d) The price or consideration that, if appropriate, the person who acquires the right must pay, or the way this is valued if reserved.
2. The title of constitution of the right of air can include the following content:
 - a) The regulations of community or property in condominium by which the building must be regulated after its exercise.
 - b) The limitation of the availability of the right of air.
 - c) The power of the owners of the right of air to establish or change the system of property in condominium, change the description of the preexisting building, and set or redistribute the quotas of participation without the consent of the grantors.
 - d) The other legal agreements that are considered appropriate.

3. The constitution of the right of air and its modifications can be opposed by third parties in good faith from the time of the registration in the Property Register, in the way and with the purposes established by mortgage legislation or when third parties have knowledge of it.

Article 567-3. *Legitimation*

1. The title of constitution of the right of air awards the proprietors of real estate or the usufructuaries with the power of disposal.
2. The right of air, if constituted or reserved in the title of constitution of property in condominium, must appear in a separate and specific clause.
3. There must be unanimity of all proprietors to constitute the right of air on a building subject to the system of property in condominium.

Article 567-4. *Transferability*

1. The right of air and the property of preexisting real estate are freely disposable by acts between the living and due to death, both free and for financial consideration, if not agreed otherwise.
2. The right of air and the property of preexisting real estate can be mortgaged and encumbered as far as they are disposable.

Article 567-5. *Exercise*

1. The owners of the right of air are empowered to build at their expense in accordance with the title of constitution, with the corresponding project and administrative licences. The owners of the right of air must ensure the whole building has the safety and the elements required by the building and if appropriate, the housing regulations.
2. The construction must be made in a way that causes the least inconvenience to the proprietors or occupants of the preexisting floors or buildings. The owners of the right of air must indemnify said proprietors or occupants for the prejudices they may have been caused during the construction.
3. The owner of the right of air takes over, with full ownership, the exclusive elements located in the resulting floors or buildings, can award only and at their own expense the declaration or extension of new work, changing the description of the preexisting building if necessary and, if required and if agreed, can establish the system of property in condominium.

4. The owners of the preexisting real estate over which the right of air is to be constituted retain the property of the exclusive elements situated on the floors or the buildings that already existed when the right was constituted.

Article 567-6. *Lapsing*

1. The right of air expires for the general reasons of lapsing of real rights and, in addition, for the following reasons:

a) Due to lack of finish of the works of new construction in the term established, in the part not constructed. This notwithstanding, if at the end of the term the construction has begun, the right is understood as extended for the time that the works permit forecast for the finish, provided that the deed of declaration or extension of new work has been presented in the Property Register within the term.

b) By a modification of the spatial planning regulations that indicates the impossibility of building the floors or buildings agreed. If the regulations only partly impede the construction, the right is maintained within the possible limits, and its owner can change the constructions envisaged without the need for consent of the proprietors of the real estate if it conforms with new spatial planning and accredits this with the corresponding technical and administrative certifications.

2. The right of air does not expire due to the destruction of the building on which it devolves.

3. If as a consequence of spatial planning the building on which it devolves is subrogated for an edificable plot, the owners of the right of air must have a part of the edificable volume in the new plot proportional to that corresponding to the estate replaced.

CHAPTER VIII

Rights of acquisition

SECTION ONE

General provisions

Article 568-1. *Concept*

1. Rights of voluntary acquisition are the following:

- a) Option, which enables its owner to acquire a property on the conditions established by the legal businesses that it constitutes.
 - b) Preemption, which enables its owner to acquire a property for financial consideration on the same conditions agreed with another acquirer.
 - c) Buyout, which enables its owner to subrogate the acquirer on the same conditions agreed by a legal business for financial consideration once the transfer has taken place.
2. Preemption and buyout are legal rights of acquisition in cases where this code so establishes. These rights are governed by the corresponding specific sector regulations.

Article 568-2. Constitution and effectiveness

1. The real rights of acquisition are constituted by public deed and, if they devolve on real estate property, must be recorded in the Property Register.
2. The exercise of the rights of voluntary acquisition involves the acquisition of the property in the same legal situation as it was at the time of constitution, and also the lapsing of incompatible rights constituted later on the property if the right was constituted with a real nature, without prejudice to the provisions of mortgage legislation.

Article 568-3. Object

1. Rights of acquisition can devolve on real estate property and movable property that can be identified.
2. The rights of acquisition over future property are subject to the condition the effective existence of their object.
3. Registrable rights of acquisition constituted on diverse property must indicate an individual price for each one that makes it possible to exercise the rights separately. This is except when a global price has been indicated that demands a joint exercise on all the property.
4. The rights of acquisition on a real estate property can be constituted on particular parts of this or its edificability. In these cases, the acquisition price must be fixed bearing in mind the surface measurements or other parameters or determined modules.

Article 568-4. Co-ownership

The rights of acquisition constituted in favour of several owners in a joint heirship must be exercised jointly by all owners or by one or more of them by assignment of the others.

SECTION TWO

Rights of voluntary acquisition

Subsection one

General provisions

Article 568-5. Constitution

1. Voluntary rights of acquisition can be constituted for any title.
2. The premium agreed in the constitution of the right is allocated only at the price of acquisition if this is expressly stipulated.

Article 568-6. Content of the title of constitution

The title of constitution must contain at the very least the following data:

- a) The term of the right and, if appropriate, that of its exercise. If it is not fixed, the first is understood as four years and the second one month.
- b) If this is a right of option, the consideration for acquiring the property or the criteria for setting it and, if appropriate, the agreement to exercise unilaterally the power of option. The consideration can be unremunerated.
- c) If the right is constituted for a financial consideration, the premium agreed for constituting it and the way it was paid.
- d) The domicile of the grantors of the option or the owners of the preemption or the buyout for the compulsory notifications.
- e) The way of accrediting the payment of the price or consideration, if this is a right of option and its unilateral exercise has been agreed.

Article 568-7. Lapsing

1. The rights of acquisition lapse for the general reasons of lapsing of real rights and, in addition, due to their exercise or the expiry of the term.
2. The owners of the right of preemption can renounce it with relation to a determined agreement of transfer. The surrender of the right of preemption implies that of buyout.

Subsection two

Right of option

Article 568-8. *Length*

1. The real right of option can be constituted for a maximum time of ten years.
2. The right of option, by agreement of the interested persons, can be successively extended, and each extension may not exceed the terms established in Section 1.
3. The length of the right of option constituted as an agreement or stipulation integrated in another legal businesses may not exceed that of the latter, with the corresponding extensions.

Article 568-9. *Transferability*

1. The property subject to a right of option is disposable without the consent of the persons opting, and the acquirers are subrogated in the obligations that, if appropriate, correspond to the grantors of the right.
2. The rights of option are transferable, except if they have been constituted in consideration of their owner.

Article 568-10. *Conservation of the object*

1. The proprietors are obliged to preserve with due diligence the property subject to the right of option and answer to the persons opting for the deterioration that said property suffers due to blame or fraud.
2. The owners of the right of option have the power to inspect the property that is subject thereto to check its state of conservation.
3. The necessary expenses are payable by the proprietors of the property, except by agreement to the contrary. The proceeds pending at the time of exercising the right of option and the improvements and accessories introduced by the proprietors of the property belong to the persons opting, who are not obliged to pay the amount.

Article 568-11. *Loss of the object*

1. If the property subject thereto has been totally lost by a fortuitous event, force majeure or by the act of a third party, the owners of the right of option cannot demand the return of the premium paid. If the total loss is caused by blame or fraud of the grantors of the right or of the proprietors, the latter must return the premium paid, without prejudice to the indemnification for damage and prejudice occasioned.

2. If the property to which it is subject is partly lost, the owners of the right of option can choose between not exercising their right or exercising it over the surviving part. In this case, they must pay the proportional consideration. If the partial loss is caused by blame or fraud of the proprietors, they must indemnify said owners for the damage and prejudice and, depending on the choice of said owners of the option, must return the corresponding part of the premium.

Article 568-12. *Exercise*

1. Without prejudice to the provisions of the title of constitution, the persons opting must pay the price or consideration in exercising the right of option or before exercising it, and the grantors must hand over the possession of the property.

2. If there are real rights or encumbrances after that of the person opting recorded on the property subject to the right of option, the price or the consideration must be deposited or placed at the disposition of their owners, who must notify the exercise of the right of option and the deposit or disposition constituted in their favour.

3. The person opting can unilaterally exercise the right of option recorded provided the following conditions are complied with:

a) That this has been so agreed when constituting the right.

b) That he or she holds the possession of the property or can acquire it instrumentally by formalising the exercise of the option.

c) That the price or the consideration is deposited by notary at the disposition of the proprietors and of the third parties who accredit recorded rights or rights recorded after the right of option in the Property Register if this is real estate, or that said price or consideration is guaranteed if its payment has been adjourned.

4. Within the term of the right of option, the persons opting must notify the grantors or the proprietors in an irrefutable manner of the exercise of said right at the domicile stated in the title of constitution. To cancel the charges and rights recorded after the registration of the right of option, the provisions of mortgage legislation must be complied with.

Subsection three

Voluntary rights of preemption and buyout

Article 568-13. *Length*

1. The real right of preemption can be constituted for an indefinite time for the first transfer and for a maximum of ten years if its exercise has been agreed in second and later transfers.
2. The right of preemption may be successively extended, but each extension may not exceed the term established in Section 1.

Article 568-14. *Exercise*

1. If there is no agreement, rights of preemption can only be exercised with respect to the first transfer for a financial consideration.
2. The rights of preemption can be exercised even if the transfer planned is done at a legal or extra-legal auction, in which case the owner of the right of preemption must equal the best price offered in the auction. In the event of contesting, the term of exercise is suspended until the contest has been resolved.
3. Free transfers, between the living or due to death, do not affect the right preemption.
4. It is understood that if no term has been established, the exercise of the right of preemption expires within the term of two months counted from the day after the day when the agreement of transfer between the proprietor of the property and a third party and its conditions is notified in an irrefutable manner. If the transfer is subject to a suspended term or condition, the term of exercise must be counted from the expiry of the suspended term or from the time of knowledge of compliance with the condition.
5. The provisions of this article are applied to the right of buyout disconnected from any prior right of preemption.

Article 568-15. *Conversion of the preemption into buyout*

1. The real right of preemption implies that of buyout if there is no irrefutable notification of the essential elements of the agreement for transfer or if the transfer was carried out in conditions other than those stated in the notification, or before the term for exercise of the preemption expired.
2. The right of buyout must be exercised within a term equal to that agreed for the exercise of the right of preemption or, if nothing is agreed, within a term of three months, in both cases counted from the date when it was recorded in the Property Register or when knowledge of the disposal became known.

SECTION THREE

Legal rights of buyout

Subsection one

Buyout of adjacents

Article 568-16. Concept

The buyout of adjacents is the legal right of acquisition that occurs in the cases and with the requirements established in this subsection, in virtue of which their owners are subrogated in the legal position of acquirers.

Article 568-17. Ownership

1. The natural or legal persons who, according to the special legislation, have the consideration of direct and personal cultivators can exercise the right of buyout of adjacents.
2. The direct and personal cultivators who are proprietors of rustic estates that confront with the rustic estates disposed of are legitimated to exercise the right of buyout of adjacent.
3. It is preferred, if there are several legitimated persons, the proprietor of the adjacent estate of less surface area and, if this is identical, that of the estate with most adjacent perimeter.

Article 568-18. Requirements

1. The right of buyout of adjacent estates can be exercised, in the event of sale or dation in payment of a rustic estate of less than the minimum unit of cultivation, in favour of a person who is not proprietor of any of the adjacent estates.
2. The right of buyout of adjacent estates cannot be exercised if within the estate disposed of there are buildings that comply with the law whose value represents more than two thirds of that of the estate.

Article 568-19. Exercise

1. The term for the exercise of the right of buyout of adjacent estates is two months from the time when the direct proprietors cultivators of adjacent estates have had knowledge of the disposal and of its circumstances or from the date when the transfer is recorded in the Property Register.

2. Acquisition by means of the right of buyout of adjacent estates is carried out for the same price or value and in the conditions agreed by the person who has transferred the estate and acquired it.

Article 568-20. *Limitations*

1. The acquirers of a rustic estate by means of the right of buyout of adjacent estates are compelled to group the estate acquired with the estate of which they are owners within the term of six months counted from the acquisition and to keep it grouped for a minimum of six years counted from the registration.

2. The acquirers of a rustic estate by means of the right of buyout of adjacent estates cannot dispose of it between the living during the term of six years counted from the day of acquisition, except if they do so with the consent of the person in whom they subrogated in acquiring it, or if the estate acquired represents less than 20% of the surface area of the estate that results from grouping.

Subsection two

'Torneria'

Article 568-21. *Legal concept and system*

1. 'Torneria' is the right to legal acquisition by buyout that takes place exclusively in the territory of Aran, in cases and with the requirements established by this subsection, in virtue of which their owners are subrogated in the legal position of acquirers.

2. 'Torneria' is governed by the regulations of this subsection and, where not incompatible, by the uses and customs of Aran, which must be borne in mind for its interpretation.

Article 568-22. *Ownership*

1. Only individual persons with local residence in Arán can exercise the right of 'torneria'.

2. Relatives up to the fourth degree in line from which the property proceeds are legitimated to exercise the right of 'torneria'.

3. It is preferred, if there are several relatives legitimated, the nearest and, in equality of degree, the oldest. Calculation of the degree must comply with the regulations of intestate succession.

Article 568-23. *Requirements*

1. In the event of sale or dation in payment of a rustic estate located in the territory of Arán, the right of ‘torneria’ can be exercised in favour of a stranger or a relation beyond the fourth collateral degree, if the estate has belonged to blood relations for two or more generations immediately prior to that of the settlor.
2. The right of ‘torneria’ can be exercised on the family house and its premises even on urban land, except if it forms part of a commercial or tourism exploitation.

Article 568-24. *Exercise*

1. The term for exercising the right of ‘torneria’ is one year and a day counted from the date when the transfer is recorded in the Property Register or when its disposal and its circumstances become known if the transfer has not been recorded.
2. Acquisition by means of the right of ‘torneria’ is carried out for the same price or value and on the conditions agreed by the relation who has transferred and acquired.
3. The right of ‘torneria’ can only be surrendered by public deed.

Article 568-25. *Limitations*

The acquirers of an estate by means of the right of ‘torneria’ cannot dispose of it between the living, even freely, within the term of six years counted from the day of acquisition, except if they do so with the consent of the person whose place they subrogated in acquiring it.

Article 568-26 *Preference*

The right of ‘torneria’ is preferential to any other right of legal acquisition, except that of co-proprietors.

SECTION FOUR

Preference between legal rights of acquisition

Article 568-27. *Preference*

1. If, because of the same disposal, various legal rights of preferential acquisition are applicable, in all cases the right of preemption prevails that corresponds to co-proprietors or co-heirs in the sale of a quota and, if none, that of the bare proprietors in the disposal of the usufruct or the annuitaries in the disposal of the right of lease.

2. If the rights referred to in Section 1 are not applicable, the rights of preemption corresponding to the tenants, if any, have preference.
3. If the rights referred to in sections 1 and 2 are not applicable, the right of buyout of adjacent estates is applicable.
4. The provisions of this article are understood to be without prejudice to the provisions of Article 568-21 on 'torneria' and that established by the special laws in relation to buyouts established in favour of the Generalitat, state or local corporations. The rights referred to in this article are governed by the corresponding specific sector regulations.

CHAPTER IX

Real rights of guarantee

SECTION ONE

General provisions

Article 569-1. The real rights of guarantee

This code regulates the following real rights of guarantee, that can be constituted to ensure the compliance of a principal obligation:

- a) Right of retention.
- b) Pledge
- c) Antichresis
- d) Mortgage

Article 569-2. General effectiveness

1. The effects of the real rights of retention and pledge are the following:
 - a) The retention of the possession of the property until complete payment of the debt guaranteed.
 - b) The realisation of the value of the property, when and how this code establishes.
2. The effects of the real right of antichresis are as established in Section 1 for real rights of retention and pledge and, in addition, the allocation of the proceeds of the property to payment of the interest of the debt guaranteed and, if appropriate, the capital.

3. The effect of the real right of mortgage is the realisation of the value of the property in the cases and the way established in this code and mortgage legislation.

4. The credit, both in the allocation of the proceeds and in the allocation of the price obtained in the realisation of the property's value, are subject to the general rules on precedence of credits.

5. The transfer of the credit guaranteed also includes that of the guarantee.

SECTION TWO

Guarantees of possession

Subsection one

Right of retention

Article 569-3. Concept of right of retention

The possessors in good faith of a private property, whether mobile or real estate, who have to hand it over to another person, can retain the possession in guarantee of payment of the debts referred to in Article 569-4 until full payment of the debt guaranteed.

Article 569-4. Obligations that can give rise to the right of retention

The following obligations can give rise to the right of retention:

- a) Compensation for the expenses necessary to preserve and manage the property and the useful expense, if there is a right to claim their reimbursement.
- b) Compensation for damage produced by the thing to the person compelled to the handing over.
- c) Retribution for activity carried out to produce or repair the property, if it existed previously, in the case of mobile property, a written and accepted budget and, if real estate, an express agreement between the parties, and if, in all cases, the activity conforms to the budget or agreement.
- d) Interest for the obligations established in this article, from the time when the right of retention is notified in the way established in Article 569-5.
- e) Any other debt to which the law expressly grants this guarantee.

Article 569-5. Constitution

1. The retainers must notify by notary the debtors, the proprietors if different and the owners of the real rights, if appropriate, of the decision of retention, the settlement made and the determination of the amount of the obligations established in Article 569-4. These can judicially oppose the retention within the term of two months counted from the date of the notification.
2. If the object that is retained is an estate that constitutes the family dwelling, the notification referred to in Section 1 must also be carried out to the spouses or cohabitants, who can not oppose the retention.
3. Once notified by notary of the decision of retention, if the right of retention devolves on an estate or a right recorded on an estate, the retainers can demand their owners to award the deed of recognition of the right of retention, for the purposes of the registration of the latter in the Property Register.
4. The deed referred to in Section 3 must contain the following data:
 - a) The settlement carried out and the determination of the amount of the obligations in accordance with the budget, the agreement and the work executed.
 - b) The value at which the persons interested appraise the estate or the right retained, to serve as the price in the auction.
 - c) The domicile of the proprietors of the estate or of the owners of the right retained, to make requirements and notifications.
 - d) If agreed, the agreement that, in the event of failure to pay, permits the retainers, the proprietors or third parties to make the direct sale of the estate and the criteria of disposal of the estate or of the right recorded.
 - e) The designation, if appropriate, of a person who may be the creditor, to represent the owner of the estate or of the right in the awarding of the deed of award.
 - f) The other data required by mortgage legislation.

Article 569-6. Possession of retained property

1. The retainers can refuse, even in front of third parties, to restore the property until the debts that have caused the retention have been paid in full.
2. The retainers must preserve the property retained with the diligence necessary and may not carry out any other use than mere preservation. The expenses necessary to preserve it are subject to the system of retention.

3. The right of retention lapses if the retainers voluntarily return the property retained to the proprietors, even afterwards they recover the possession, and, in the real estate retention, if they consent to cancel the registration.

Article 569-7. Realisation of the value of the retained movable property

1. After two months have gone by from the notarial notification of the decision of retention to the debtors and the proprietors without a judicial proposition occurring, the retainers can realise the value of the movable property retained by direct disposal or by notarial public auction.

2. The retainers and proprietors of the movable property retained may agree to directly dispose of any of it or for a third party to do so. This agreement must be formalised by public deed, must contain the criteria of disposal and the term within which this must be done, which may not exceed six months, and must be notified in an irrefutable manner to the owners of known real rights on the property, so that, if they are interested, they can pay the debt and be subrogated in the position of creditors.

3. If there is no agreement for the direct sale, the retainers can dispose of the property retained by notarial public auction, in accordance with the following rules:

a) Except by agreement to the contrary, the auction must be carried out before any notary of the municipality where the debtors have their domicile, if located in Catalonia, at the creditors' choice. If there is no notary's office in said municipality, it can be done in any in the capital of the corresponding notarial district.

b) The debtors must be invited to the auction and, if different persons, the proprietors, in the way established by notarial legislation and, if none of these persons are found, by edicts. The auction must be announced, with a minimum of ten and a maximum of fifteen working days' notice with respect to its date, by the daily papers of greatest circulation in the municipality where it is to take place and in the *Diari Oficial de la Generalitat de Catalunya* (Official Journal of the Generalitat of Catalonia).

c) The auction rate must be as agreed between the creditors and the proprietors. If there is no agreement, the rate must be, at the very least, equal to the amount of the obligations that have originated the retention plus the expenses envisaged for disposal and the release of the property. Notwithstanding this, the rate can be established as the amount resulting from a technical inspection arranged by the retainers if higher than the above.

d) If in the auction no bid is presented, a second auction must be carried out, within a term of between three and fifteenth working days counted from the first.

- e) If the property is not disposed of in either of the two auctions, the retainers can take it over, granting a letter of payment of the whole credit, and taking on the expenses caused by the procedure.
4. In the event of retention of stocks subject to official quotation, the disposal must be carried out according to the corresponding specific procedure in accordance with the applicable legislation on this matter.
5. If the property retained is recorded in the Movable Property Register, the letters *b* and *c* of Section 3 of Article 569-8 must be applied.

Article 569-8. Realisation of the value of the retained estate or right

1. The owners of a right of retention recorded in the Property Register can realise the value of the estate or the right retained by direct disposal or public judicial auction, in accordance with the rules established in this article.
2. The retainers and the owners of the thing or right retained can agreed to directly dispose of any of it or for a third person to do so. This agreement must be formalised by public deed, must contain the criteria of disposal and the term within which this must be done, which may not exceed six months, and must be notified in an irrefutable manner to the owners of the real rights later recorded, so that, if they are interested, they can pay the debt and be subrogated in the position of creditors.
3. If there is no agreement for direct sale, the retainers can do the disposal by notarial public auction, in accordance with the following rules:
- a) The auction must be carried out at the notary's office of the place where the estate is located or, if there is more than one, to that to which it corresponds by time-sharing.
- b) The retainers must require the notary competent the start of the procedure and must supply the registration in a public deed of the constitution of the retention or, if appropriate, the corresponding judicial resolution.
- c) After examining the documentation presented, the notary must request from the Property Register the certificate of ownership and charges of the estate or the right recorded on which the right object of retention devolves. The issue of the certificate must be recorded in the margin of the registration of the right of retention.
- d) Once five working days have gone by from the receipt of the certification from the Property Register, without the need to require the payment of the debtors, the notary must notify the

beginning of the actions to the owners of the right retained, the proprietors of the estate, if other, and in both cases, if it is stated that this is their family home, the spouses or co-habitees.

e) Once the notification has been made, the debtors and proprietors can paralyse the auction by depositing before the notary, within the following twenty working days, the amount sufficient to pay the debt, with the corresponding interest and expenses arising until the time said deposit was made. Once this term has gone by, the auction must be announced, with advance warning of at least fifteenth working days, in one of the daily newspapers with most circulation in the municipality where it must be carried out and in the *Diari Oficial de la Generalitat de Catalunya* (Official Journal of the Generalitat of Catalonia).

f) The auction rate is that agreed by the creditors and the proprietors in accordance with Article 569-7.

g) If no bid is presented at the first auction, another must be held within a term of between three and fifteenth days counted from the first.

h) If the property is not disposed of in either of the two auctions, the retainers can take it over by granting a letter of payment of the whole credit and taking on the expenses caused by the procedure.

i) Once the estate or the right retained has been awarded, their owners or, if they refuse or there are none, the legal authority must grant a deed of sale in favour of the successful bidders, who can record their right in the Property Register. The charges prior to adjudication survive and those after it expire and are cancelled.

Article 569-9. *Destination of the amount of disposal*

The provisions of Article 569-21 are applied as regards the destination of the amount obtained in the auction or public sale.

Article 569-10. *Retention of movable property of little value*

1. The right of retention on a movable property of a value lower than the amount of three months' national minimum wage caused by the retribution of the activity that has been carried out at the request of the legitimate possessors can be exercised, in accordance with the rules established in this article.

2. The communication of the decision of retention referred to in Article 569-5 can be replaced, in the case of property of little value, by a notification made by bureaufax, registered post or by any other means that sufficiently accredits reception.

3. After one month has gone by from the notification without the debtors or the proprietors of the property paying the debt or in an irrefutable manner contesting the retention, the retainers can freely dispose of the property. In this event, the preexisting charges survive, except if any limitations corresponding to the power of disposal or reserves of ownership are recorded in the corresponding register.
4. If the property has been sold, the proprietors have right to the remainder of the price obtained once the amount of the credits that caused the retention and the expenses of conservation and disposal, if appropriate, of the property retained have been deducted.

Article 569-11. Substitution of the property retained

1. The debtors or proprietors of the property retained can impose on the retainers, while they have the right of retention, the substitution of the retention for another real guarantee or for the sufficient solidarity funding of a credit entity.
2. It is understood that the real guarantee is sufficient if the market price of the property offered in guarantee, although lower than that of the property retained, can cover the amount of the debt that caused the retention and 25% more.

Subsection two

Right of pledge

Article 569-12. Concept of pledge

The right of pledge, which can be constituted on property, stocks, rights of credit or money in guarantee of the compliance with any obligation, empowers the creditor to possess it, by him/herself or by a third party if agreed, and in the event of non-compliance with the obligation guaranteed, to request realisation of its value.

Article 569-13. Requirements of constitution

1. The pledge, constituted for any title, requires:
 - a) The transfer of the possession of the private property to the creditors or to third parties, in accordance with the pledgors, by any means allowed by this code.
 - b) The power of free disposal of the movable property pledged by the person who pledges it.
2. The pledge only has effects against third parties from the time when the date on which its constitution was agreed is recorded in a public document.

3. The pledge of credits must be constituted by public document and must be notified to the debtor of the credit pledged.

Article 569-14. Obligations that may be guaranteed by pledge

1. The pledge can guarantee any obligation, present or future, own or private, of the pledgors.
2. The pledge can guarantee obligations of which the amount is unknown at the time of constitution. In this case, the maximum quantity guaranteed must be determined.

Article 569-15. Plurality of pledges and indivisibility

1. A property pledged cannot be pledged again, except in favour of the creditors themselves and the responsibility of the obligations guaranteed is distributed.
2. The guarantee is indivisible, even if the credit or debt are divided.

Article 569-16. System of pledge in relation to the pledged object

1. The creditors and debtors or, if appropriate, the proprietors of the property, if there is more than one object pledged, can set the part of the credit that each guarantees. In this case, it is understood that as many rights of pledge have been constituted as there are objects.
2. The group of property whose value is determined in the trade by taking into account the number, weight or measurement is a single object of pledge.
3. The whole or packages of stocks, among which are included shares, obligations, bonds, credits and stock in general, can be configured as unitary objects of pledge, in accordance with the legislation applicable on this matter.

Article 569-17. Substitution of the property pledged

1. The debtors or, if another person, the pledgor, if the pledge devolves on fungible property and it has been expressly agreed, can substitute all or part of the property pledged.
2. The substitution of some stocks for others, in the case of quotable stocks, is carried out in accordance with the price of the respective quotations in the official market on the day of substitution. In the case of non-quotable stocks, to accredit the substitution it is sufficient for them to have in their power the secured creditors or designated third parties, and that it is registered in the same bill or document that accredits the right.

3. It is understood to all effects, in the two cases referred to in Section 2, that the date of the pledge is maintained, as if it had been initially constituted on the property that substitutes that initially encumbered.

4. It is understood to all effects, in the cases of substitution of the property pledged, that the date of the pledge is maintained, as if it had been constituted initially on the property that substitutes that initially encumbered.

Article 569-18. Principle of real subrogation

If the object of the pledge is a right of credit and this is paid before the credit guaranteed by the pledge expires, the guarantee devolves on the object received as a consequence of the payment.

Article 569-19. Possession of the property pledged

1. The secured creditors can refuse to restore the property pledged until they are fully paid the credit guaranteed for the principal, the interest and the procedure expenses agreed.

2. The secured creditors must preserve the property pledged with the diligence necessary and may not carry out any other use than mere preservation. The expenses necessary to preserve it are subject to the system of retention.

3. It is understood that the right of pledge has been renounced if the property pledged is in the hands of its proprietor.

Article 569-20. Realisation of the value of pledged property

1. Once the debt guaranteed with the pledge has expired, the creditors can realise the value of the property pledged, in accordance with the provisions of this article, if payment has been required of the debtors and if in the term of one month there is no judicial opposition from these, accompanied by the deposit or the guarantee of the value of the debt by a credit entity.

2. In cases of pledge of business participations or registered shares, ex officio, the notary must notify the company of the beginning of the process.

3. The secured creditors and the pledgors can agree that any of them or a third party can sell the property pledged. This agreement, which must be formalised in a public document, must contain the criteria of the disposal and the term for compliance, that may not exceed six months, and must notify in an irrefutable manner the known owners of real rights on the property, so that if they are interested, they can pay the debt and be subrogated in the position of the secured creditors.

4. If there is no agreement for the direct sale, the secured creditors can dispose of the property by means of a judicial auction if they bring to the notary who authorised the title of constitution of the pledge and the requirement to pay, and guarantee them the lack of legal opposition, in accordance with the following rules:

a) Except by agreement to the contrary, the auction must be carried out before any notary of the municipality where the debtors have their domicile, if located in Catalonia, at the creditors' choice. If there is no notary's office in said municipality, it can be done in any capital of the corresponding notarial district.

b) The debtors must be invited to the auction and the proprietors if different, in the way established by notarial legislation and, if none of these persons are found, by edicts. The auction must be announced with a minimum of five and a maximum of fifteen working days' advance notice with respect to that date this, in one of the daily newspapers with most circulation in the municipality where it is to take place and in the *Diari Oficial de la Generalitat de Catalunya* (Official Journal of the Generalitat of Catalonia).

c) At the first auction, bids lower than the amount of the debt guaranteed by the pledge plus 20% for the expenses caused by the procedure are not allowed. The second auction, which can be carried out immediately after the first, has a minimum rate of 75% of this amount.

d) Only if the property is not disposed of in either of the two auctions, the creditors can take it over by awarding a letter of payment of the whole credit and taking on the expenses caused by the procedure.

e) If the property is auctioned for an amount higher than the credit, the remainder must be released to the proprietors or, if appropriate, to the corresponding creditors.

5. If the pledge devolves on money or on a title representative of money, provided that it is for a liquid and due quantity, the secured creditors can take it over without need for previous auction, but only up to the limit of the amount of the credit guaranteed, with the sole requirement of notifying it in an irrefutable manner to the debtors before doing so.

6. If the pledge devolves on quotable stocks and other financial instruments that are similar in accordance with the laws, the disposal must be done according to the specific procedure established by applicable legislation in matters of stock markets.

7. If the objects pledged are diverse, the debtors can demand that their realisation is finalised when disposal of some has already covered the debt guaranteed and the expenses of execution.

8. The execution established by this article is applicable supplementarily to the pledges constituted by legally recognised pawn shops and to the pledges of financial guarantee.

Article 569-21. *Destination of the amount of the disposal*

1. The amount obtained in the auction or public sale must be allocated firstly to pay the expenses of disposal and then to pay the debt.
2. The remainder, if any, without prejudice to the provisions of bankruptcy legislation, is allocated to pay the owners of recorded charges or the creditors with the best right after the debt that caused the constitution of the real right of guarantee, according to the corresponding order of precedence. Finally, the final remainder will be handed over to the proprietor of the property.
3. If there is no agreement between the proprietor of the property and the later creditors as regards the remainder, the notary must deposit it judicially.

Article 569-22. *Pledge of quotable stocks*

The provisions of this chapter are applicable to the pledge of quotable stocks and other similar financial instruments in accordance with the laws in anything not established in the specific legislation applicable in matters of the stockmarket.

Subsection three

Right on antichresis

Article 569-23. *Concept of right of antichresis*

The right of antichresis, which can be constituted on profitable real estate in guarantee of the payment of any obligation, empowers the creditors to possess it, by themselves or by a third party if so agreed, and to charge the proceeds to apply them in payment of the interests and the amortisation of the capital of the obligation guaranteed and, in the case of non-compliance with the obligation guaranteed, to request the realisation of the value.

Article 569-24. *Constitution*

1. Antichresis, constituted by any title, requires:
 - a) The power of free disposal of real estate on which it devolves by the person who constitutes the guarantee.
 - b) The transfer of the possession of the property to the creditors or to a third party, in accordance with the antichretic guarantors, by any means allowed by the law.

2. The right to antichresis must be constituted by public deed and can only be contested by third parties from the time when it is recorded in the Property Register.

Article 569-25. *System*

1. The regulations established by articles 569-14, 569-15 and 569-19.1 as regards the obligations that may be guaranteed by pledge, the plurality and indivisibility of antichretic guarantees and the power of creditors to refuse to restore the estate until they have been fully paid the credit guaranteed, are applicable to the real right of antichresis in everything compatible with the nature of this right.

2. If there is more than one estate encumbered, the credit must be distributed between these estates to determine the part that each guarantees.

3. If the encumbered estate is segregated or divided, the creditors and the proprietors can agree, by public deed, the part of the credits guaranteed by each of the resulting estates. If this is not done, the resulting estate continues guaranteeing the credit jointly and severally.

4. During the retention, the owners of the right of antichresis must administer the property with the diligence necessary to obtain the maximum yield possible and keep it in a good state in accordance with its nature, and have the right to take possession of the net profits to apply them to the payment of the obligation guaranteed and, if appropriate, its interests. The proprietors of the encumbered estate may demand that the creditors or the third party who possesses it the annual rendering of accounts of their management.

Article 569-26. *Realisation of the value of the antichretic estate*

The antichretic creditors can realise the value of the antichretic estate on the same terms as the owners of the right of retention.

SECTION THREE

Right of mortgage

Subsection one

General provisions

Article 569-27. *Mortgageable property and rights*

As well as mortgageable property and rights in accordance with mortgage legislation, those established in Subsection 2 can be mortgaged, in accordance with the dispositions of said subsection.

Article 569-28. Obligations guaranteed by a mortgage

A mortgage can be constituted in guarantee of all classes of obligations, in accordance with the provisions of the mortgage legislation and with what Subsection 2 provides for each case.

Article 569-29. Capacity and legitimation to constitute a mortgage

1. To constitute a mortgage the free disposal of the property is required.
2. Minors and disabled people can only constitute a mortgage if they comply with the requirements that the Code of the Family and other laws establish for the disposal and encumbrance of their property.
3. If the mortgage is constituted by means of representatives, the power must expressly contain the power to mortgage, both if it is a special power and a general power. The person represented, if appropriate, can notify the mortgage constituted without powers or with insufficient powers before the other party revokes it.

Subsection two

Special circumstances of mortgage

Article 569-30. Mortgage constituted by spouses

The mortgage constituted on property bought with a survival agreement or on common property bought in the community matrimonial systems requires the consent of both spouses, except if there is an agreement or disposal that expressly allows a single spouse to unilaterally dispose of the common real estate property.

Article 569-31. Mortgage on the family or common house

1. In mortgages that a spouse constitutes on rights or holdings of family housing of the marriage or that a cohabitee constitutes on rights or holdings of common housing of an unmarried couple, the other spouse or other cohabitee who is not the owner must give consent. If this does not happen, legal authorisation is required.

2. The person who mortgages a dwelling that does not have the nature of family or common, must state so expressly in the deed of constitution of the mortgage. In the event of false or erroneous declaration of the person mortgaging, the contesting by the other spouse or cohabitee may not prejudice mortgage creditors in good faith.

Article 569-32. *Mortgage of legal usufruct of widowed spouses*

1. The legal usufruct conceded to the widowed spouses in the intestate succession of their spouses predeceasing them is mortgageable.
2. The loss of the usufruct for the reasons established in this code determines the automatic expiry of the mortgage, except if the bare proprietors have consented to its constitution, in which case full ownership is extended.

Article 569-33. *Mortgage on the rights resulting from the sale with letter of grace*

1. The right of redemption or recovery of the property sold with letter of grace can be mortgaged if the length of the mortgage is not longer than the term established for exercising it.
2. In the event of non-compliance with obligation guaranteed, mortgage creditors can directly execute the right of redemption, or exercise it previously and then realising the estate mortgaged.
3. If the debtors exercise the right of redemption, before the expiration of the terms of the mortgage, there will be real subrogation of the object mortgaged, that devolves from then on onto the recovered estate.
4. The buyers can mortgage the encumbered estate with the right of redemption. In this case, the exercise of the right of redemption, which must be communicated in an irrefutable manner to the mortgage creditors, involves the recovery of the estate sold free of mortgage, although the price of the redemption remains subject to the payment of the mortgage loan and it must be accredited that this has been deposited by notary or judicially in favour of the mortgage creditors and, if appropriate, of third parties who own the rights on the encumbered estate, to be able to record the cancellation of the mortgage.
5. If the vendors do not exercise the right of redemption on the mortgaged estate within the term established, the mortgage continues encumbering the estate, free of the right of redemption.

Article 569-34. *Mortgage of the right of building*

1. The right of building can be mortgaged both if conceded by public bodies and by private persons.
2. The lapsing of the right of building due to the expiry of the term causes the automatic expiry of the mortgage constituted on this right, except for any agreement to the contrary in the title of constitution.
3. The mortgage that devolves on the right of ownership of the land and the right of building, if it concurs in the same person, are continued to be encumbered separately, although the mortgage constituted on the right of building expires when the term for which it was agreed expires.

Article 569-35. Mortgage on the rights of preferential acquisition

1. Real rights of acquisition can be mortgaged.
2. Exercise of the right of option within the term established involves the extension of the mortgage on the estate acquired by the owners of the right of option.
3. In the event of non-compliance with the obligation guaranteed by the mortgage, the creditors can directly execute the right of option, or previously exercise the right in the name of the debtors in the time in which these have the right thereto, advancing the quantity required, and then urging its execution on the estate acquired.
4. The provisions of sections 2 and 3 are also applied to mortgages constituted on the right of preemption.
5. In all types of rental with option of purchase, the mortgage devolves on the right of rental with option to purchase as a whole.

Article 569-36. Mortgage in guarantee of compensatory pensions

1. In the event of the annulment of marriage, divorce or legal separation, spouses with a right to be paid a maintenance or alimony pension can demand that they be guaranteed payment by means of a mortgage on the property of debtor spouse.
2. The conditions of the mortgage can be established by common agreement between the spouses in the judicially approved governing agreement or in a later agreement. If there is no agreement, at the request of the spouse with the right to a pension, the legal authority which has heard the procedure can set the conditions by means of a resolution, giving audience to both parties.
3. In all cases, as well as the value of appraisal of the estate and of the domicile to receive the notification for the effects of execution, the term of the mortgage, the amount of the pension and

the manner and terms of payment must be established. If its updating has been agreed, the index of reference must be objective and a maximum percentage must be established, for the purposes of the mortgage liability.

4. The person who buys the mortgaged property acquires it with subsistence of the mortgage and with the real liability of payment of the pensions until the obligation expires, without prejudice to the personal obligation of payment of the spouse. Pensions due and not paid at the time of execution only prejudice third parties in the terms established in mortgage legislation.

5. The mortgage can be changed, depending on the circumstances of the obligation guaranteed, by agreement between the persons interested and, if there is no agreement, by legal resolution.

6. The mortgage can be cancelled without consent of the creditor spouses if six months have gone by from the date of expiration of the last pension without the start of execution of the mortgage being recorded in the Property Register.

7. In the event of the death of the person obliged to pay the pension, the provisions of Article 86.2 of the Code of the Family must be abided by.

8. The provisions of this article are applicable to the economic compensations due to work if the payment has been adjourned.

Article 569-37. Mortgage in guarantee of alimony

Among the measures necessary to ensure the obligation to provide food to relatives who have right thereto in accordance with the provisions of the Code of the Family and at their request, the legal authority can adopt that of demanding the person obliged to constitute a mortgage in guarantee of the obligation, which remains subject to the regulations of Article 569-36 in everything not against the specific nature of the right of alimony.

Article 569-38. Mortgage in guarantee of regular pensions

1. The obligation to pay the regular pension arising from the constitution of a ground rent annuity or of a lifetime pension can be guaranteed with a mortgage.

2. The mortgage to which the Section 1 refers is governed by the provisions of mortgage legislation with regard to the mortgage in guarantee of rents or periodic benefits.

3. The mortgage in guarantee of a ground rent annuity must state, as well as the general circumstances, whether or not an agreement of improvement has been made and whether the ground rent annuity was constituted as irredeemable. In the mortgage in guarantee of a lifetime pension, the person or persons on whose the life it is constituted must be determined, as must

the simultaneous or successive nature of the designation of the creditors or beneficiaries and, particularly, the existence of an agreement of discharge of the contract by failure to pay the pensions.

4. In the event of sale of the mortgaged estate in guarantee of the ground rent annuity, it can be agreed that the acquirers are subrogated in the obligation to pay the pensions, so that the sellers are freed from the obligations from the time when the creditors of the pension consent to the subrogation expressly or tacitly by means of clear and conclusive conduct.

Article 569-39. Mortgage for reasons of guardianship or proprietary administration

The security judicially due by reason of the exercise of a tutelary or proprietary administration role can be constituted as:

- a) A maximum required mortgage in guarantee of the indemnifications and obligations of the tutors in the exercise of their position.
- b) A unilateral mortgage, that must be approved, if appropriate, by the legal authority.
- c) A brief for taking of possession of the position of tutor or proprietary administrator.

Article 569-40. Mortgage by reason of widower's life interest

1. If there is real estate property subject to reservation, the beneficiaries must request that this reservation is stated in a note in the margin of the registration of the property in the Property Register, in accordance with the provisions of the State mortgage Law.
2. In guarantee of the value of the movable property subject to reservation, the constitution of a legal maximum required mortgage can be demanded on any real estate property of the beneficiaries that is sufficient to guarantee said value.
3. In accordance with mortgage legislation, those making the reservation, their legal representatives and the public prosecutor can demand compliance with the obligations established by this article.

Article 569-41. Mortgage in the event of substitution of beneficiaries of a trust

1. If the security referred to in Article 207 of the Code of Succession is a mortgage, a maximum quantity of liability of the trustees in guarantee of the movable property in trust must be set, of the indemnification for damage and prejudice caused by the trustees to said property, and of costs.

2. If there is no agreement on the provision and amount of the mortgage, the beneficiaries of the trust can use the procedure established by mortgage legislation to demand the constitution of the legal mortgages.
3. To record the mortgages constituted by the trustees on the property in trust, the requirements that, in each case, are established by articles 217 to 228 of the Code of Succession, as well as general requirements established by legislation mortgage, must be complied with.
4. The beneficiaries of the trust can constitute a mortgage on their right to acquire the inheritance or the legacy in trust, which can also be object of a preventive annotation, provided that the clause of substitution of beneficiaries is recorded in their favour. The mortgage must be limited to the property that corresponds to them when the trust is disputed, when it becomes a registration of mortgage on the property with intervention of the mortgage creditors. If the trust was conditional and is not disputed due to non-compliance with the condition, the mortgage remains without effect.
5. In residual trusts, the beneficiaries can demand that they be guaranteed with a mortgage the amount of the fourth part that, at the very least, is their right, except if the testators have prohibited its detraction or guarantee. They can also record their right in the Property Register with a marginal note on one or several properties of sufficient value, by agreement with the trustees or, if none, by legal decision. While the right or the mortgage is not stated in the Property Register, the trustees can dispose of or encumber the property in trust as theirs, without prejudice to their liability as regards the obligations towards residual beneficiaries.
6. Once the trust has been disputed to the beneficiaries, while the fourth trebellianic part has not been paid, can record their right in the Property Register with a marginal note, provided that their requirements are accredited. A mortgage can also be constituted in guarantee of the payment of said fourth trebellianic part, by agreement of the persons interested.
7. In all the cases referred to in this article, by agreement or by legal resolution obtained in accordance with the procedure established in the State mortgage Law to demand the constitution of legal mortgages, the maximum amount that guarantees the mortgaged estate and, if appropriate, the term of compliance with the obligation must be set.

Article 569-42. Mortgage in guarantee of the obligation to urbanise

1. A real estate mortgage can be constituted to ensure to the Town Council or the organ acting on the obligation to urbanise of the developers of plans of private initiative.

2. The mortgage in guarantee of the obligation to urbanise that the developers of spatial plans of popular initiative can, in accordance with spatial planning legislation, be constituted unilaterally and remains pending acceptance by the administration acting as a maximum requirement mortgage. This mortgage must be constituted for a value sufficient to cover the amount of the percentage required by the spatial planning legislation of the value of the urbanisation works, or for a lesser quantity if it is completed by another guarantee. The acting administration can accept it by means of a public deed or an administrative document.
3. The mortgage can be agreed with the clause of automatic postponement to any other that is constituted in guarantee of loans or credits destined to finance the urbanisation works or construction, if this circumstance is accredited in a sufficiently objective way, or can be agreed in the deed of constitution of the prior mortgage itself and the deed be notified in a irrefutable manner to the acting administration.
4. The mortgage is cancelled by means of a certificate issued by the acting administration that accredits the compliance with the requirements established by spatial planning legislation. If a collaborating urbanistic entity is subrogated in the obligations of the developers, the mortgage can only be cancelled if this entity constitutes another guarantee to the satisfaction of the Town Council or the acting body.
5. If the project of re-distribution or equitable distribution is aimed at the execution of a unit within the territorial ambit of an urban organisation plan of individual initiative, the definitive approval of the project where it is stated that the resulting estates are encumbered for the payment of the amount of the settlement of the urbanisation expenses and the other project expenses, or that a sufficient guarantee of the obligation to urbanise has been constituted before the acting body, implies the cancellation of the mortgage constituted by the developer of the plan due to individual initiative in guarantee of the urbanisation works.
6. The estates of the project do not need to be encumbered for the payment of the amount of the definitive settlement if a mortgage accepted by the Town Council or the acting body in the case of compensation or re-distribution guarantees the payment of the urbanisation and other project expenses.

TRANSITORY PROVISIONS

First

Revocation of donations

The revocation of donations made before the entry into force of this book is governed by the regulations thereof, which also apply to donations made with reversion clauses and reservation of the power of disposal.

Second

Usucapio

Usucapio initiated before the entry into force of this book is governed by the regulations thereof, except for the terms, which are those established in Article 342 of the Compilation of the Civil Law of Catalonia. Notwithstanding this, if the usucapio had to be consumed beyond the time for usucapt established in this code, the terms set herein will apply, which start to be counted from the entry into force of this book.

Third

System of disposal

The effects of disposal that result from acts carried out before the entry into force of this book are governed by the regulations therein, except if the options established by Law 25/2001, of 31 December, on disposal and occupancy have been made in an irrefutable manner or the legal proceedings have been lodged before the entry into force of this book, when they are governed by the legislation that regulates it.

Fourth

Revindicative and negatory actions

1. Revindicative action originated and not exercised before the entry into force of this book survives if anyone who is not proprietor of the property maintains their possession, with the scope and on the terms recognised by previous legislation, but subject to the provisions of this code as regards the exercise, term and procedure.
2. Negatory action originated and not exercised before the entry into force of this book survives if the disturbance is maintained, with the scope and on the terms recognised in Law 13/1990, of 9 July, on negatory action, emissions, easements and neighbourhood relationships, but subject to the provisions of this code as regards the exercise, term and procedure.

Fifth

Situations of community

The situations of community constituted before the entry into force of this book are wholly governed by the regulations therein, even as regards the administration and the procedure of division.

Sixth

System of property in condominium

1. The buildings and groups thereof established in a system of property in condominium before the entry into force of this book are wholly governed by the regulations therein, which, after their entry into force, are applied with preference to the regulations of community or the bylaws that govern them, even if they are recorded, without any specific act of adaptation being required.
2. Without prejudice to the provisions of Section 1, the committee of proprietors must adapt the bylaws and, if appropriate, the title of constitution to this code if a tenth of the proprietors so require. To adopt the corresponding agreement, the majority of the quotas at the first calling and the majority of the quotas present or represented at the second is sufficient. If the adaptation proposed does not achieve the necessary majority, any of the proprietors who have proposed it can request the legal authority to compel the community to carry out the adaptation. The legal authority must pronounce a resolution, in all cases, with imposition of costs.

Seventh

Properties in condominium by preexisting plots

1. Properties in condominium by plots existing before the entry into force of this book must be constituted in accordance with the regulations of Title V. Once the term of five years has gone by, any proprietor can judicially ask for the award of the title.
2. For the awarding of the title, it is sufficient to have the favourable vote of the proprietors who represent two thirds of the total of the plots concerned, but the permit of the Town Council of the municipal district where the development is located must be delivered, or accreditation supplied that this has been applied for more than three months in advance of the awarding of the deed.
3. The plots or exclusive elements can be described simply by making reference to the description that is recorded in the Property Register, indicating the corresponding number in the housing development, the registration data of each and, if appropriate, the cadastral reference,

and also, if appropriate, the exclusive elements allocated to exclusive exploitation of particular proprietors.

4. The description of the common elements must specify the roads, spaces, green zones and common works of infrastructure of the property in condominium by plots, without it being essential to indicate the surface area nor the length of the streets, roads and green zones.

5. The title of constitution, which is awarded in accordance with Article 553-57, must be accompanied by the updated plan of the estates making up the property in condominium by plots and the estates occupied by the common elements. If the roads have passed to the public domain, the system of community can be constituted even if the proprietors of a number not higher than 20% of the plots are not integrated therein.

6. In order that the modifications that come from the adaptation of the title of constitution or the award of a new title, if appropriate, are recorded in the Property Register, a separate and independent sheet must be opened for the housing development as a whole and a reference must be made with a marginal note to each of the inscriptions of the private estates, which must record the corresponding quota, in accordance with Article 553-58.

7. The legally constituted association of proprietors has the consideration of proprietors if the property that they manage is in their own ownership and their property has the qualification that results from the ownership and the destination established in the title. The organs of government of these associations are legitimised to promote and manage the process of constitution of the property in condominium by plots.

8. The ownership of the property corresponding individually to the members of the association of proprietors in accordance with the civil regulations if said property is not patrimony of the association or if this is not legally constituted.

9. The award of the title of constitution does not in any circumstances permit nor involve the regularisation of urbanistically irregular situations and does not necessarily involve the annulment of the association of proprietors.

Eighth

Loadbearing party walls

Loadbearing walls that had the consideration of party walls before the 8 August 1990 continue to be governed by the legislation before that date while they are preserved, although they have not made use of the right of loading, until ten years have gone by from the entry into force of this book.

Ninth

Rights of usufruct, use and habitation

1. The usufruct freely constituted before the entry into force of this book are wholly governed by its regulations from the day when it comes into force.
2. The usufructs constituted for a financial consideration before the entry into force of this book are governed by the previous legislation if the usufructuaries and the bare proprietors do not agree otherwise.

Tenth

Rights of partial exploitation

The rights of partial exploitation existing at the time of the entry into force of this book are governed by its regulations. Notwithstanding this, the term of redemption established by Article 563-3 is counted from said entry into force.

Eleventh

Rights of building

The rights of building constituted on estates located in Catalonia before the entry into force of this law are governed by the previous legislation that was applicable thereto.

Twelfth

Accreditation of the existence and the legal system of the 'rabassa morta'

1. 'Rabassa morta' is understood as the contract under which the proprietors of the land grant its use to plant vines for the time during which the first stocks planted live, in exchange for an annual rent or annuity payable by the assignees, in proceeds or in money.
2. The owners of a 'rabassa morta' recorded in the Property Register before 18 April 2002 must accredit its validity before 18 April 2007, which must be stated in a marginal note.
3. The 'rabassa morta' is accredited by means of an application signed by its recorded owner, addressed to the Property Register where it is recorded, in which the 'rabassa morta' and the estate on which it devolves must be identified and the marginal note must be requested.
4. The 'rabassa morta' expires once the terms established in Section 1 have gone by without its validity being recorded, and can be cancelled due to discharge, at the request of the owners of

the property, in accordance with the provisions of mortgage legislation and without need to process the file on liberation from charges.

5. The 'rabasses mortes' constituted before the entry into force of Law 22/2001, of 31 December, regulating the rights of building, right of easement and voluntary or preferential acquisition, which continue in force must be governed, while they exist, by the following regulations:

- a) The 'rabassa morta' expires after fifty years from the concession, if a different term is not agreed, or by the death of the first stocks, or because two thirds of the stocks planted do not give fruit.
- b) The assignees or 'rabassaires' can cultivate shoots and similar during the time that the contract lasts.
- c) The contract does not lose its nature if the cessionaries make other plantations on the land granted, provided that vines are the main object of planting.
- d) The assignees can freely transfer their right for a financial consideration or free, but cannot divide the use of the estate if the proprietors have not consented.
- e) The grantors and cessionaries, in disposals for a financial consideration, have reciprocally the rights of preemption and buyout, in accordance with what this code establishes for the emphyteutic lease, and must issue the prior notice that this code establishes for the preemption.
- f) The cessionaries can resign and return the estate to the grantors when they wish, in which case they must pay for any deterioration they have caused.
- g) At the time of the discharge of the contract, the cessionaries do not have right to the improvements they have introduced into the estate if they are necessary or were made in compliance with what was agreed.
- h) The cessionaries do not have the right to be paid the useful and voluntary improvements if they have made them without the proprietor of the land having given consent in writing through which he or she undertakes to pay them. If done with said consent, the improvements must be paid in accordance with the value they have at the time of the return of the estate.
- i) The grantor can make use of the action of eviction if the term of the contract has expired.
- j) The cessionaries cannot be evicted once the term of fifty years or that agreed by the parties have gone by, if they continue having the use and exploitation of the estate with the tacit consent of the grantors for more than three months, and these have not given the prior notice with a year's advance notice.

Thirteenth

Discharge and cancellation of leases prior to 1990

1. Leases constituted before 16 April 1990, whatever their class, whose owners did not accredit their validity in accordance with the first or third transitory provisions of Law 6/1990, of 16 March, on leases, expire and can be cancelled at the simple request of the proprietors of the encumbered estate, in accordance with the provisions of mortgage legislation and without the need to process the file on liberation from charges.
2. No registration entries can be made relating to leases constituted before 16 April 1990 whose validity is accredited, if various estates are affected, until the deed of division is recorded, awarded in the form and with the terms established in the first transitory provision of Law 6/1990. If the deed of division is not recorded within the term of one year counted from the entry into force of this book, the leases expire and can be cancelled in accordance with the provisions of Section 1.

Fourteenth

Redemption of the leases constituted in accordance with legislation prior to Law 6/1990

1. All leases, whatever their class, constituted in accordance with legislation previous to Law 6/1990, whatever the conditions agreed in their title of constitution, can be redeemed at the request of the annuitary in the term agreed and, in all cases, if more than twenty years have gone by since their constitution and the annuitary is up to date in the payment to the annuitant of pensions, of laudemium and of any other concept arising from the lease.
2. The annuitary must redeem the leases referred to in Section 1 at the request of the annuitant if the latter has accredited the validity of his or her right in accordance with the transitory provisions of Law 6/1990.
3. The regulations of redemption of the leases referred to in sections 1 and 2 are the following:
 - a) The redemption must necessarily comprise the annuity and the other inherent rights to the lease, even rights of property. Not can part of the annuity be redeemed.
 - b) The annuitary can, jointly or separately, demand, in the order he or she sees fit, the redemption of any leases on the estate, whatever their nature or subordination. The part of laudemium relative to a lease redeemed does not accrue to the surviving leases. Also considered discharged in benefit of the annuitary is the part of the laudemium of some of the existing leases that have been left without effect by redemption, by prescription or for any other cause.

c) The redemption must be formalised by public deed and is made for the quantity agreed when the lease was constituted or by a later agreement. If not agreed to the contrary, the price of the redemption must be paid in money and immediately. The expenses of the redemption and of the registry operations are payable by the annuitary.

d) In leases with ownership, if there is no agreement between the persons interested, the following rules apply:

First. The annuitant will be paid, in concept of redemption of the annuity, the quantity that results from capitalising it at the rate agreed or, if none is agreed, at 3%. If the annuity is paid in proceeds, these are estimated at the average price that they have obtained in the last quinquennium in the municipal district where the estates are located. If the annuity consists of an aliquot part of proceeds, the average quantity that the annuitant has been paid or should have been paid in the last quinquennium is also taken as a base for capitalisation. If the lease has correspondence, this understood in the sense that the sub emphyteuticiaries pay the total of the annuity agreed to the intermediary landlords, said correspondence is deducted from the annuity for the purpose of its capitalisation. The redeemers are subrogated in the obligation to pay the correspondences deducted.

Second. Due to the expiry of the rights of *laudemium*, ‘*fadiga*’ and other rights inherent to the ownership, the annuitant will be paid the amount of a *laudemium* at a rate agreed in the title of constitution or, if there is no agreement, at 2%, or at 10% if this is the old emphyteutic territory of Barcelona, calculated on the total value of the real estate, that comprises the buildings carried out, disposals and improvements prior to the entry into force of this book, but not any afterwards. In addition, a fortieth part of another *laudemium* must be paid for every complete year that has gone by from the last transfer of the estate that have accrued, until receiving, as a maximum, the amount of two *laudemiums*.

Third. The price of the estate for the purpose of the redemption, if there is no agreement, is the cadastral value at the time when the redemption is requested if the estate is urban, and determined judicially if it is rustic.

Fourth. To determine the *laudemium* and the other property rights of the value attributed to the estate, the price of redemption of the lease, calculated in accordance with the provisions of this letter, and the deposit, if it was paid in constituting the lease, must be deducted.

Fifth. In application of the provisions of this letter, none of the pleas lodged by the annuitants on the failure to pay any of the laudemiums accrued are effective, nor is the fact that persons other than the proprietors of the lease were paid, nor the fact that the laudemium was for a lower amount in relation to the higher amount that could be due to the improvements after the last transfer.

e) In leases at bare payment and in those of any other class, both if emphyteutic and otherwise, and also if the lease proceeds from seizure and has been transferred by the state, the annuitant must only be paid the sum referred to in letter *d*.first.

f) The quantities to be paid due to the expiry of the laudemium and other property rights must be distributed in the following way:

First. If the direct ownership is unique, the total price will be due thereto.

Second. If there is one direct ownership and one half ownership, they must be paid a quarter and three quarters, respectively.

Third. If one direct ownership and two half ownerships concur, the second half must pay two quarters and the other half and the direct ownership, a quarter each.

Fourth. If a direct ownership and three half ownerships concur, a quarter corresponds to each.

g) It must be born in mind, for the purposes of the distribution established in letter *f*, the non-accretion of the laudemium established in letter *d*.second.

h) In leases transferred one or more times for a financial consideration from 1 January 1900 until 31 December 1945, the total quantity that must be paid to the annuitant may not exceed four times the price paid in the last of said transfer, nor the corresponding quantity for redemption, in accordance with the provisions of this transitory Provision.

i) The fact that the lease is attached to conditions, buyouts, substitutions, reserves, encumbrances of any class or limitations of the power of disposal, although there is interest from uncertain or unborn persons, is not an obstacle for demanding the redemption of the annuity. In virtue of this, the leases can be redeemed at the request of the owners of the encumbered estate. The persons who have them recorded in their favour, whether as executor or trustee heir, and, in general, the persons who exercise the representation of the property of said leases must agree to redeem them. In this case, the amount of the redemption must be deposited, with the intervention of a notary, in a banking establishment or savings bank, at the disposal of anyone who may be the definitive beneficiaries. In the redemption of leases attached to inalienable successions corresponding to inheritances caused before the entry into force of Law

8/1990, of 9 April, on modification of the regulation of inalienable successions, the provisions of mortgage legislation must be abided by.

j) In the redemption made at the request of the annuitant, the annuitary may opt to capitalise the amount of the quantities that must be paid for the redemption and confer the capital to the legal interest guaranteeing it with a first mortgage that is sufficient, which must be amortised within the term of ten years. The legal authority must decide on the legitimacy of this capitalisation if the annuitant does not accept the decision of the annuitary.

4. The regulations established in Section 3 are not applicable to lifelong leases constituted in accordance with the legislation prior to Law 6/1990, except if the redemption has been expressly agreed.

5. As regards the redemption of the leases of the state, the regulations in force on the property system of the latter must be abided by.

Fifteenth

Terms of usucapio and prescription of leases, laudemium and annuities

1. The regulations of Chapter V of Title VI that regulate the terms for the usucapio and prescription of leases, annuities and laudemium apply to all leases, whatever the class and whatever the date of constitution and the applicable regulations.

2. The term for the prescription or usucapio established in this code begins to be counted from the time when this book comes into force. Notwithstanding this, if the term established by the previous regulation, although longer, expires before the term established by this code, the prescription is consumed when the term established by the previous regulation expires.

Sixteenth

Rights of easement

Easements constituted before the entry into force of this book are governed by the regulations thereof counted from the day when it comes into force.

Seventeenth

Rights of air

1. The rights of air and the reservations for construction constituted on estates located in Catalonia before the entry into force of this book are governed by the previous legislation that was applicable, but the reasons for lapsing established in Article 567-6 are applicable.

2. The rights of air constituted for an indefinite term or longer than thirty years lapse once thirty years have gone by counted from the entry into force of this book. Notwithstanding this, if the term agreed, although longer, expires before the thirty years counted from the entry into force of this book have gone by, they expire when the agreed term has gone by, without prejudice, if appropriate, to the provisions of Article 567-6.1.a.

Eighteenth

Rights of preferential acquisition

The voluntary rights of preferential acquisition constituted on property located in Catalonia before the entry into force of this book are governed by the previous legislation applicable. However, the provisions of Article 568-12 are applicable thereto.

Nineteenth

Legal buyouts

The action to exercise the legal buyouts established by this code is only applicable to the transfers made after this book has come into force.

Twentieth

Rights of guarantee

The real rights of guarantee constituted on property located in Catalonia before the entry into force of this law are governed by the previous legislation applicable thereto.

DEROGATORY PROVISION

The following regulations are repealed:

- a) Articles 277, 329, 340, 341 and 342 of legislative Decree 1/1984 of 19 July, by which the amended text of the Compilation of the Civil Law of Catalonia was approved.
- b) Law 6/1990, of 16 March, on leases.
- c) Law 13/1990, of 8 July, on negatory action, emissions, easements and neighbourly relations.
- d) Law 13/2000, of 20 November, regulating the rights of usufruct, use and habitation.
- e) Law 22/2001, of 31 December, regulating the rights of building, of access and of voluntary or preferential acquisition.

- f) Law 25/2001, of 31 December, on disposal and occupancy.
- g) Law 19/2002, of 5 July, on real rights of guarantee.

FINAL PROVISION

Entry into force

This law comes into force on 1 July 2006.