

Issuer:	Riigikogu
Type:	act
In force from:	01.10.2015
In force until:	31.12.2015
Translation published:	14.08.2015

# Family Law Act

Passed 18.11.2009  
RT I 2009, 60, 395  
Entry into force 01.07.2010

Amended by the following acts

Passed	Published	Entry into force
22.04.2010	RT I 2010, 22, 108	01.01.2011, enters into force on the date which has been determined in the Decision of the Council of the European Union regarding the abrogation of the derogation established in respect of the Republic of Estonia on the basis provided for in Article 140 (2) of the Treaty on the Functioning of the European Union, Council Decision 2010/416/EU of 13 July 2010 (OJ L 196, 28.07.2010, pp. 24-26).
03.06.2010	RT I 2010, 34, 181	01.07.2010
08.12.2010	RT I, 21.12.2010, 4	01.01.2011
08.12.2011	RT I, 29.12.2011, 1	01.01.2012, partially 01.01.2014 and 01.11.2014
13.06.2012	RT I, 27.06.2012, 4	07.07.2012
11.06.2014	RT I, 29.06.2014, 3	09.07.2014, partially 01.01.2015 and 01.05.2015
19.06.2014	RT I, 29.06.2014, 109	01.07.2014, the titles of ministers replaced on the basis of subsection 107 <sup>3</sup> (4) of the Government of the Republic Act in the wording in force as of 1 July 2014.
18.02.2015	RT I, 12.03.2015, 4	01.10.2015

## Part 1 MARRIAGE

### Chapter 1 CONTRACTION OF MARRIAGE

#### § 1. Prerequisites for contraction of marriage

(1) A marriage is contracted between a man and a woman.

(2) Only adults may get married.

(3) A court may extend the active legal capacity of a person who has attained at least 15 years of age pursuant to the provisions concerning the extension of active legal capacity of minors for the performance of acts required for the contraction of marriage and for the exercise of the rights and performance of the obligations related to marriage.

(4) An adult with restricted active legal capacity may marry only if he or she understands sufficiently the legal consequences of marriage. If a guardian has been appointed to a person, it is presumed that the person is unable to understand the legal consequences of marriage unless otherwise provided in the ruling concerning the appointment of a guardian.

## **§ 2. Prohibition on consanguineous marriage**

(1) A marriage shall not be contracted:

- 1) between relatives in the ascending and descending lines;
- 2) between brothers and sisters and a half-brothers and a half-sisters.

(2) The provisions of subsection (1) of this section apply even if the family relationship between the persons has terminated as a result of adoption of one person.

## **§ 3. Prohibition on marriage in case of adoption relationship**

A marriage shall not be contracted between persons whose family relationship specified in subsection 2 (1) of this Act is based on adoption.

## **§ 4. Prohibition on several simultaneous marriages**

A marriage shall not be contracted between persons of whom at least one is already married.

## **§ 5. Circumstances hindering contraction of marriage**

A vital statistics official shall not certify the contraction of marriage if there is reason to presume that grounds for annulment or nullity of the marriage exist.

## **§ 6. Right of minister of religion to refuse to contract marriage**

A minister of religion entitled to certify the contraction of marriage has the right to refuse to contract a marriage if a prospective spouse does not meet the requirements for the contraction of marriage according to the religion of the church, congregation or association of congregations.

## **§ 7. Procedure for contraction of marriage**

(1) A marriage is contracted in the presence of a vital statistics official.

(1<sup>1</sup>) For the purposes of Part 1 of this Act, vital statistics officials include notaries and ministers of religion who are entitled to perform vital statistics procedures pursuant to the Vital Statistics Registration Act.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(2) A marriage is contracted provided that prospective spouses express their will to contract marriage before a vital statistics official both being present in person at the same time.

(3) The vital statistics official confirming the contraction of marriage shall ask both prospective spouses whether they want to contract marriage with the other party. A declaration of intention to contract marriage shall be unconditional.

(4) If both prospective spouses answer yes, the vital statistics official shall declare that as of this moment both parties are legal spouses.

(5) The vital statistics official shall enter the contraction of marriage in the population register pursuant to the procedure provided for in the Vital Statistics Registration Act.

## **§ 8. Promise of marriage**

A promise of marriage does not provide grounds for a claim for the contraction of marriage or for compensation of damage upon failure to keep the promise. An agreement which derogates from the provisions of the first sentence is void.

# **Chapter 2 INVALIDITY OF MARRIAGE**

## **§ 9. Grounds for annulment of marriage by court**

(1) A court may annul a marriage by an action if:

- 1) a requirement for marrying age or active legal capacity has been violated upon the contraction of the marriage;

- 2) the prohibition on marriage provided for in §§ 2–4 of this Act has been violated upon the contraction of the marriage;
  - 3) the formal requirements prescribed in subsections 7 (2)–(4) of this Act have been violated upon the contraction of the marriage;
  - 4) at the time of contraction of the marriage, at least one spouse had a temporary mental disorder or was incapable to exercise his or her will for any other reason;
  - 5) the marriage was contracted by fraud, threat or violence, including by concealing the state of health or other personal details of a spouse, where such details are relevant to the contraction of the marriage;
  - 6) it was not the intention of one or both parties to perform the obligations arising from the marital status, but the marriage was contracted with other intentions, in particular with an aim to obtain a residence permit of Estonia (ostensible marriage);
  - 7) the spouses are of the same sex due to sex reassignment during marriage.
- [RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(2) Annulment of marriage cannot be claimed if a spouse has concealed his or her financial status.

## **§ 10. Nullity of marriage**

A marriage is void if:

- 1) the marriage has been contracted between persons of the same sex;  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]
- 2) contraction of the marriage has been certified by a person who does not have the competence of a vital statistics official; or
- 3) even only one party has not expressed his or her will to contract marriage.

## **§ 11. Grounds for refusal to annul marriage**

A marriage shall not be annulled if:

- 1) the requirement for marrying age has been violated but, by the time of annulment of the marriage, the court has extended the active legal capacity of the minor to marry or if upon becoming an adult the spouse confirms that he or she wishes to continue the marriage;
- 2) the requirement for active legal capacity has been violated, but the adult spouse whose active legal capacity was restricted at the time of contraction of the marriage confirms after restoration of his or her active legal capacity that he or she wishes to continue the marriage;
- 3) the spouse who contracted marriage in a state where he or she was incapable to exercise his or her will confirms after restoration of his or her capability that he or she wishes to continue the marriage;
- 4) in the case of an ostensible marriage, the spouses have lived together as spouses for at least three years or children have been born in the marriage.

## **§ 12. Right to file action**

(1) An action for annulment of marriage may be filed:

- 1) by both spouses or the minister responsible for the area in the case of violation of subsections 1 (2)–(4), §§ 2–4, subsections 7 (2)–(4) and clauses 9 (1) 4), 6) or 7), and also by any other person whose rights have been violated by the contraction of the marriage in the case of violation of § 4 of this Act;  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]
- 2) by the spouse who has contracted marriage under influence of fraud, threat or violence.

(2) An adult spouse with restricted active legal capacity may file an action with the consent of the guardian. The guardian may file an action on behalf of a spouse with restricted active legal capacity.

(3) If, at the time of contraction of marriage, a spouse who is a minor did not have active legal capacity required for the contraction of the marriage, an action shall be filed by his or her legal representative. In other cases, a spouse who is a minor shall file an action himself or herself without the need for the consent of the legal representative.

## **§ 13. Expiry of right of claim for annulment of marriage**

(1) Expiry of claims for annulment of marriage shall not be applied.

(2) If a marriage is contracted in a state where a person is incapable to exercise his or her will, a claim for annulment of the marriage may be filed within one year as of restoration of the capability to exercise his or her will. If a marriage is contracted under the influence of fraud, threat or violence, a claim for annulment of the marriage may be filed within one year as of discovery of the mistake or fraud or termination of the influence of threat or violation.

(3) For the legal representative of a spouse with restricted active legal capacity the limitation period for filing an action commences not earlier than on the date on which circumstances enabling annulment of the marriage

become known to him or her or, in the case of a spouse who is a minor, not earlier than on the date on which the spouse becomes an adult. If the legal representative of a spouse with restricted active legal capacity fails to submit an action in due time, the spouse may file an action himself or herself within six months as of becoming an adult or as of restoration of his or her active legal capacity.

(4) An action cannot be filed if a marriage has been terminated unless at least one of the spouses was already married at the moment of contraction of the marriage.

#### **§ 14. Consequences of annulment of marriage**

(1) If a court judgement concerning annulment of a marriage has entered into force, the marriage is void from inception.

(2) In the case of nullity of a marriage, the marital property contract is void. Unless otherwise provided by the relations between the parties, the provisions concerning civil law partnerships apply to their proprietary relations.

(3) If a marriage is annulled because one of the prospective spouses concealed from the other prospective spouse that he or she was already married, or influenced the other spouse to marry by fraud, threat or violence, a court may order support for the person who was in a void marriage with him or her and apply the provisions of this Act concerning the provision of maintenance to a divorced spouse. A court may, at the request of the party induced to contract marriage, apply the provisions of Subdivision 1 of Division 2 of Chapter 4 of this Act to the proprietary relations of the parties.

(4) If marriage is annulled due to the reason that persons of the same sex are married, the provisions of subsection (1) of this section do not apply, but the marriage is considered to be void from entry into force of the court judgement.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

## **Chapter 3 GENERAL LEGAL CONSEQUENCES OF MARRIAGE**

### **Division 1 General provisions**

#### **§ 15. Matrimonial cohabitation and rights and obligations of spouses**

(1) By marrying a man and a woman commence marital cohabitation which obligates them to respect and support each other. Spouses have equal rights and obligations with respect to each other and family. They organise together their marital cohabitation and satisfaction of the needs of their family considering the well-being of each other and their children and they shall each accept responsibilities relating to marriage with regard to the other.

(2) Spouses participate in the organisation of shared household and earning of income to the best of their ability. A spouse shall select his or her area of activity and operate in his or her area of activity by making the best use of his or her ability to obtain the assets for maintenance of his or her family.

(3) Non-performance of the obligations provided for in subsections (1) and (2) of this section can only be the basis for a divorce claim.

#### **§ 16. Obligation to provide maintenance to family**

(1) Spouses have reciprocal obligations to maintain their family by their work and assets.

(2) Maintenance of family includes the activities and proprietary contributions necessary according to the living conditions of the family for covering the expenses of shared household and for the satisfaction of the common and special needs of both spouses and the children dependent on them (expenses made in the interests of the family).

(3) If spouses are legally separated, each spouse shall provide maintenance in regularly paid amounts of money for the satisfaction of the common needs of the other spouse on the same basis as in the case of maintenance of the family pursuant to subsections (1) and (2) of this section. A separated spouse is not entitled to claim maintenance from the other spouse, if he or she is able to maintain himself or herself or if legal separation was caused by his or her conduct.

(4) A spouse may claim the performance of the obligation to provide maintenance or compensation for damage incurred due to failure to perform the obligation retroactively for up to one year before filing an action concerning maintenance with a court.

### **§ 17. Expenses made on family**

If one spouse makes bigger monetary expenses on his or her family than the other spouse, it is presumed that he or she does not have the right to require compensation from the other spouse for the financial resources he or she has contributed more.

### **§ 18. Transactions for satisfaction of needs of family**

(1) A solidary obligation of the spouses arises from a transaction made by one spouse for the organisation of shared household or in the interests of children or in order to satisfy other common needs of the family if the amount of the transaction does not exceed the reasonable rate according to the living conditions of the spouses.

(2) The spouses are solidary obligees with respect to the obligated party of the transaction specified in subsection (1) of this section.

(3) The spouses shall not, by agreement with each other, derogate, to the detriment of the obligee, from the provisions of subsection (1) of this section.

### **§ 19. Liability for obligations assumed by other spouse**

A spouse shall be liable for the performance of the obligations assumed by the other spouse in so far as the spouse may represent the other spouse or obligate the other spouse by his or her acts.

### **§ 20. Scope of duty of care**

Upon the performance of the obligations arising from marriage the spouses shall exercise such care with respect to each other as they would usually exercise in their own affairs.

### **§ 21. Shared housing of family**

A dwelling where the members of a family reside regularly is deemed to be the housing of the family.

## **Division 2**

## **Legal consequences of legal separation**

### **§ 22. Distribution of consumer property in case of legal separation**

(1) If spouses are legally separated, a spouse shall not claim the objects belonging to him or her which were used in the interests of the family in the case the other spouse needs the objects in his or her separate household and the other spouse has a legitimate interest to continue to use the objects.

(2) The objects of standard furnishings of a housing of a family owned jointly by the spouses shall be divided between them on the basis of the principle of equity.

(3) If spouses fail to reach an agreement upon the distribution of property, a court shall decide the matter in proceedings on petition. A court may determine reasonable charge payable for the use of the objects. The provisions of this section do not affect the right of ownership of the objects unless otherwise agreed by the parties.

### **§ 23. Shared housing in case of legal separation**

(1) If spouses are legally separated or one of them wants to live separately, the spouse may request that the other spouse transfer to him or her the shared housing of the family or a part of it for his or her sole use if this is necessary in order to avoid major personal conflicts. Upon making a decision, ownership relations and restricted real rights in the immovable where the housing of the family is located shall be taken into account. A certain term may be established for the transfer of housing which shall not exceed the period of time until the termination of marriage.

(2) If one spouse is required to transfer the housing of the family or a part of it to the other spouse for the sole use thereof, he or she may demand equitable user fee for that.

## **Chapter 4**

# PROPRIETARY RELATIONS OF SPOUSES

## Division 1 General provisions

### § 24. Selection of proprietary relationship

(1) Prospective spouses may, by agreement, select a proprietary relationship from among the types of proprietary relations set out in Division 2 of this Chapter before the contraction of marriage by an application for marriage pursuant to the procedure prescribed in the Vital Statistics Registration Act. The abovementioned declaration of intention takes effect upon the contraction of marriage.

(2) If the prospective spouses do not select a proprietary relationship by an application for marriage and do not enter into a marital property contract, the provisions regarding jointness of property shall apply to their proprietary relations as of the contraction of marriage.

(3) If spouses select a proprietary relationship by an application for marriage and, in addition, enter into a marital property contract, the marital property contract shall be applied to the proprietary relations between the spouses.

## Division 2 Types of proprietary relations

### Subdivision 1 Jointness of property

#### Sub-subdivision 1 General provisions

### § 25. Joint property

In the case of jointness of property, the objects and other proprietary rights of the spouses acquired during the jointness of property shall transfer into the joint ownership of the spouses (hereinafter *joint property*).

### § 26. Principle of unity of joint property

(1) A spouse cannot dispose of his or her share in joint property or in a single object included in joint property. A spouse does not have the right to request the division of joint property during the jointness of property.

(2) A claim owned by spouses jointly may be set off only against a claim the satisfaction of which out of the joint property is prescribed by law or by an agreement.

### § 27. Separate property

(1) Joint property does not include the separate property of neither of the spouses.

(2) The separate property of a spouse includes:

- 1) personal effects of the spouse;
- 2) objects which were in the ownership of the spouse before the marriage or objects acquired by the spouse during the marriage by disposal without charge, including as a gift or by succession;
- 3) objects which the spouse acquires on the basis of a right belonging to his or her separate property or as compensation for the destruction of, damage to or seizure of objects included in his or her separate property or on the basis of a transaction entered into with regard to his or her separate property.

(3) The expenses incurred by both spouses in the form of work and proprietary performance during jointness of property in order to receive benefit from the property (necessary and useful expenses) are not included in separate property. The value of such expenses shall be included in the joint property of the spouses.

(4) Single objects or certain type of objects may be declared to be joint property or separate property by a marital property contract.

(5) [Repealed - RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(6) An object of property shall be deemed to be included in the joint property of the spouses until the inclusion thereof in the separate property of a spouse is proved. Inclusion of an object of property in the separate property of a spouse shall apply with regard to third persons only in accordance with the provisions of § 61 of this section.

#### **§ 27<sup>1</sup>. Administration of separate property and conclusion of transactions with separate property**

(1) A spouse shall administer his or her separate property independently and at his or her own expense.

(2) A spouse may dispose of or undertake to dispose of a dwelling which is the spouse's separate property and is used as a housing of the family or used separately by the spouse who is not the owner and grant the use thereof to a third party or terminate the legal relationship on which the use thereof is based only with the consent of the other spouse.

(3) Subsection (2) of this section does not apply to dispositions made by a will or a succession contract.

(4) Spouses may prescribe by a marital property contract that the restrictions on disposal provided for in subsection (2) of this section shall not apply to the property which is separate property of a spouse.

(5) If one spouse enters into a transaction specified in subsection (2) of this section without the consent of the other spouse, subsections 31 (1)–(3) and § 32 of this Act apply.

(6) Until ratification of a transaction, the declaration of intention made by the other party for entry into the transaction may be withdrawn unless upon entering into the transaction the party knew or should have known that the person who entered into a transaction with him or her was married or that the other spouse had not granted consent.

[RT I, 29.06.2014, 3 - entry into force 01.01.2015]

## **Sub-subdivision 2 Administration of joint property**

#### **§ 28. Principles of joint administration of joint property**

(1) Unless otherwise agreed, spouses shall jointly exercise the rights and perform the obligations relating to joint property. Spouses have the right to possess jointly the objects forming part of their joint property.

(2) Spouses may transfer the right to administer joint property to one of the spouses by a marital property contract.

(3) Spouses shall administer joint property in the interests of matrimonial cohabitation and regular management of the property. They shall inform each other of the acts of administration of property and of the financial status.

(4) A spouse may require conclusion of transactions necessary for correction of an entry concerning an object included in the joint property to be entered in the register.

#### **§ 29. Entry into transactions with regard to property**

(1) If spouses administer their joint property jointly, they may enter into transactions with respect to the property and conduct legal disputes relating to the property only jointly or with the consent of the other spouse. If one spouse disposes of a movable or a right which forms part of the joint property of the spouses, consent of the other spouse is presumed. A spouse may, without the consent of the other spouse, enter into transactions with respect to joint property for the satisfaction of everyday needs of himself and herself and the family.

(2) A marital property contract may prescribe that consent of a spouse is not required in the case of transactions entered into in independent economic activities of the other spouse.

(3) If it is not possible to obtain consent from one spouse primarily due to illness or absence of the spouse or he or she refuses to grant consent required for entry into a transaction with respect to joint property without adequate reason, consent may be granted by a court in proceedings on petition on the basis of an application of the other spouse if failure to enter into the transaction or delay in entry into the transaction causes the risk of damage.

(4) A transaction entered into on the basis of subsection (1) of this section becomes a solidary obligation of the spouses. Both spouses are solidary obligees with respect to the obligated party of the transaction.

### **§ 30. Administration of property by one spouse**

(1) If the right to administer joint property has been granted to one spouse pursuant to subsection 28 (2) of this Act, he or she is entitled to possess and dispose of an object forming part of joint property taking into account the restrictions prescribed for the benefit of the other spouse by law and by the marital property contract. A spouse who administers joint property alone shall conduct legal disputes related to joint property in his or her name.

(2) The spouse who administers the property may dispose of or undertake to dispose of a dwelling used as a housing of the family or used separately by the spouse who is not the owner and grant the use thereof to a third party or terminate the legal relationship on which the use thereof is based only with the consent of the other spouse.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

### **§ 31. Ratification of transaction**

(1) A multilateral transaction with respect of objects included in joint property entered into without the consent of a spouse is void unless the spouse without whose consent or participation the transaction was entered into ratifies it later.

(2) If a spouse has entered into a transaction without the required consent of the other spouse, the other party to the transaction may make a proposal to ratify the transaction to the spouse without whose consent the transaction was entered into. Ratification is valid when granted to the person making the proposal.

(3) If the spouse without whose consent the transaction was entered into does not grant ratification within two weeks after receipt of the proposal specified in subsection (2) of this section, the spouse is deemed not to have ratified the transaction.

(4) Until ratification of a transaction, the declaration of intention made by the other party for entry into the transaction may be withdrawn. If the other party was aware of the jointness of property, he or she shall not withdraw the declaration of intention if upon entry into the transaction he or she knew or should have known that the other spouse had not granted consent.

### **§ 32. Unilateral transaction**

A unilateral transaction with respect to objects included in joint property entered into without the consent of a spouse is void. This does not apply to dispositions made by a will.

### **§ 33. Liability to third party**

(1) A spouse is liable to a third party with his or her separate property and joint property in full:

- 1) for the obligations assumed by each spouse for the satisfaction of the needs of the family arising from administration of joint property pursuant to § 18 of this Act;
- 2) for the performance of a solidary obligation of the spouses;
- 3) for the performance of obligations in which case the obligated spouse has agreed with the third party that he or she is liable with both, joint property and separate property.

(2) Consent of the other spouse is required for conclusion of an agreement specified in clause (1) 3) of this section.

(3) Each spouse is liable for other obligations with his or her separate property and one-half of the value of joint property. A creditor may request the division of joint property if he or she proves that separate property is not sufficient to perform the obligations.

### **§ 34. Compensation for use of property**

(1) If a spouse entitled to administer joint property uses joint property in the interests of his or her separate property, he or she shall compensate for the value of the used property. The compensation shall be deemed to form part of joint property.

(2) If a spouse uses his or her separate property in the interests of joint property, he or she may request that the value thereof be compensated from joint property.

(3) If joint property decreases due to wrongful behaviour of a spouse or due to a transaction he or she has entered into without the declaration of intention of the other spouse, he or she shall compensate for the decrease of property. The compensation shall be deemed to form part of joint property.

### **§ 35. Termination of proprietary relationship**

The proprietary relationship of jointness of property terminates if:

- 1) one of the spouses dies;



- 2) a marital property contract is entered into which establishes another marital proprietary relationship prescribed by law;
- 3) the marriage is divorced, or
- 4) the proprietary relationship is terminated pursuant to § 36 of this Act at the request of a spouse on the basis of a court judgement.

### **§ 36. Action for termination of jointness of property**

- (1) A spouse may file an action for termination of jointness of property if:
  - 1) his or her rights are significantly endangered since the other spouse has repeatedly abused his or her right to administer the property or since the other spouse does not participate in regular management of joint property without adequate reason;
  - 2) the other spouse has violated the obligation to maintain the family and this may endanger significantly maintenance of the family.
- (2) If jointness of property is terminated on the basis of subsection (1) of this section, the court shall send a copy of the corresponding court decision to the marital property register for making the corresponding entry.
- (3) Separateness of property arises between spouses upon termination of the proprietary relationship of jointness of property on the basis of this section.

## **Sub-subdivision 3 Division of joint property**

### **§ 37. Division**

- (1) After termination of jointness of property the spouses shall divide joint property between themselves. A spouse may submit an application for the division of joint property to court already together with an action for divorce or annulment of marriage or together with an action for termination of jointness of property.
- (1<sup>1</sup>) The composition of joint property shall be determined as of the termination of the proprietary relationship. [RT I, 29.06.2014, 3 - entry into force 09.07.2014]
- (2) Until the division of joint property, the requirements for administration of joint property established in sub-subdivision 2 of this division shall apply to the possession, use and disposal of the joint property.
- (3) Joint property shall be divided between the spouses into equal parts pursuant to the provisions concerning the termination of common ownership unless otherwise agreed.

### **§ 38. Performance of obligations encumbering property**

The obligations encumbering joint property shall be performed in the course of the division of property or shall be divided between the spouses similarly to other property. The provisions of the Law of Obligations Act concerning the transfer of obligations apply to the division of obligations. The provisions of this Act concerning the division of property apply to the division of obligations in the relationship between the spouses. [RT I, 29.06.2014, 3 - entry into force 09.07.2014]

### **§ 39. Termination of marriage upon death of spouse**

If marriage terminates upon the death of one spouse, the share of the deceased spouse in joint property forms part of his or her estate. The provisions of the Law of Succession Act concerning co-successors shall apply to the division of the joint property of the spouses after the death of one spouse.

## **Subdivision 2 Set-off of assets increment**

### **Sub-subdivision 1**

# General provisions

## § 40. Creation of proprietary relationship of set-off of assets increment

If, upon contracting marriage, set-off of assets increment is selected pursuant to the procedure prescribed by the Vital Statistics Registration Act or established by a marital property contract, the share added to the property of each spouse during a proprietary relationship (acquired assets) shall be set off between the spouses. The proprietary relationship of set-off of assets increment does not affect the ownership of the proprietary rights acquired by a spouse before entry into force of or during the proprietary relationship.

## § 41. Right to administer property

(1) Spouses shall administer the property belonging to them jointly in accordance with the interests and needs of the family and taking, among other, into account the mutual rights and obligations of the spouses provided for in § 15 and § 16 of this Act. The owner of single objects included in property has the right to possess, use and dispose of the objects.

(2) A spouse may dispose of or undertake to dispose of a dwelling used as a housing of the family or used separately by the spouse who is not the owner and grant the use thereof to a third party or terminate the legal relationship on which the use thereof is based only with the consent of the other spouse.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(3) Subsection (2) of this section does not apply to dispositions made by a will or a succession contract.

(4) If a transaction complies with the principles of regular management, consent in lieu of the other spouse may be granted by a court on the basis of an application of a spouse in proceedings on petition, in the case the other spouse refuses to grant consent without adequate reason or he or she is unable to grant consent due to illness or absence and delay with the consent may cause damage.

(5) Spouses may prescribe by a marital property contract that the restrictions on disposal provided for in subsection (2) of this section shall not apply.

## § 42. Legal consequences of absence of consent

(1) If one spouse enters into a transaction specified in subsection 41 (2) without the consent of the other spouse, subsections 31 (1)–(3) and § 32 of this Act shall apply.

(2) Until ratification of a transaction, the declaration of intention made by the other party for entry into the transaction may be withdrawn unless upon entering into the transaction the party knew or should have known that the person who entered into a transaction with him or her was married or that the other spouse had not granted consent.

## § 43. Right of claim of other spouse

If a spouse disposes of property without the consent prescribed in subsection 41 (2) of this Act, the other spouse has the right to file a claim arising from invalidity of the disposal against the third party.

## § 44. Termination of proprietary relationship

The proprietary relationship of set-off of assets increment terminates if:

- 1) one of the spouses dies;
- 2) a marital property contract is entered into which establishes another marital proprietary relationship prescribed by law;
- 3) the marriage is divorced, or
- 4) the proprietary relationship is terminated pursuant to § 45 of this Act at the request of a spouse on the basis of a court judgement.

## § 45. Termination of proprietary relationship of set-off of assets increment at request of spouse

(1) A spouse may file an action for the termination of the proprietary relationship of set-off of assets increment during marriage and set-off of acquired assets if:

- 1) the other spouse has violated the obligation to provide maintenance to the family or any other proprietary obligation arising from conjugal relations over a long period of time and it may be presumed that he or she will violate the obligation also in future;
- 2) the other spouse has entered into a transaction specified in subsection 41 (2) of this Act without the required consent and thus it may be presumed that the future claim for set-off is significantly endangered;
- 3) the other spouse has refused to notify his or her spouse of his or her financial status for an extended period without adequate reason, or
- 4) the spouses have lived apart for at least one year.

(2) If a proprietary relationship is terminated on the basis of subsection (1) of this section, the court shall send a copy of the corresponding court decision to the marital property register for making the corresponding entry.

(3) Separateness of property arises between spouses upon termination of the proprietary relationship of set-off of assets increment on the basis of this section.

## **Sub-subdivision 2**

### **Mutual rights of spouses upon termination of proprietary relationship of set-off of assets increment**

#### **§ 46. Ascertaining claims arising from termination of proprietary relationship of set-off of assets increment**

Upon termination of the proprietary relationship of set-off of assets increment, the acquired assets of both spouses shall be ascertained and the financial claim arising from the set-off of acquired assets shall be determined pursuant to the provisions of this subdivision.

#### **§ 47. Definition of acquired assets**

Acquired assets means assets by which the total assets of a spouse exceed his or her fixed assets. If the total assets prove to be less than the fixed assets, the acquired assets shall be deemed to be zero.

#### **§ 48. Total assets**

(1) Total assets means the sum of the usual value of the things belonging to a spouse and his or her monetarily appraisable rights and obligations as of the termination of the proprietary relationship expressed in money.

(2) The sum by which the assets have decreased shall be added to the total assets of a spouse if, after the proprietary relationship of set-off of assets increment has been created, the spouse:

- 1) has made gifts not arising from his or her moral obligation or adherence to etiquette;
- 2) has wasted assets, or
- 3) has entered into transactions with an aim to place the other spouse in a worse situation upon the set-off of acquired assets.

(3) The sum specified in subsection (2) of this section shall not be added to total assets if such decrease of assets has taken place more than one year before the termination of the proprietary relationship or if the other spouse agreed to the gifts made, transactions entered into or to assets being wasted.

(4) A court shall declare invalid a transaction specified in subsection (2) of this section which was entered into by a spouse during one year before the termination of the proprietary relationship in order to knowingly damage the interests of the other spouse if the other party knew or should have known it at the time the transaction was entered into. An interested person may demand declaration of invalidity of a transaction within five years as of the termination of the proprietary relationship.

(5) It is presumed that the other party knew or should have known that a transaction damages the interests of the other spouse if the other party is a person connected with the spouse who made the transaction.

(6) The persons connected with a spouse shall be determined pursuant to § 117 of the Bankruptcy Act.

#### **§ 49. Composition of fixed assets**

(1) The fixed assets of a spouse consist of:

- 1) the assets which belonged to the spouse at the time of entry into force of the proprietary relationship of set-off of assets increment;
- 2) the assets acquired by the spouse during the proprietary relationship as a gift, any other disposal without charge or by succession;
- 3) the rights arising from damage to health or bodily injury caused to him or her;
- 4) the rights belonging to him or her on the basis of state pension insurance and compulsory pension insurance;
- 5) the assets acquired on the basis of an object or right included in his or fixed assets, including the assets acquired by entry into a transaction made with respect to the fixed assets and the assets acquired by him or her as a compensation or in return of the transfer of, destruction of, damage to or seizure of objects included in his or her fixed assets.

(2) The expenses incurred by both spouses in the form of work and proprietary performance during the proprietary relationship of set-off of assets increment in order to receive benefit from the assets (necessary and

useful expenses) are not included in fixed assets. The value of such expenses shall be included in the acquired assets of the spouse with respect to whose object of fixed assets the expenses were incurred.

(3) The value of the assets which have not been proved to be included in the fixed assets of a spouse shall be included in his or her acquired assets.

(4) In a marital property contract the scope and calculation of fixed assets may be specified differently than provided for in this subdivision.

#### **§ 50. Deductions from fixed assets**

(1) Upon determining the fixed assets, the objects included in the fixed assets which have been destroyed or lost during the proprietary relationship of set-off of assets increment and the use or transfer of which is not proved shall not be taken into account. In such case it is presumed that the objects were not included in the fixed assets of the spouse.

(2) The obligations arising from unlawful causing of damage by a spouse shall be deducted from the value of fixed assets.

#### **§ 51. Valuation of total assets**

(1) The value of the objects included in total assets shall be determined, in the case of an object extant at the time of termination of the proprietary relationship, on the basis of the value of the object at the time of termination of the proprietary relationship and, upon determining the sum to be added to the value of total assets due to decrease of assets on the basis of subsection 48 (2), on the basis of the value of the assets at the time of the decrease.

(2) Subsection (1) of this section also applies to valuation of obligations.

#### **§ 52. Time for calculation of acquired assets**

The amount of acquired assets shall be determined as of the termination of the proprietary relationship. If a marriage is divorced, the time of filing a petition or action shall be taken into account instead of the time of termination of the proprietary relationship. If acquired assets are set off at the request of a spouse by a court judgement pursuant to § 45 of this Act, the acquired assets shall be calculated as of the time of filing an action for early set-off instead of the time of the termination of the proprietary relationship.

#### **§ 53. Set-off of acquired assets**

(1) Upon the termination of the proprietary relationship of set-off of assets increment, the spouses shall ascertain the status of their acquired assets. If the acquired assets of one spouse are greater than the acquired assets of the other spouse, one half of the difference between the values of the acquired assets shall belong to the spouse who received the smaller amount of acquired assets on the basis of a financial claim for set-off.

(2) The amount of a claim for set-off is limited to the value of assets remaining to the obligated spouse after the deduction of obligations upon the termination of the proprietary relationship.

(3) A claim for set-off may be bequeathed and assigned as of the termination of the proprietary relationship of set-off of assets increment.

(4) Spouses may enter into a notarially authenticated agreement concerning the set-off of acquired assets in the case of termination of the marriage. A notarised agreement may be replaced by a judicial compromise made in the proceedings for divorce. In other cases neither of the spouses can undertake to dispose of a claim for set-off before the termination of the proprietary relationship.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(5) A claim for set-off expires after three years as of the date the spouse becomes aware of the termination of the proprietary relationship, but not later than ten years after the termination of the proprietary relationship.

#### **§ 54. Providing information on status of property**

(1) Upon the termination of the proprietary relationship of set-off of assets increment, each spouse shall submit to the other spouse an overview of the status of his or her property in writing. Each spouse may request that he or she be invited to the preparation of such an overview and that the value of the objects of property and obligations be ascertained.

(2) If a spouse has applied for divorce or annulment of marriage, the obligation prescribed in subsection (1) of this section arises as of the submission of an application or filing of an action for divorce or annulment of marriage.

(3) A spouse may submit a written overview specified in subsection (1) of this section and an application for approval of a claim for set-off to court already together with an application or action for divorce or annulment of marriage or together with an action for termination of the proprietary relationship of set-off of assets increment.

#### **§ 55. List of fixed assets**

(1) Where spouses have jointly determined the status of the fixed assets of a spouse in a single list and the objects to be added to the assets and the value thereof, it is presumed in the relationship between the spouses that the list is correct.

(2) A spouse may request that the other spouse assist in preparation of the list.

(3) If a list of assets has not been prepared, it is presumed that the total assets of a spouse are his or her acquired assets to the extent to which the inclusion of the objects of property in fixed assets has not been proved in any other way.

#### **§ 56. Specifications concerning fulfilment of claim for set-off**

(1) A court may decrease the acquired assets subject to transfer or release the obligated party from fulfilment of a claim or postpone the fulfilment of a claim at the request of the obligated party if fulfilment of the claim in full or immediate fulfilment of the claim would not be fair taking into account the financial situation of both spouses or for any other reason and would not comply with the principles of rational management.

(2) A court may, at the request of a spouse, designate the property remaining with each spouse as a share or objects in common ownership taking account of the legitimate interest of the spouse. In the case of a dispute, the sum to be deducted from the claim for set-off of acquired assets in the case of transfer of objects shall be determined by the court.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

### **Subdivision 3 Separateness of property**

#### **§ 57. Creation of separateness of property**

(1) Upon marriage spouses may select separateness of property as a proprietary relationship pursuant to the procedure provided for in the Vital Statistics Registration Act or prescribe separateness of property as a proprietary relationship by a marital property contract.

(2) Separateness of property arises also upon the termination of jointness of property based on a marital property contract or § 36 of this Act unless another type of proprietary relationship is prescribed by the marital property contract. The same applies if the proprietary relationship of set-off of assets increment is terminated based on a marital property contract or § 45 of this Act.

#### **§ 58. Proprietary relations between spouses in case of separateness of property**

In case of separateness of property, in proprietary relations spouses shall be deemed to be persons not married to each other. This does not affect application of the provisions of Chapters 3 and 5 of this Act.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

### **Division 3 Marital property contract**

#### **§ 59. Marital property contract**

(1) Spouses may, by agreement (hereinafter *marital property contract*):

1) terminate a selection made upon marriage or a proprietary relationship valid on the basis of a marital property contract;

2) establish another proprietary relationship prescribed by law; or

3) make alterations in the selected proprietary relationship in the cases prescribed by law.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(2) A marital property contract may be entered into before or during a marriage. A marital property contract entered into before marriage enters into force on the date of contraction of marriage.

## **§ 60. Form of marital property contract**

A marital property contract shall be entered into by the spouses in person. A marital property contract shall be entered into in a notarially authenticated form.

## **§ 61. Legal effect of marital property contract with regard to third persons**

(1) At the request of a spouse, the data of a marital property contract shall be entered in the marital property register.

(2) If spouses change a proprietary relationship applied with respect to them pursuant to § 24 of this Act or terminate a proprietary relationship, the changes shall have legal effect with regard to a third person only if the changes have been entered in the marital property register as a marital property contract or the third person was aware of the existence of the marital property contract.

(3) Subsections (1) and (2) of this section apply also if the spouses terminate or amend a marital property contract or an order concerning proprietary relations entered in the marital property register on the basis of a court judgement.

(4) The marital property register shall be maintained pursuant to the procedure provided for in the Marital Property Register Act.

## **§ 62. Expiry of marital property contract**

A marital property contract expires if:

- 1) one of the spouses dies or the marriage is divorced;
- 2) a new marital property contract is entered into which establishes another marital proprietary relationship prescribed by law, or
- 3) the set-off of assets increment or jointness of property is terminated by a court judgement on the basis of an action filed by a spouse.

# **Chapter 5 TERMINATION OF MARRIAGE**

## **Division 1 General provisions**

## **§ 63. Grounds for termination of marriage**

A marriage terminates if a spouse dies or the marriage is divorced.

## **§ 64. Divorce granted by vital statistics office**

A vital statistics office may grant divorce upon agreement of the spouses on the basis of a joint written petition. A divorce may be granted by a vital statistics office if both spouses reside in Estonia.

## **§ 65. Divorce granted by court**

(1) A marriage may be divorced by a court judgement on the basis of an action of one spouse against the other spouse.

(2) A court grants divorce if the spouses disagree about the divorce or the circumstances relating to the divorce or if a vital statistics office is not competent to grant divorce.

## **§ 66. Date of termination of marriage**

A marriage terminates:

- 1) upon the death of a spouse at the time of his or her death;
- 2) upon grant of divorce by court on the date of entry into force of the court judgement;
- 3) upon grant of divorce by a vital statistics office on the date of entry into force of the divorce entry.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

## **§ 67. Termination of conjugal relations**

(1) A divorce may be granted by court if conjugal relations have definitively terminated. Conjugal relations have terminated if the spouses do not have matrimonial cohabitation any more and there is reason to believe that that the spouses will not restore cohabitation.

(2) Termination of conjugal relations is presumed if the spouses have lived apart for at least two years.

(3) A court shall take measures for the conciliation of the parties unless it is impossible or unreasonable due to the circumstances. A court may give the parties a term of up to six months for reconciliation.

#### **§ 68. Housing of family in case of divorce**

(1) If upon termination of marriage the spouses fail to reach an agreement with regard to further use of a dwelling and the objects of the standard furnishings belonging thereto, each spouse has the right to require that the rights and conditions for use of each spouse with respect to the abovementioned objects be determined by court. A court shall take the well-being of children and other important circumstances into particular account.

(2) If a dwelling used as a common housing of the family is in sole ownership of one spouse or in common ownership of one spouse and a third party, a court shall grant the use of the dwelling to the other spouse only in case it is necessary to prevent injustice. The same applies if one spouse alone or with a third party has a real right in the registered immovable where the common housing of the family is located.

(3) In the case of a dwelling used on the basis of a lease relationship, a court may order that one of the spouses continues to perform the residential lease contract entered into by both spouses as a lessee or that the other spouse becomes a party to the residential lease contract as a lessee in lieu of the spouse who entered into the contract. At the request of a lessor, a court may prescribe provision of security for the performance of a lease contract.

(4) If a dwelling is used on the basis of a contract other than a residential lease contract, a court may transfer the rights arising from this contract to one of the spouses or order that the other spouse becomes a party to the contract in lieu of the spouse who entered into the contract.

(5) In the cases provided for in subsection (2), the court may determine reasonable charge for the use of a dwelling. In case of significant changes in the circumstances, a court may amend a ruling made earlier concerning the transfer of the right of use of a dwelling or concerning determination of charge for use.

#### **§ 69. Property connected with housing of family in case of divorce**

(1) At the request of a spouse, a court shall divide the objects of standard furnishings of the housing of the family which are in common ownership of the spouses fairly and rationally.

(2) An object of standard furnishings connected with the housing of the family which the spouses have acquired during marriage for a charge for use in their shared household, shall be deemed to be in the joint ownership of the spouses in the case of division of property pursuant to subsection (1) of this section unless the sole ownership of one spouse with respect to this object is proved.

(3) An object transfer into the ownership of the spouse to whom the court assigns the object. A court may require this spouse to pay fair compensation for the object to the other spouse.

(4) If one spouse or both spouses are liable for the performance of obligations related to objects specified in subsection (1) of this section as solidary obligors, a court may specify which spouse shall perform the obligation arising from the relations between them.

#### **§ 70. Settlement of disputes**

The disputes specified in §§ 68 and 69 of this Act shall be resolved by court in an action either together with the matter of divorce or as an independent matter.

#### **§ 71. Restoration of marriage**

If a spouse who has been declared dead returns, a marriage shall be deemed to be restored if neither spouse has remarried in the meantime. A marriage shall be deemed to be restored after the entry into force of the court order recalling the declaration of death.

## **Division 2**

### **Provision of maintenance to divorced spouse**

#### **§ 72. Obligation to provide maintenance to divorced spouse caring for child**

If, after divorce, a divorced spouse is unable to maintain himself or herself due to caring for the common children of the spouses, he or she may request provision of maintenance from the other divorced spouse until the child attains three years of age.

### **§ 73. Obligation to provide maintenance to divorced spouse in other cases**

(1) If, after divorce, a divorced spouse is unable to maintain himself or herself due to his or her age or state of health and the need for assistance arising from age or state of health existed at the time of the divorce, he or she may request provision of maintenance from the other divorced spouse. Provision of maintenance due to age or state of health may be requested from the other divorced spouse also in case the need for assistance arising from age or state of health existed at the time when the right to receive maintenance from the other divorced spouse on another basis provided by law terminated.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(2) Maintenance specified in subsection (1) of this section shall be provided to the person entitled to receive maintenance until the person cannot be presumed to obtain income and to the extent the person cannot be presumed to obtain income.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

### **§ 74. Amount of maintenance**

(1) The amount of maintenance shall be determined on the basis of usual needs of the spouse entitled to receive maintenance by taking into account the financial situation and living conditions of the spouses during marriage. A court may disregard the current financial situation of the spouses or take it into account only with regard to certain period of time if it would not be reasonable to determine the amount of maintenance on the basis of the previous financial situation during the whole period of obligation to provide maintenance taking into account the organisation household and obtaining of income.

(2) A spouse entitled to receive maintenance shall, for the purposes of his or her maintenance, transfer his or her property to the extent which complies with the principles of fairness and rational management taking into account the financial situation of both spouses. The spouse obliged to provide maintenance shall, for the purposes of the performance of the obligation to provide maintenance, transfer his or her property to the extent which complies with the principles of fairness and rational management taking into account the financial situation of both former spouses.

### **§ 75. Support order**

(1) If the obligated party fails to perform the obligation to provide maintenance, a court shall, at the request of the entitled person, order support from the obligated party.

(2) A court may, at the request of the entitled person, order support as a single sum if there is good reason for that and the obligated party is not encumbered unfairly thereby.

### **§ 76. Limitations on and non-applicability of limitations on obligation to provide maintenance**

(1) A court may release a divorced spouse from the obligation to provide maintenance, limit the obligation in time or reduce the amount of support if payment of support would be extremely unfair considering, *inter alia*, the interests of the common child left to be cared for and raised by the entitled person, if:

- 1) the marriage has lasted for a short period of time;
- 2) the entitled person is convicted of a criminal offence against the person obliged to provide maintenance or a person connected with him or her;
- 3) the need for maintenance has been caused by unreasonable conduct of the entitled person;
- 4) the entitled person violated severely his or her obligation to contribute to the maintenance of the family for a longer period of time before the divorce;
- 5) there is another good reason for that.

(2) A court may release a former spouse from the obligation to provide maintenance in so far as the spouse is, considering his or her other obligations and financial situation, unable to provide maintenance to the spouse entitled to receive maintenance without damage to his or her own usual maintenance.

### **§ 77. Time for support order**

(1) A divorced spouse entitled to receive maintenance may request the performance of the obligation to provide maintenance arising from law only as of filing of the action.

(2) The entitled person may, with good reason, request support retroactively for up to one year before filing the action for support in court.

### **§ 78. Maintenance contract**

(1) Spouses may, by a notarially authenticated agreement, specify the obligation to provide maintenance after divorce different from the provisions of this Division.

(2) An agreement by which the obligation to provide maintenance to a divorced spouse is excluded or restricted unreasonably is void.



(3) A maintenance contract expires upon death of the entitled or obligated person.

**§ 79. Termination of obligation to provide maintenance in case of remarriage or death of entitled person**

The obligation to provide maintenance terminates upon remarriage of the entitled person and also upon the death of the entitled or obligated person.

## **Part 2 RIGHTS AND OBLIGATIONS ARISING FROM BLOOD RELATIONSHIP**

### **Chapter 6 GENERAL PROVISIONS ON BLOOD RELATIONSHIP**

**§ 80. Blood relationship**

(1) If one person descends from another, they are direct blood relatives. Direct blood relatives are ascendants and descendants. Ascendants are parents and their ancestors, and descendants are children and their issue.

(2) If persons descend from the same person but are not direct blood relatives, they are collateral blood relatives.

(3) Children who have a common father and mother are brothers or sisters. Children who have a common father but different mothers or a common mother but different fathers are half-brothers or half-sisters.

(4) The degree of relationship shall be determined on the basis of the number of births between the ascendants and descendants.

**§ 81. Relationship by marriage**

(1) Relatives of a spouse are relatives by marriage to the other spouse.

(2) A relationship by marriage does not end with the termination of the marriage from which the relationship by marriage arose.

## **Chapter 7 ASCERTAINMENT OF FILIATION**

**§ 82. Legal effect of filiation**

The mutual rights and obligations of parents and children arise from the filiation of children which is ascertained pursuant to procedure provided by law.

**§ 83. Mother**

The woman who gives birth to a child is the mother of the child.

**§ 84. Father**

(1) The man by whom a child is conceived is the father of the child. It shall be deemed that a child is conceived by a man:

- 1) who is married to the mother of the child at the time of birth of the child;
- 2) who has acknowledged his paternity; or
- 3) whose paternity has been established by court.

(2) A court shall not identify a donor whose sperm has been used for artificial insemination as a father of a child.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

### **§ 85. Preclusion of filiation from married man**

A man who is married to the mother of a child shall not be considered as the father of the child if he has not conceived the child and:

- 1) the spouses have submitted a respective joint application to the vital statistics office; or
  - 2) another man has acknowledged his paternity.
- [RT I, 29.06.2014, 3 - entry into force 09.07.2014]

### **§ 86. Presumption of filiation in case of termination of marriage**

(1) If a child is born within three hundred days after termination of marriage, the man who was married to the mother of the child shall be the father of the child. If it is ascertained that a child was conceived more than three hundred days before his or her birth, this period of time shall be taken into account.

(2) If a child is born to a woman who has contracted a new marriage and who shall be deemed to be the child of the former husband pursuant to subsection (1) of this section and the child of the new husband pursuant to clause 84 (1) 1) of this Act, the child shall be deemed to be the child of the new husband.

(3) In the case of divorce, paternity may be acknowledged as of submission of an application or filing an action for divorce.

### **§ 87. Acknowledgement of paternity**

(1) Paternity can be acknowledged only if filiation of the child from the father has not been ascertained on the basis provided by law.

(2) Paternity can be acknowledged only in person.

(3) Conditional or temporary acknowledgement of paternity is void.

### **§ 88. Acknowledgement of paternity in case of restricted active legal capacity**

(1) A minor or an adult with restricted active legal capacity may acknowledge paternity with the consent of his or her legal representative.

(2) If the mother of a child is a minor or an adult with restricted active legal capacity, he or she may give consent for acknowledgement of paternity with the consent of his or her legal representative.

### **§ 89. Consent to acknowledgement of paternity**

(1) Consent of the mother of the child is required for acknowledgement of paternity.

(2) If the mother of the child is dead and she has granted her consent to acknowledgement of paternity before her death or the child has become an adult, the consent of the child is required for acknowledgement of paternity. Consent for acknowledgement of paternity on behalf of a child under 14 years of age shall be granted by the legal representative of the child. A child who is at least 14 years of age may grant consent for acknowledgement of paternity in person with the consent of his or her legal representative.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(3) Consent shall be granted in person. Consent shall not be conditional or temporary.

(4) Paternity cannot be acknowledged if the mother has been fully deprived of the parental right of custody or the mother is dead and she has not granted her consent to acknowledgement of paternity before her death.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

### **§ 90. Invalidity of declaration of intention**

(1) Acknowledgement of paternity and the relevant consent are invalid only if the requirements for application for acknowledgement provided for in §§ 87–89 of this Act or in the Vital Statistics Registration Act have been violated.

(2) If a person has been entered in the population register as the father of a child on the basis of acknowledgement, acknowledgement of paternity shall be valid even if the application for acknowledgement or the consent given therefor does not meet the requirements for an application for acknowledgement prescribed in §§ 87–89 of this Act or in the Vital Statistics Registration Act.

### **§ 91. Contestation of paternity**

(1) A man, whose paternity has been established on the basis of the marriage to the mother of a child or who has acknowledged paternity, and the mother of a child and a child have the right to contest paternity. Within one year after the birth of a child, paternity may be contested also by a man who applies for establishment of his paternity instead of the man whose paternity has been ascertained arising from marriage to the mother of

the child or who has acknowledged paternity. If more than a year has passed from the birth of a child, a man applying for establishment of his paternity may contest paternity of another man with the consent of the man, who has been entered in the population register as the father, and the mother of the child. In the absence of the consents specified in the previous sentence, a court may, with good reason and considering the interests of the child, grant permission to a man applying for establishment of paternity to contest the paternity of another man.

(2) Taking account of the significant interests of a child, the minister responsible for the area may contest paternity arising from acknowledgement if there is reasonable doubt that the child does not descend from the man who acknowledged paternity.

(3) If a court judgement establishes that the child does not descend from that man, the man cannot acknowledge paternity.

#### **§ 92. Contestation of paternity through representative**

(1) An action for contestation of paternity may be filed only in person.

(2) Paternity may be contested on behalf of a minor child only by the legal representative of the child. Other persons entitled to contest paternity may contest paternity only in person even if their active legal capacity is restricted without the need for the consent of the legal representative.

#### **§ 93. Term for contestation of paternity**

(1) Paternity may be contested in court within one year as of the date when the person entitled to contest paternity becomes aware of the circumstances which are the basis for contestation.

(2) The term specified in subsection (1) does not begin to run before the birth of a child or before entry into force of acknowledgement of paternity.

(3) If the legal representative of a minor child fails to contest paternity in due time, the child may contest filiation from his or her father in person as an adult. In this case the term begins to run from the date the child who has become an adult becomes aware of the circumstances which are the basis for contestation of paternity, but not before the child becomes an adult.

(4) If a man whose paternity has been established on the basis of marriage to the mother of the child and who has acknowledged paternity dies before the expiry of the term for the contestation of paternity, his successor may contest the paternity of the deceased man within one year as of the death of the man.

#### **§ 94. Establishment of paternity by court**

(1) Paternity shall be established by court, if no man has been established as the father of a child pursuant to clause 84 (1) 1) or 2) or § 86 of this Act or if paternity has been contested on the basis of § 91 of this Act and a court has established that the child does not descend from the man whose paternity was contested.

(2) A court shall establish filiation from the father on the basis of circumstances which allow to presume that the child descends from this man.

(3) The time period from the tree hundredth day until the one hundred eighty-first day before the birth of a child shall be deemed to be the time for conception. If it is ascertained that a child has been conceived outside of the time period specified in the previous sentence, this period of time shall be deemed to be the time for conception.

#### **§ 95. Action for establishment or contestation of paternity**

A court shall decide on establishment or contestation of paternity on the basis of an action of a man filed against a child or on the basis of an action of a mother or a child filed against a man. If the person against whom an action should have been filed is dead, a court shall decide on contestation or establishment of paternity in a proceeding on petition on the basis of the petition of the person entitled to file a claim pursuant to the previous sentence.

## **Chapter 8 OBLIGATION TO PROVIDE MAINTENANCE ARISING FROM FILIATION**

### **Division 1**

# General provisions

## § 96. Persons required to provide maintenance

Adult ascendants and descendants related in the first and second degree are required to provide maintenance (hereinafter *person required to provide maintenance*). The obligation to provide maintenance shall not be affected by changes in the right of custody.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

## § 97. Persons entitled to receive maintenance

The following persons are entitled to receive maintenance:

- 1) a minor child;
  - 2) a child who is acquiring basic, secondary or higher education or formal vocational education as an adult but not more than until he or she attains 21 years of age;
- [RT I, 12.03.2015, 4 - entry into force 01.10.2015]
- 3) other descendant or ascendant who needs assistance and is unable to maintain himself or herself.

## § 98. Order of entitled persons

(1) If there are many persons entitled to receive maintenance and the person required to provide maintenance is unable to provide maintenance to all of them, a minor child shall be preferred to other children, children to more distant descendants, descendants to ascendants and, in the case of ascendants, closer relatives to more distant relatives.

(2) In the order of entitled persons, a spouse has an equal status with a minor child and shall receive maintenance before an adult child or a married minor child and the rest of the relatives.

(3) In the order of entitled persons, the status of a divorced spouse caring for a child and a parent entitled to receive maintenance in the case of birth of a child pursuant to § 111 of this Act is after a minor child and they shall receive maintenance before an adult child and married minor child and the rest of the relatives.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(4) In the order of entitled persons, the status of a divorced spouse entitled to receive maintenance pursuant to § 73 of this Act is after an adult child and he or she shall receive maintenance before the rest of the relatives.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

## § 99. Scope of maintenance

(1) The scope on maintenance shall be determined on the basis of the needs and usual lifestyle of the person entitled to receive maintenance.

(2) Upon determining maintenance all the needs of the entitled person, including the expenses relating to education and vocational training corresponding to his or her abilities and leanings, and, in the case of a minor dependant, the expenses relating to raising him or her shall be taken into account.

## § 100. Manner of provision of maintenance

(1) Maintenance is generally provided by making periodic payments of money (hereinafter *support*). With good reason, an obligated person may request that he or she be allowed to provide maintenance in another manner.

(2) A parent of a minor child shall perform the obligation to maintain the child by paying support primarily if the parent does not live together with the child or does not participate in raising of the child. The parent living together with the child shall use the support in the interests of the child.

(3) Parents may specify, by mutual agreement, the performance of the obligation to maintain their child and determine in which manner and after which period of time maintenance shall be provided. An agreement does not preclude or restrict assertion of a claim arising from law, taking account of the provisions of the agreement.

(4) Support shall be paid in advance for each calendar month.

## § 101. Support for minor child

(1) The monthly support payment for one child shall not be less than half of the minimum monthly wage established by the Government of the Republic.

(2) A court may order support as a fixed amount or as a variable amount by determining in advance the bases for the calculation of the amount of support.

## **§ 102. Taking account of financial situation of obligated person**

(1) A person is released from the obligation to provide maintenance in so far as he or she is, considering his or her other obligations and financial situation, unable to provide maintenance to another person without damage to his or her own usual maintenance

(2) Parents shall not be released from the obligation to provide maintenance to their minor child pursuant to subsection (1). If a parent is in a situation specified in subsection (1), he or she shall use the assets at his or her disposal for the maintenance of himself or herself and his or her child similarly. With good reason, a court may, however, reduce the amount of support to less than the amount provided for in subsection 101 (1) of this Act. A good reason is, *inter alia*, incapacity for work of a parent or a situation where a parent has another child who would be financially less secure than the child receiving support if the amount of support provided for in subsection 101 (1) of this Act were ordered.

## **§ 103. Restriction of claim for provision of maintenance**

(1) A court may release an obligated person from the obligation to provide maintenance, limit the obligation in time or reduce the amount of support if it would be extremely unfair to request performance of the obligation in particular if:

- 1) the need for maintenance of the person entitled to receive maintenance has been caused by his or her unreasonable conduct;
- 2) the entitled person has severely violated his or her maintenance obligation against the person obliged to provide maintenance;
- 3) the entitled person is convicted of an intentionally committed criminal offence against the person obliged to provide maintenance or a person connected with him or her.

(2) Subsection (1) shall not be applied to the obligation of a parent to provide maintenance to his or her minor child.

(3) If a claim of a person who needs assistance is restricted on the basis of this section, he or she shall not file a claim for provision of maintenance against other persons obligated to provide maintenance.

## **§ 104. Information on financial situation**

Direct blood relatives are required to provide each other information on their income and assets upon the submission of the corresponding request if this is necessary in order to ascertain the obligation to provide maintenance or the amount of support. If requested, the certificates from the employers and other relevant documents concerning the amount of income shall be submitted.

## **§ 105. Order of persons obligated to provide maintenance**

(1) A descendant shall provide maintenance before an ascendant.

(2) In the case of descendants and ascendants, a closer relative shall provide maintenance before a more distant relative.

(3) Several relatives in the same degree shall perform the obligation to provide maintenance as joint obligors. The amount of the obligation of each joint obligor shall be determined in proportion to his or her income and financial situation taking into consideration the relationship between him or her and the person entitled to receive maintenance.

## **§ 106. Substitution obligation**

(1) If a person is released from the obligation to provide maintenance on the basis of § 102 of this Act, maintenance shall be provided by the person who is obliged to do it next.

(2) If it is not possible to obtain maintenance from a person or if it is too difficult to achieve it, maintenance shall be provided by the person who is obliged to do it next. In the case specified in the first sentence the claim of the entitled person against the obligated person transfers to the person who has provided maintenance in lieu of the obligated person. Transfer of the right of claim shall not be in conflict with the interests of the person entitled to receive maintenance.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

## **§ 107. Preliminary obligation of spouse**

(1) The spouse of a person in need of assistance shall provide maintenance before the relatives of the person in need of assistance. If the spouse is, considering his or her other obligations and financial situation, unable to

provide maintenance to his or her spouse without damage to his or her own usual maintenance, maintenance shall be provided by the persons who are obliged to do it next.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(2) Subsection (1) of this section also applies to the obligation of a spouse to provide maintenance to the other divorced spouse.

(3) The provisions of subsection 106 (2) of this Act apply to the transfer of the right of claim.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

#### **§ 108. Retroactive provision of maintenance**

An entitled person may request the performance of the obligation to provide maintenance and compensation for the damage caused by failure to perform the obligation retroactively for up to one year before filing an action for support in court.

#### **§ 109. Preclusion of claim for provision of maintenance**

An agreement by which the performance of the obligation to provide maintenance in future is precluded or by which the obligation to provide maintenance is unreasonably restricted is void.

#### **§ 110. Termination of obligation to provide maintenance**

(1) The obligation to provide maintenance terminates upon the death of the entitled or obligated person. A claim for retroactive performance or for compensation for damage caused by failure to comply with a claim or a claim for making an advance payment which has fallen due by the moment of the death of the entitled or obligated person remains valid.

(2) The obligated person shall cover the funeral expenses in the case of death of the entitled person unless the expenses can be paid from the estate.

## **Division 2**

### **Provision of maintenance in case of birth of child**

#### **§ 111. Provision of maintenance in case of birth of child**

(1) The father of a child is required to provide maintenance to the mother of the child eight weeks before and twelve weeks after the birth of the child.

(2) If a mother is unable to maintain herself due to a health disorder caused by pregnancy or childbirth, the father is required to provide maintenance to her until improvement of her state of health. The same applies if a mother is unable to receive income due to caring for a child. The obligation to provide maintenance commences not earlier than four months before the birth of a child and terminates after three years have passed from the birth of the child.

(2<sup>1</sup>) If the father is, considering his other obligations and financial situation, unable to provide maintenance to the mother without damage to his own usual maintenance, maintenance shall be provided by the persons who are obliged to do it next.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(3) If a father cares for and raises a child, he has the right to file a claim specified in the second sentence of subsection (2) of this section against the mother. In such case § 112 of this Act applies, taking account of the specifications of subsection (2).

(4) If a mother dies due to pregnancy or childbirth, the father of the child shall bear the funeral expenses unless it is possible to cover the expenses from the mother's estate.

(5) The maintenance provided for in subsections (1)–(3) of this section shall be provided by the obligated person after the spouse and before the relatives of the person in need of assistance.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(6) The provisions of subsection 106 (2) of this Act apply to the transfer of the right of claim.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

#### **§ 112. Limitation period for claims**

The limitation period of the claim arising from § 111 of this Act expires one year after the end of the year following the birth if the running of the limitation period has not been suspended or interrupted or, if the maintenance obligation arises at a later time, then one year after the end of the year when the maintenance obligation arose.

## **Chapter 9**

# **GENERAL LEGAL RELATIONSHIP BETWEEN PARENTS AND CHILDREN**

### **§ 113. Obligation to support and respect each other**

A parent and a child are required to support and respect each other and take each other's interests and rights into account.

### **§ 114. Obligation to assist parents**

Until a child resides together with his or her parents and the parents raise or maintain him or her, the child is required to assist his or her parents in household in accordance with his or her abilities and possibilities.

### **§ 115. Child's expenses in household**

If an adult child who resides together with his or her parents makes expenses from his or her assets in order to cover household expenses or relinquishes a part of his or her assets to parents for this purpose, it is presumed that he or she does not make the expenses with the intention to claim reimbursement of the expenses from the parents.

## **Chapter 10**

# **RIGHTS AND OBLIGATIONS OF PARENTS**

### **Division 1**

## **General provisions**

### **§ 116. Principles of parent's right of custody**

(1) Parents have equal rights and obligations with respect to their children unless otherwise provided by law.

(2) Parents have the obligation and right to care for their minor child (hereinafter *parent's right of custody*). The parent's right of custody includes the right to care for the person of the child (hereinafter *custody over person*) and for the property of the child (hereinafter *custody over property*) and decide on matters related to the child.

(3) Upon caring for and raising a child, the parents shall take into account that the ability and need of the child to act independently and the responsibility of the child increases. If the development level of a child so allows, the parents shall discuss the caring and raising issues with the child.

### **§ 117. Parent who is granted right of custody**

(1) The parents who are married to each other have joint custody over their child.

(2) If the parents of a child are not married to each other at the time of birth of the child, they shall have joint right of custody unless they have expressed their wish to leave the right of custody only to one of the parents upon submitting the declarations of intention concerning the acknowledgement of paternity.

### **§ 118. Exercise of parent's right of custody**

(1) Parents shall exercise joint right of custody with respect to their child and perform the custodial obligation on their own responsibility and unanimously considering all-round well-being of the child.

(2) If it is not possible for the parents to exercise the right of custody, a court shall apply the relevant measures in the interests of the child. If necessary, a court shall commence proceedings for appointment of a guardian with respect to the child.

### **§ 119. Grant of powers of decision to one parent**

If, upon exercising joint right of custody, parents fail to reach an agreement in a matter significant for the child, a court may, at the request of a parent, grant powers of decision in this matter to one parent. In the

case of transfer of powers of decision, a court may restrict the exercise of the powers of decision or impose supplementary obligations on the parent exercising the right.

### **§ 120. Representation of child**

(1) A parent who has the right of custody is the legal representative of a child. Parents who have joint custody have a joint right of representation. Parents who have the right of custody may agree on the arrangement of exercising the joint right of representation.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(2) A parent represents his or her child alone if:

- 1) he or she has sole custody over the child, or
- 2) the powers of decision have been transferred to him or her pursuant to § 119 of this Act.

(3) If making a joint declaration of intention of the parents would cause a delay in conflict with the interests of the child, one parent has the right to enter into necessary transactions and perform necessary acts in the interests of the child also alone. In this case the other parent shall be immediately informed of the acts.

(4) A joint right of custody shall not preclude the right of the parent raising the child to file an action against the other parent for the order of maintenance of the child.

(5) Where a third person is required to make a declaration of intention to a child in order to perform an act, he or she may submit it to one parent.

(6) Parents shall not represent a child in the cases where this is prohibited for a guardian pursuant to § 180 of this Act.

(7) If a parent represents a child independently, consent of the other parent is presumed.

### **§ 121. Custody over minor with extended active legal capacity**

If the active legal capacity of a minor has been extended, a parent's right of custody does not apply in the case of acts which the minor is permitted to perform independently.

### **§ 122. Special guardian and foster family**

(1) A parent's right of custody does not apply to matters relating to a child for which a special guardian has been appointed and in court cases where another representative has been appointed.

(2) If parents give their child to a foster family to be cared for for a longer period of time, a court may, at the request of the parents or the person who provides care for the child, grant powers of decision in matters concerning custody of the child to the person who provides care for the child. Consent of the parents is required for transfer of the rights at the request of the person providing care for a child (foster parent). A foster parent has the rights and obligations of a special guardian to the extent of the transferred rights.

(3) Foster family is a family where a child is actually raised and which does not include a parent of the child or a person married to a parent of the child.

### **§ 123. Following child's interests**

(1) Upon hearing any matter concerning a child and regulated in this Chapter, a court shall make a decision primarily in the interests of the child, taking into account all the circumstances and the legitimate interest of the relevant persons.

(2) A court shall amend a decision made earlier if this is required due to significant circumstances which affect permanently the well-being of a child.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

### **§ 123<sup>1</sup>. Restoration of parent's right of custody**

(1) In the case of changes in the right of custody, a parent's right of custody shall be restored on the basis of a parent's application if restoration of the parent's right of custody corresponds to the interests of the child.

(2) In the case of restriction of the right of custody, application of measures restricting the right of custody shall be terminated and a parent's right of custody shall be restored on the basis of a parent's application if the interests of the child are no longer in danger.

(3) A parent has the right to request from a court in proceedings on petition that the right of custody belong jointly to the parents. The request shall be satisfied if the prerequisites provided for in the second sentence of subsection 138 (1) of this Act are complied with.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]



## **Division 2**

### **Custody over person**

#### **§ 124. Content of right of custody over person**

(1) Custody over a person is the obligation and right of a caregiver to raise a child, exercise supervision over him or her, ascertain the whereabouts of the child and take care of the all-round well-being of the child in any other manner.

(2) Physical, mental and emotional abuse and application of other degrading educational measures with respect to a child is prohibited.

(3) At the request of parents, a court shall support them upon exercising the right of custody over person by applying the relevant measures if necessary.

#### **§ 125. Education**

In matters concerning the provision of education, parents shall first take into account the abilities and leanings of the child. If necessary, parents shall ask the advice of a teacher or any other competent person.

#### **§ 126. Requirement for surrender of child and determining access to child**

(1) The right of custody over person includes the right to require surrender of a child from anyone who keeps a child unlawfully against his or her parent's will.

(2) The right of custody over person includes the right to appoint the third persons who can have access to the child. A decision of a parent is binding on third persons whose access to the child has been prohibited by the parent.

(3) Disputes which arise in the cases specified in subsections (1) and (2) of this section shall be settled by a court at the request of a parent.

(4) If a child lives in a foster family and the parents wish to request surrender of the child from the person providing care for him or her, a court may, on its own initiative or at the request of the person providing care, order that the child shall stay with the person providing care for the child where the request for surrender might damage the interests of the child.

## **Division 3**

### **Custody over property**

#### **§ 127. Content of custody over property**

Custody over property includes the right and obligation to administer the property of the child and, *inter alia*, represent the child. This does not preclude the right of the child to administer his or her property independently in the cases provided by law.

#### **§ 128. Restriction of custody over property**

(1) The right of custody over property does not apply in the case of property acquired by a child:

- 1) by succession or as a gift if the bequeather or donor has specified that the property shall not be administered by one or neither of the parents;
- 2) on the basis of a right included in the property specified in clause 1) of this subsection or as compensation or in return of the transfer of, destruction of, damage to or seizure of objects included in such property.

(2) Parents shall administer the property acquired by their child by succession or as a gift in adherence to the instructions of the person from whom the property was acquired. Parents may deviate from the instructions if adherence thereto may damage the interests of the child.

#### **§ 129. Prohibition on making gift**

Parents as representatives of a child shall not give away a child's property as a gift. As an exception, it is permitted to make ordinary gifts in order to perform a moral obligation or adhere to etiquette.

### **§ 130. Investment of money**

Parents shall invest the money belonging to their child and administered by the parents pursuant to the principles of prudent management of property and in adherence to the provisions of § 186 of this Act if it is not necessary to use the money for covering the maintenance costs of the child.

### **§ 131. Conclusion of transactions with consent of court**

(1) Parents shall have the consent of a court in order to conclude transactions on behalf of a child in the cases where a guardian requires it pursuant to § 187 and clauses 188 (1) 1)–3), 5) and 7)–11) of this Act. A parent shall not, without the consent of a court, ratify transactions for the conclusion of which on behalf a child consent of a court is required.

(2) Consent of a court is not required for renunciation of succession if the child's right to the estate has arisen as a result of renunciation of succession by the parent who has the right of representation with respect to the child.

(3) Parents shall not, without the consent of a court, commence new business activities on behalf of a child or transfer objects for the transfer of which consent of a court is required to a child for the performance of a contract entered into by the child or for free disposal.

(4) The provisions concerning the guardian's right of representation shall be applied to consent of a court.

### **§ 132. Benefit received from child's property**

(1) From the benefit received from a child's property first the obligations incumbent on the property which have fallen due shall be performed and other expenses of regular management of the property shall be covered. The income remaining from the abovementioned expenses may be used for the maintenance of the child.

(2) If the benefit received from a child's property is not needed for covering the expenses of regular maintenance of the property or for maintenance of the child, the parents may use it for the maintenance of themselves and unmarried minor brothers and sisters of the child if there are no appropriate resources for covering the maintenance costs of the abovementioned persons.

### **§ 133. Parents' obligation of care**

(1) Upon exercising the right of custody over property of a child, parents shall exercise such care as they would usually exercise in their own affairs.

(2) If both parents cause damage to a child, they shall be liable as solidary obligors.

## **Division 4**

### **Restriction of parent ' s right of custody**

### **§ 134. Endangering of well-being of child**

(1) If the physical, mental or emotional well-being or the property of a child is endangered by abuse of the parent's right of custody, neglecting the child, inability of the parents to perform their obligations or conduct of a third person and the parents do not wish or are unable to prevent danger, a court shall apply necessary measures, including the measures listed in subsection (3) of this section and §§ 135 and 136 of this Act, for the prevention of danger.

(2) If the well-being of a child is endangered, the official of a state agency or local government agency, police officer, health care professional, judge, prosecutor, notary, bailiff, teacher or any other person who has information concerning the endangered child shall notify the rural municipality government or city government of the residence of the child or a court thereof.

[RT I, 29.12.2011, 1 - entry into force 01.01.2012]

(3) In the case the well-being of a child is endangered, a court may make decisions arising from the right of custody in lieu of a parent, issue warnings and precepts and impose prohibitions and require the parents to observe the instructions of the agency specified by the court. A court may restrict the right of custody over person or property by prohibiting the performance of certain acts or certain type of acts. A court may deprive a parent of the right of custody over property in full.

(4) In the matters of the right of custody over person, a court may, on its own initiative, apply measures provided by law, the legal consequences of which are binding also on a third person.

### **§ 135. Separation of child from family and deprivation of right of custody in full**

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(1) A court may separate a child from the parents only if damage to the interests of the child cannot be prevented by other supporting measures applied in the relationship between the parents and the child.

(2) A court may deprive a parent of the right of custody in full only if other measures have not yielded any results or if there is reason to presume that the application of the measures is not sufficient to prevent danger.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(3) Upon hearing a matter concerning substantial restriction of the right of custody or deprivation of the right of custody in full, a court shall involve a rural municipality or city government in the proceedings for the purpose of hearing its opinion.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(4) If leaving a child in his or her family endangers the health or life of the child, a rural municipality government or city government may separate the child from the family before a court ruling is made. In such case the rural municipality government or city government shall promptly submit an application to a court for restriction of parental rights with respect to the child.

### **§ 136. Endangering of property of child**

(1) In general it is presumed that a child's property is endangered if the person exercising custody over the property violates the obligation to provide maintenance to the child or any other obligations relating to the right of custody over property or fails to comply with the directions of a court concerning the right of custody over property.

(2) A court may issue a precept to parents for the submission of a list of a child's property and a report concerning administration of the property. Parents shall confirm the correctness of the list of property. If the list is insufficient, a court may, by a ruling, assign preparation of the list to the rural municipality or city government.

(3) A court may issue a precept for the investment of a child's money in a certain manner or establish the obtaining of a consent from a court as a condition for withdrawal of money. If a child's property includes securities or valuables, a court may impose the same obligations on the parent representing the child as rest with the guardian.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(4) A court may demand security from a parent damaging the proprietary interests of a child to the extent of the value of the property administered by the parent. The court shall decide on the type and scope of the security at its discretion. A court ruling substitutes the participation of a child upon granting and annulment of security. Only full or partial deprivation of the right of custody over property pursuant to § 134 of this Act may be imposed as a coercive measure of grant of security.

(5) The cost of the implementation of the measures established by a court ruling shall be borne by the parent who caused the implementation of the measures.

## **Division 5 Changes in right of custody**

### **§ 137. Termination of joint right of custody**

(1) If parents who have joint right of custody live permanently apart or do not wish to exercise the right of joint custody any further for any other reason, each parent has the right to request from a court in proceedings on petition that the right of custody of the child be partially or fully transferred to him or her. A court may resolve a dispute concerning the right of custody also in the proceedings concerning the divorce.

(2) A petition shall be dismissed if:

- 1) a child who has attained at least 14 years of age objects to the transfer of the right of custody, or
- 2) if there is reason to believe that termination of the joint right of custody and granting sole right of custody to the petitioner does not correspond to the interests of the child.

(3) In the case of termination of the joint right of custody, a court shall decide on the grant of the right of custody to one parent on the basis of the interests of the child and shall take into account, *inter alia*, the mental and financial readiness of each parent to raise the child, emotional relationship with the child and current commitment to caring for the child and the future living conditions of the child.

### **§ 138. Transfer of right of custody**

(1) If the right of custody belongs to only one parent, the other parent may request from a court that the right of custody of the child be partially or fully transferred to him or her. A petition is satisfied if transfer of the right of custody corresponds to the interests of the child, a child who has attained at least 14 years of age does not object to it and the parent requesting transfer of the right is suitable and able to exercise the right of custody. If the right of custody belongs to only one parent on the basis of a court decision, the other parent may request transfer of the right of custody if the circumstances on the basis of which the court decision was made have changed significantly, or he or she may request restoration of joint right of custody.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(2) If a parent with the sole right of custody has died or has been deprived of the right of custody in full, a court shall grant the right of custody to the other parent unless it is in conflict with the interests of the child.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

### **§ 139. Right of custody of parent with restricted active legal capacity**

(1) A parent with restricted active legal capacity does not have the right to represent a child and shall exercise the right of custody over person with respect to a child together with the legal representative of the child.

(2) If the guardian or special guardian is the legal representative of the child, the opinion of the parent shall be preferred in the case of divergent opinions between the parent and the representative.

### **§ 140. Suspension of parent's right of custody**

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(1) A court shall suspend a parent's right of custody in the case of extended inability of the parent to exercise the right of custody.

(2) A court shall restore a parent's right of custody if it is established that the grounds for suspension of the right of custody have ceased to exist.

(3) A parent shall not exercise the right of custody at the time of suspension of the right of custody.

(4) If parents have joint right of custody and the right of custody of one parent is suspended, the other parent shall exercise the right of custody alone. If the sole right of custody over a child granted to a parent on the basis of law or a court decision is suspended and there is no reason to expect that the grounds for suspension cease to exist, a court shall grant the right of custody to the other parent if it corresponds to the interests of the child.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

### **§ 141. Handing over of property**

If a parent's right of custody terminates or is suspended, he or she shall hand the child's property over to the child and shall submit a report concerning administration of the property at the request of the child or the legal representative of the child.

### **§ 142. Representation of child after termination of parent's right of custody**

(1) A parent may continue administration relating to custody over person and property until he or she becomes aware or should become aware of the termination of his or her right of custody. A third person shall not rely of on the right of a parent if upon entry into the transaction he or she knew or should have known of termination of the right of custody.

(2) Subsection (1) shall apply also upon suspension of the parent's right of custody.

## **Division 6 Right of access**

### **§ 143. Right of access to child**

(1) A child has the right to maintain personal contact with both parents. Both parents have the obligation and right to maintain personal contact with their child.

(2) A parent shall refrain from any action which is harmful to the relationship between the child and the other parent or which hinders raising of the child. The same provision applies if a child is cared for and raised by another person.

(2<sup>1</sup>) In the case of legal separation of parents, the parents shall agree on access of the separated parent to the child. In the case of a dispute between the parents, the procedure for access of the parent to the child shall be determined at the request of a parent by the court.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(3) A court may restrict the right of access or the enforcement of the earlier decisions made concerning the right of access or terminate the exercise of the right of access or the enforcement of the earlier decisions made concerning the right of access.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(3<sup>1</sup>) A court may order that a parent has access to a child in the presence of a suitable third person. If the third person is a rural municipality or city government or a legal person in private law, the rural municipality or city government or the legal person shall appoint a competent natural person to perform this duty.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(4) A court may allow, prohibit or restrict access of a third person to a child in the interests of the child. A court may impose an obligation on a person involved to refrain from any action which is harmful to the relationship between the child and his or her parents or which hinders raising of the child.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(5) A court may apply the measures specified in this section also on its own initiative.

#### **§ 144. Requirement to provide information**

A parent has the right to request from the other parent information concerning important circumstances relating to the person and property of a child unless this is in conflict with the child's interests.

## **Division 7 Powers of decision**

#### **§ 145. Powers of decision of parents who are separated**

(1) If parents who have joint right of custody are permanently separated, they shall jointly decide on essential matters relating to the child.

(2) The parent who has the right of custody and with whom a child resides with the consent of the other parent or on the basis of a court decision has the right to decide on everyday matters (usual care) of the child alone. As a rule, deciding on everyday matters means making usual decisions which occur often and which do not have a permanent effect on the development of the child.

(3) When a child stays with the other parent with the consent of the parent specified in subsection (2) of this section or on the basis of a court decision, the matters concerning usual care shall be decided by the other parent.

(4) A parent without the right of custody has powers of decision specified in subsection (2) of this section when a child stays with him or her with the consent of the other parent or another person who has the right of custody or on the basis of a court decision. A court may restrict the powers of decision of a parent without the right of custody in the interests of the child.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

#### **§ 146. Powers of decision of person caring for child**

(1) If a child resides in a foster family for an extended period of time, the person actually caring for and raising the child (hereinafter *foster parent*) has the right to decide on matters concerning usual care for the child and represent the child in such matters.

(2) A foster parent shall not have such right if the person who has the right of custody objects to it or a court has restricted or precluded the powers of decision arising from subsection (1) of this section.

(3) If a child stays at a third person on the basis of a court decision, his or her powers of decision specified in subsection (1) may be restricted or precluded only by court.

## **Chapter 11**

# ADOPTION

## § 147. Permission for adoption

(1) Adoption is permitted if it is necessary in the interests of the child and there is reason to believe that a parent-child relationship will be created between the adoptive parent and the child. Upon the selection of an adoptive parent, his or her personal characteristics, relationship with the child being adopted, his or her financial situation and ability to perform the obligations arising from the adoption relationship and, if possible, the presumed will of the parents of the child shall be taken into account. If possible, the need for consistency of raising of the child and his or her national, religious, cultural and linguistic origin shall be taken into account upon making a decision.

(2) Adoption is not permitted if this is in conflict with weighty interests of the children of the adoptive parent or the child being adopted or if there is reasonable doubt that the children of the adoptive parent damage the interests of the child being adopted. Adoption shall not be decided on based on proprietary interests. Upon deciding, it shall be verified that the consents have not been granted for charge or any other compensation.

(3) Upon deciding on adoption, separation of sisters and brothers shall be avoided, if possible.

(4) Only minors may be adopted.

## § 148. Right of single person and right of married person to adopt

(1) A single person may adopt a child only alone.

(2) Married persons may adopt a child jointly. A child may be adopted also by only one spouse if:

- 1) he or she adopts the child of the other spouse;
- 2) the other spouse cannot adopt because he or she has restricted active legal capacity.

## § 149. Prohibition on re-adoption of child

During an adoption relationship, a child being adopted shall not be adopted by a person other than the spouse of the adoptive parent.

## § 150. Age and active legal capacity of adoptive parent

(1) A person with full active legal capacity who has attained at least 25 years of age may be an adoptive parent. [RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(2) A court may, as an exception, allow a person who has attained at least 18 years of age to adopt if he or she adopts his or her spouse's child or if there is any other good reason for adoption.

## § 151. Consent of child

A child who is at least 10 years of age may be adopted only with his or her consent. A child shall grant his or her consent in person. The wishes of a child younger than 10 years of age shall also be considered if the development level of the child so permits. A child shall grant his or her consent to an adoptive parent whose person is known to the child.

## § 152. Consent of child's parents

(1) A child may be adopted only with the consent of his or her parents.

(2) Consent of a parent shall not enter into force before eight weeks have passed from the birth of the child. A petition for adoption cannot be filed with a court before entry into force of the consent of a parent. With the consent of a parent, a child may be given to the person who wishes to adopt to be cared for before entry into force of the consent granted for adoption.

(3) Parent's consent for adoption may be granted to an adoptive parent whose person is determined or to an adoptive parent whose person has not been determined.

(4) If consent is granted for adoption to an adoptive parent whose person is not determined, a parent does not have the right to request disclosure of information concerning the person of the adoptive parent and the new identity of the child to him or her.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(5) Parent's consent is not required if he or she is incapable of submitting an application for an extended period of time or if his or her whereabouts are unknown for an extended period of time or if the parent has been deprived of the right of custody in full on the basis of § 135 of this Act.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(6) A county government is required to provide advice to a parent who wishes to grant consent for the adoption of his or her child and to explain him or her, *inter alia*, his or her rights and the legal consequences of adoption.

#### **§ 153. Consent of child's guardian**

(1) If a guardian has been appointed to a child, the consent of the guardian is required for adoption. If a guardian has been appointed to a child in a situation where the parents have not been deprived of the right of custody in full, the consent of the guardian is required in addition to the consent of the parents.

(2) If a guardian refuses to grant consent without good reason, a court may substitute the guardian's declaration of intention at the request of the adoptive parent.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

#### **§ 154. Consent of spouse**

(1) If a spouse wishes to adopt a child alone on the basis of subsection 148 (2) of this Act, the consent of the other spouse is needed therefor. A court may substitute the consent of the other spouse at the request of the adoptive parent unless the adoption is in conflict with the legitimate interests of the spouse and the family.

(2) The consent of a spouse is not required if he or she is incapable of making a declaration of intention for an extended period of time or if he or she is missing.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

#### **§ 155. Procedure for granting consent**

(1) A child, the parents of a child, a guardian and the spouse of an adoptive parent shall grant their consent to a court. The parents of a child, a guardian and the spouse of an adoptive parent may grant their consent in person or in a notarially authenticated form. Rural municipality or city government as a guardian may grant its consent in writing.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(2) In the case the consent specified in subsection (1) is granted by a parent, a court or the notary who authenticates the consent shall verify whether the child is left without a legal representative. In such case the court or notary shall notify the rural municipality or city government of the arising obligation of a guardian in accordance with subsection 156 (1).

(3) Consent shall not be conditional or temporary. A notarially authenticated consent may be withdrawn until a petition for adoption is filed with the court. A child who has attained at least 10 years of age may withdraw his or her consent by submitting an application to a court until a decision of adoption is made. The consent of the legal representative is not required for withdrawal.

(4) Consent shall be granted in person. If the person granting consent has restricted active legal capacity, he or she does not require the consent of the legal representative for granting consent.

(5) The consent of a child becomes invalid if the petition for adoption is withdrawn or the court refuses to grant consent for adoption.

(6) The consent of a guardian or a parent granted for adoption to an adoptive parent whose person has been determined becomes invalid if the petition for adoption is withdrawn or the court refuses to satisfy the petition for adoption. The consent of a guardian or a parent granted for adoption to an adoptive parent whose person has been determined also becomes invalid if the child has not been adopted within three years as of granting the consent.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(7) The consent of a guardian or a parent granted for adoption to an adoptive parent whose person has not been determined shall be valid for an unspecified term.

#### **§ 156. Suspension of parent's right of custody**

(1) A parent's right of custody is suspended from the moment of granting consent for adoption. From this on the parent shall not communicate with the child in person. If a child is left without a legal representative due to the suspension of the parent's right of custody, the rural municipality or city government shall become the guardian of the child. The established special guardianship shall be valid unaltered. Subsections 146 (1) and (2) of this Act apply to an adoptive parent during adoption proceedings.

(2) Subsection (1) of this section shall not be applied if the adoptive parent is the spouse of the parent.

(3) If the consent of a parent has become invalid, a court shall restore his or her right of custody unless this is in conflict with the interests of the child.

### **§ 157. Adoptive parent's obligation to provide maintenance**

An adoptive parent is required to provide maintenance to the child from the moment the parents grant the required consent for adoption and the adoptive parent takes the child to be cared for. The adoptive parent shall provide maintenance before a parent of the child. If a spouse wishes to adopt his or her spouse's child, the spouses are required to provide maintenance to the child from the moment the parent grants consent for adoption and the spouses take the child to be cared for. The abovementioned persons are the first in the order of persons required to provide maintenance from obtaining the consent required for adoption and from taking the child to be cared for.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

### **§ 158. Preparation of adoption**

(1) A person wishing to adopt shall file a petition for adoption to the county government.

(2) A county government shall perform the acts relating to the preparation of adoption under circumstances which enable to presume with a sufficient degree of confidence that the conditions required for adoption are complied with at the time of filing the petition to court. A county government shall explain the persons wishing to adopt their rights and the legal consequences of adoption.

(3) The acts relating to the preparation of adoption which county governments are required to perform if the prerequisite specified in subsection (2) of this section exists, the content thereof and the list of documents to be collected by county governments and the list of information to be submitted in a petition specified in subsection (1) shall be established by a regulation of the minister responsible for the area.

(4) A county government is required to examine the living conditions at the place of residence of the person wishing to adopt and verify the suitability of the living conditions for raising a child.

(5) A person wishing to adopt shall, at the request of the county government, complete an appropriate training programme prior to adoption.

(6) In the course of the preparation of adoption, a county government is required to:

- 1) bring the child into contact with the adoptive parent;
- 2) explain the child, together with the legal representative of the child, circumstances relating to adoption in a manner which takes account of his or her development level and is understandable to the child.

(7) An adoptive parent has the right to receive general information from the county government concerning the personal history, state of health and character of the child. An adoptive parent does not have the right to obtain information concerning the child or his or her parents which would violate their personal rights. The given name and the surname of the parents of the child and information concerning their place of residence shall not be disclosed to the adoptive parent without the consent of the parents of the child.

(8) If an adoptive parent does not wish to continue acts relating to the preparation of adoption, he or she is required to notify immediately the county government, to whom he or she filed the petition specified in subsection (1) of this section, thereof.

### **§ 159. Petition for adoption and ruling on adoption**

(1) A court shall decide on adoption on the basis of the petition of an adoptive parent.

(2) A petition for adoption shall be unconditional or for an unspecified term and it shall be filed in person.

(3) A child is adopted as of entry into force of the court ruling on adoption.

### **§ 160. Adoption after death**

(1) A court shall not make a ruling on adoption after the death of the child.

(2) A decision on adoption may be made after the death of the adoptive parent if the adoptive parent has filed a petition for adoption to a court.

(3) If the court ruling on adoption enters into force after the death of an adoptive parent, it shall have the same legal consequences as in the case of a ruling which has entered into force before the death of the adoptive parent.

### **§ 161. Legal status of child**

(1) If spouses adopt a child jointly or if a spouse adopts the child of the other spouse, the child acquires the legal status of a common child of the spouses.



(2) In other cases the child acquires the legal status of a child of an adoptive parent.

(3) In the cases specified in subsection (1), the spouses or the parent of the child and the adoptive parent have joint right of custody over the child and in the cases specified in subsection (2) of this section the adoptive parent has sole custody of the child.

#### **§ 162. Termination of family relationship**

The family relationship of the child and his or her descendants with the former relatives and the rights and obligations arising from the family relationship terminate by adoption.

#### **§ 163. Preservation of former family relations**

(1) If the adoptive parents are related in the second or third degree or relatives by marriage, only the family relationship between the child and his or her descendants and the rights and obligations arising from a family relationship which the child has with respect to his or her parents terminate.

(2) If a spouse adopts a child of his or her spouse, the family relationship of the child with the relatives of the other parent does not terminate if the parent is dead and he or she had the right of custody over the child prior to death.

#### **§ 164. Adoption secrecy**

(1) Adoption secrecy means the information and data relating to the pre-trial proceedings and judicial proceedings of adoption, including facts of adoption from which it may be presumed that a child is adopted or that parents have adopted a child or that a parent or guardian has given a child for adoption. The objective of adoption secrecy is to guarantee the protection of the private life of children, parents and adoptive parents, prevent undesired interference and discrimination on the basis of origin or on any other basis.

(2) A person who is aware of adoption secrecy shall not disclose it unless disclosure thereof is required in the public interest.

(3) The new personal data of a child shall be in secrecy from adoptive parents if a parent has granted consent for adoption of the child to an adoptive parent whose person is not determined.

(4) The birth certificate of an adopted child shall not indicate that the child has been adopted.

(5) Data on adoption shall be used pursuant to the principle of purposefulness provided for in the Personal Data Protection Act by ensuring, *inter alia*, that the data on adoption and the data referring thereto can be accessed only by officials for whom it is necessary in order to perform their official duties.

(6) A minor adopted child, with the consent of the adoptive parent, or an adopted child who has become an adult has the right to obtain information from the county government concerning the fact of adoption.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(7) In addition to the information specified in subsection (6) of this section, a minor adopted child, with the consent of the adoptive parent, or an adopted child who has become an adult has the right to obtain information from the county government concerning his or her biological parents, grandparents, brothers and sisters if the abovementioned persons have granted consent for disclosure of the corresponding information. If consent for disclosure of information is not granted, a county government shall provide information concerning the abovementioned persons to the extent and in a manner which does not enable identification of the biological parents, grandparents, brothers or sisters of the adopted child if they have not granted consent for disclosure of information.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(8) If an adopted child wishes to obtain information concerning his or her adopted minor biological brother or sister, prior consent of the adoptive parent is required for requesting the consent specified in subsection (7) of this section from the brother or sister.

#### **§ 165. International adoption**

(1) If the residence of the adoptive parent or the child is not in Estonia, a court shall not decide on adoption without the consent of the committee for international adoptions formed at the Ministry of Social Affairs. The committee shall consist of three members. The Administrative Procedure Act applies to the procedure conducted by the committee, taking into consideration the specifications arising from this Act.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(2) The committee for international adoptions shall be formed by a regulation of the Government of the Republic.

(3) The rules of procedure of the committee for international adoptions shall be established by a regulation of the minister responsible for the area.

(4) International adoption shall be organised and service shall be provided to the committee for international adoptions by the Ministry of Social Affairs.

(5) The committee is competent to grant consent to:

- 1) petitions for adoption of a child from Estonia to a foreign state;
- 2) petitions for adoption of a child from a foreign state to Estonia.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(6) Adoption from Estonia to a foreign state may occur primarily if it is not possible to care for the child to the necessary extent in the Republic of Estonia.

#### **§ 166. Declaration of invalidity of adoption**

(1) A court may declare an adoption invalid if the adoption took place without the petition of the adoptive parent or without the consent of one of the parents.

(2) A petition or consent is invalid if:

- 1) at the time of filing the petition the petitioner was without capacity to exercise his or her will;
- 2) the petitioner was with restricted active legal capacity and the guardian had not granted the relevant consent or consent was granted by a child under 10 years of age in person;
- 3) the petitioner was not aware that this was an adoption or was aware of it but did not wish to file a petition for adoption or grant consent for adoption or if the adoptive parent was mistaken in the person of the child being adopted or the child being adopted was mistaken in the person of the adoptive parent;
- 4) the petitioner was induced to make a declaration of intention by fraud with respect to significant circumstances;
- 5) the petitioner was induced to make a declaration of intention by threat or violence;
- 6) the petition for adoption was filed with a court before eight weeks had passed from the birth of the child.

#### **§ 167. Prohibition on declaration of invalidity of adoption**

(1) Adoption shall not be declared invalid if a person files a new petition after restoration of his or her active legal capacity, termination of incapability to exercise his or her will or of the effect of threat or mistake or after the child has attained eight weeks of age or if the person grants a new consent or notifies in any other manner that he or she wishes to preserve the adoption relationship

(2) If a petition for adoption has been filed or consent for adoption has been granted by fraud in significant circumstances, the adoption shall not be declared invalid in the case the fraud concerns the financial situation of the adoptive parent or the child or in the case a person, who is not entitled to file a petition or grant consent or intermediate adoption in any other manner, turns out to be misrepresenter without the knowledge of the person entitled to file a petition or grant consent.

(3) If, upon making a ruling on adoption, it was erroneously presumed that one parent is incapable of making a declaration of intention for an extended period of time or that his or her whereabouts are unknown for an extended period of time, the adoption shall not be declared invalid if this parent grants consent retroactively or expresses his or her wish to preserve the adoption relationship in any other manner. In such case, subsection 155 (3) shall apply also.

(4) Adoption shall not be declared invalid in the case of absence or invalidity of the consent of a parent if the prerequisites for deprivation of the right of custody from the parent in full existed at the time of making the ruling on adoption or at the time of hearing the petition for declaration of invalidity of adoption.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(5) Adoption shall not be declared invalid if it damages materially the interests of a child unless declaration of invalidity is required due to weighty interests of an adoptive parent.

#### **§ 168. Petition for declaration of invalidity of adoption**

(1) A petition for declaration of invalidity of an adoption may be filed only by a person without whose petition or consent the child was adopted. A petition on behalf of a child under 14 years of age shall be filed by his or her legal representative. In other cases it is not permitted to file a petition through a representative. If an adult entitled to file a petition has restricted active legal capacity, he or she does not require the consent of a legal representative for filing a petition.

(2) The term for filing a petition is one year from the moment specified in clauses 1)–4) of this subsection but not more than three years as of entry into force of the court ruling on adoption. The term begins to run as follows:

- 1) in the cases specified in clauses 166 (2) 1) and 2) of this Act, as of the moment the petitioner's capacity to exercise will and active legal capacity is restored or an adoptive parent with restricted active legal capacity or the legal representative of a child under 10 years of age becomes aware of making of the declaration of intention;
  - 2) in the cases specified in clauses 166 (2) 3) and 4) of this Act, as of the moment the petitioner becomes aware of the mistake or fraud;
  - 3) in the case of a declaration of intention to adopt made under the influence of threat or violence, as of the moment the influence of threat or violence ceases;
  - 4) in the case specified in clause 166 (2) 6) of this Act, as of the moment the child attains eight weeks of age.
- [RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(3) The provisions concerning the suspension of the limitation period shall apply also to running of the term specified in subsection (2) of this section.

(4) Petitions shall be adjudicated in proceedings on petition

#### **§ 169. Declaration of invalidity of adoption on initiative of court**

(1) Before a child becomes an adult, a court may, on its own initiative, declare the adoption invalid in the weighty interests of the child.

(2) If a child has been adopted by a married couple, the adoption relationship between the child and one adoptive parent may also be declared invalid.

(3) A court may, on its own initiative, declare adoption invalid if:

- 1) in the case specified in subsection (2) of this section, the other spouse or a biological parent of the child is ready to care for the child and exercise of the parent's right of custody is not in conflict with the interests of the child, or
- 2) the purpose of declaration of invalidity is to enable new adoption.

#### **§ 170. Legal consequences of declaration of invalidity of adoption**

(1) The legal consequences of declaration of invalidity of adoption arise as of the moment of declaration of invalidity. If an adoptive parent or a child applies for declaration of invalidity of adoption and a court satisfies the application after the death of the applicant, the declaration of invalidity shall have the same legal consequences as it would have if the adoption relationship had been declared invalid during the lifetime of the abovementioned person.

(2) The family relationship between a child and his or her descendants and previous relatives which arose from adoption and the rights and obligations arising therefrom terminate by declaration of invalidity of the adoption.

(3) The family relationship between a child and his or her descendants and blood relatives and the rights and obligations arising therefrom, except a parent's right of custody, are restored by declaration of invalidity of the adoption.

(4) A court shall restore the right of custody of biological parents over their child in so far as it is not in conflict with the interests of the child or shall appoint a guardian or special guardian for the child.

(5) If a child is adopted by a married couple and the adoption relationship of one spouse is declared invalid, the declaration of invalidity has the consequences specified in subsection (2) of this section only with respect to the relationship between the child and his or her descendants and the spouse and his or her relatives. The consequences specified in subsection (3) of this section shall not arise.

## **Part 3 GUARDIANSHIP**

### **Chapter 12 Guardianship over minor**

#### **Division 1**

# Establishment of guardianship

## § 171. Prerequisites for establishment of guardianship

(1) If neither of the parents of a minor child has the right of representation or if it is not possible to ascertain the origin of a child, a guardian shall be appointed to the child.

(2) Officials of vital statistics offices or any other government agencies or rural municipality or city government officials, police officers, heads of medical institutions and social welfare institutions, judges, prosecutors, notaries and bailiffs who have information concerning a child in need of guardianship are required to notify the rural municipality or city government and a court thereof according to the usual whereabouts of the person in need of guardianship. The same obligation also rests with the relatives of a child in need of guardianship.  
[RT I, 29.12.2011, 1 - entry into force 01.01.2012]

## § 172. Content of guardianship

A guardian has both, the right of custody over the person and property of the child.

## § 173. Establishment of guardianship

(1) A court decides on establishment of guardianship on its own initiative or on the basis of an application of a rural municipality or city government or an interested person. A court may address a rural municipality or city government in order to find a person suitable to act as a guardian.

(2) A guardian may be appointed also before the birth of a child if there is reason to presume that the child needs a guardian after birth. Appointment enters into force as of the birth of the child.

## § 174. Requirements for guardians

(1) A guardian shall be an adult natural person with full active legal capacity.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(2) A person who has been fully or partially deprived of the parent's right of custody or who has previously violated the obligations of a guardian shall not be a guardian. An employee of the health care or social welfare institution where a child is staying shall not be appointed guardian of the child.

(3) Upon the selection of a guardian, his or her personal characteristics, financial situation and ability to perform the obligations of a guardian, the presumed will of the parents and relationship with the child who is placed under guardianship, the need for consistency of raising of the child and the child's national, religious, cultural and linguistic origin shall be taken into account. Upon the selection of a guardian, a court and rural municipality or city government has the right to require from the person appointed guardian documents and information for the assessment of his or her suitability.

(4) A person may be appointed guardian only with his or her consent.

## § 175. Legal person as guardian

(1) If a suitable natural person is not found to be appointed guardian or if a parent has specified in his or her will or succession contract that a legal person shall be a guardian, a legal person may be appointed guardian. The legal person shall be systematically engaged in seeking guardians who are natural persons for the persons under guardianship, provision of advice and training to the guardians.

(2) A legal person may be appointed guardian only with its consent.

(3) The health care, social welfare or educational institution where the child is staying shall be appointed guardian who is a legal person.

## § 176. Rural municipality government or city government as guardian

(1) Until appointment of guardian, the duties of a guardian shall be performed by the rural municipality or city government of the child's place of residence entered in the population register if the prerequisites for the establishment of guardianship have been complied with. Upon the performance of the duties of a guardian, a rural municipality or city government has the rights and obligations of a guardian arising from this Act.

(2) Upon failure to find a suitable natural or legal person, the rural municipality or city government with which the child is most closely connected shall be appointed guardian. A child is most closely connected with the rural municipality or city government, *inter alia*, where the child is from, where the child has lived for most part of the time, with which the child has preserved essential ties, where the child's close persons or assets are located or where the child's residence according to the population register is.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(3) Upon change of a child's place of residence entered in the population register, the rural municipality or city government of the initial place of residence entered in the population register and the rural municipality or city government of the new place of residence entered in the population register may agree that the rural municipality or city government of the new place of residence entered in the population register shall perform the duties of a guardian. Until an agreement is reached, the duties of a guardian shall be performed by the rural municipality or city government of the child's initial place of residence entered in the population register.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(4) If a child has not been entered in the population register or information concerning his or her place of residence is missing in the population register, the regulation specified in subsections (1) and (3) of this section apply to the rural municipality or city government of the usual whereabouts of the child.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

#### **§ 177. Parents' right to appoint**

(1) The person whom a parent has appointed legal representative of the child in his or her will or succession contract shall be appointed guardian if suitable.

(2) If parents have appointed different persons in their wills or succession contracts, the person who is the most suitable as a guardian shall be appointed guardian.

(3) A person whose guardianship as a legal representative of the child has been precluded by a parent in his or her will or succession contract shall not be appointed guardian. If parents have made contradictory dispositions, the disposition of the parent who died later shall apply.

(4) A rural municipality or city government shall not be appointed guardian by a will or succession contract and shall not be precluded as a guardian pursuant to subsection (3) of this section.

#### **§ 178. Appointment of several guardians**

(1) A court shall appoint one guardian to a child; spouses may also be appointed joint guardians. If possible, one guardian shall be appointed to the brothers and sisters in need of guardianship.

(2) A court may appoint several guardians if this is reasonable under the circumstances of the certain case. In such case it is presumed that the guardians have a joint right of representation. A court may specify the duties and the scope of the right of representation of each guardian.

## **Division 2**

### **Exercise of guardianship**

#### **§ 179. Duties and liability of guardian**

(1) Guardians are the legal representatives of persons under guardianship. A guardian has the right and obligation to care for the person and property of the person under his or her guardianship within the limits of his or her duties.

(2) A guardian does not have the right of representation or obligations in the area for which a special guardian has been appointed.

(3) A guardian shall not transfer performance of his or her duties to a third person.

(4) A guardian shall ask for and take into account the ward's opinion if it is appropriate taking account of the child's age and level of development.

(5) A guardian shall administer the ward's property with due diligence of a guardian. A guardian shall be liable for causing damage by wrongful violation of his or her obligations.

#### **§ 180. Preclusion of the right of representation**

(1) A guardian shall not represent a ward:

1) in transactions where one party is the ward and the other party is the guardian, the spouse of the guardian, a direct relative, brother or sister of the guardian unless no direct civil liabilities arise to the ward from the transaction;

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

2) in transactions where the ward discharges his or her pledge or claim secured by suretyship against the guardian, encumbers such a claim, terminates security of a claim or decreases the security or assumes the obligation to enter into such a transaction;

3) in legal disputes between the ward and the persons specified in clause 1) of this subsection and in disputes in matters specified in clause 2) of this subsection.

(2) Section 131 of the General Part of the Civil Code Act applies in the event of a violation of the prohibition specified in subsection (1) of this section.

(3) A guardian shall not make gifts at the expense of the ward while representing the ward. As an exception, it is permitted to make gifts in order to perform a moral obligation or adhere to etiquette.

(4) This section applies also to rural municipality or city government officials acting as guardians and employees of a guardian who is a legal person.

#### **§ 181. Deprivation of right of representation**

A court may deprive a guardian of the right to represent a ward in certain transactions or in a certain area if the interests of the ward are in significant conflict with the interests of the guardian or a third person represented by the guardian or a person specified in clause 180 (1) 1) of this Act.

#### **§ 182. Guardian's obligation to care for person of child**

(1) If a child grows with a guardian, the provisions of Division 2 of Chapter 10 of this Act apply to the right and obligation of the guardian to care for the person of the child.

(2) If a guardian provides maintenance to a ward without being required to do so, the claims against the persons required to provide maintenance to the ward shall transfer to the guardian to the extent of the maintenance provided thereby.

#### **§ 183. Obligation of guardian to administer ward's property**

(1) A guardian is required to administer a ward's property with due diligence of a guardian, preserve and, if possible, increase the property. A guardian shall, *inter alia*, collect the claims belonging to the ward on time and administer the real estate owned by the ward.

(2) From the benefit received from a ward's property first the obligations incumbent on the property which have fallen due shall be performed and other expenses of regular management of the property shall be covered. The income remaining from the abovementioned expenses may be used for the maintenance of the ward.

(3) A guardian shall keep his or her property and the ward's property separate and shall not use the ward's property in his or her own interests.

#### **§ 184. Preparation of list of property**

(1) A guardian shall submit a list of the child's property to the court of the usual whereabouts of the child in writing within a reasonable period of time as of the establishment of guardianship.

(2) The list shall include information concerning the changes which have taken place in the composition of property until the preparation of the list.

#### **§ 185. Administration of property acquired by succession or as gift**

(1) A guardian shall administer the property which a ward receives by succession or as gift in accordance with the dispositions included in a gratuitous contract, will or succession contract. A guardian's right or representation arising from law cannot be extended by dispositions.

(2) A guardian may derogate from the dispositions with the consent of court if adherence thereto could damage the interests of the ward.

#### **§ 186. Investment of ward's money**

(1) If a ward's money is not required for maintaining him or her, the administration of property or for covering other current expenses, a guardian shall invest it in a credit institution of Estonia or another contracting state separately from his or her own property. A notation shall be made upon investment that the consent of a court is required for the disposal of the account.

(2) [Repealed - RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(3) A court may grant consent for investment of a ward's money in another manner.

(4) Consent of a court for the disposal of an account belonging to a ward by a guardian is required only in the case specified in subsection (1) of this section.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

#### **§ 187. Consent for entry into transaction with respect to immovable**

(1) Without prior consent of a court, a guardian shall not do the following on behalf of a ward:

- 1) dispose of an immovable or a real right in immovable property belonging to the ward;
- 2) dispose of a claim belonging to the ward and directed at transfer of immovable property ownership or creation, transfer or termination of a real right in immovable property;
- 3) assume an obligation to perform the disposals specified in clauses 1) and 2) of this subsection;
- 4) enter into a contract directed at acquisition for charge of an immovable or a real right in immovable property on behalf of the ward;
- 5) grant the use of an immovable belonging to the ward.

(2) The provisions of subsection (1) of this section apply correspondingly also to ships entered in the ships register.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

#### **§ 188. Consent for other transactions**

(1) Without prior consent of a court, a guardian shall not do the following on behalf of a ward:

- 1) enter into a transaction by which the ward assumes an obligation to dispose of all of his or her property, estate, future legal share of an estate or future compulsory portion;
- 2) renounce a succession, legacy or compulsory portion or enter into a contract for division of an estate;
- 3) enter into a contract directed at acquisition or transfer of an enterprise or an organisationally independent part thereof or a contract of partnership directed at operation of an enterprise;
- 4) lease an enterprise;
- 5) acquire a holding in a legal person or join membership thereof;
- 6) enter into a residential lease contract, commercial lease contract, insurance contract or any other long-term contract which does not terminate or which cannot be cancelled within one year after the ward becomes an adult;
- 7) take a loan;
- 8) acquire or transfer securities;
- 9) enter into a transaction by which the liability of the ward arises for the obligation of another person or a transaction by which the ward's property is encumbered in order to secure an obligation of another person;
- 10) enter into an agreement for the division of common ownership or the preclusion or postponement thereof;
- 11) enter into a transaction which terminates the ward's claim, reduces it or the security thereof or creates such an obligation, except in the cases provided for in subsection 186 (4) of this Act.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(1<sup>1</sup>) If a guardian acquires the securities specified in clauses 2 (1) 1)–5) and 7) of the Securities Market Act on behalf of a ward, but on account of his or her own funds, the consent of the court is not required for the acquisition and transfer of these securities provided that the proceeds of the sale remain in the ownership of the ward. The provisions of the first sentence also apply to further transactions in the securities specified in the first sentence on account of the proceeds of the sale.

[RT I, 29.06.2014, 3 - entry into force 01.05.2015]

(2) A court may, as an exception, grant a guardian a general consent to enter into all or certain type of transactions for which the consent of a court is required.

(3) If the consent of a court is required for the transfer of an object, a guardian shall not grant it to a ward for the performance of a contract entered into or for free disposal without the consent of a court.

(4) [Repealed - RT I, 29.06.2014, 3 - entry into force 09.07.2014]

#### **§ 189. Multilateral transactions entered into without consent of court**

(1) A multilateral transaction entered into without the prior written consent of a court is void unless a court ratifies the transaction later. Ratification is valid when the guardian notifies the other party thereof. If a ward has acquired active legal capacity, he or she may ratify the transaction himself or herself.

(2) The other party may make a proposal to the guardian to notify him or her of grant of ratification. If a guardian does not grant ratification within two weeks as of the receipt of the abovementioned proposal, ratification is deemed to be refused.

(3) If a guardian was required to obtain the prior consent of a court in order to enter into a transaction, the other party to the transaction may withdraw the declaration of intention to enter into the transaction in the case the

guardian had not obtained the prior consent of a court for entry into the transaction and the other party did not know and should not have known that consent had not been granted. In such case, the declaration of intention is deemed not to have been made. The other party shall not withdraw his or her declaration of intention after the guardian has notified the other party of grant of ratification.

(4) Section 130 of the General Part of the Civil Code Act applies in the event of a violation of the prohibition arising from § 187 or § 188 of this Act.

#### **§ 190. Unilateral transactions entered into without consent of court**

A unilateral transaction entered into without the prior consent of a court is void.

#### **§ 191. Compensation of expenses**

(1) A guardian may demand compensation for the expenses made for guardianship from the ward pursuant to the provisions concerning mandates.

(2) A rural municipality or city government shall not demand compensation for the expenses.

#### **§ 192. Remuneration for performance of guardianship**

(1) As a rule, guardianship shall be performed free of charge.

(2) A court may order that a guardian receive remuneration for the performance of his or her duties if payment of the remuneration is reasonable taking into account the financial situation of the ward and the relationship between the parties.

(3) A guardian has the right to receive compensation for the expenses incurred upon the performance of guardianship, including for securing his or her liability arising from guardianship out of ward's assets. Guardianship shall be performed unless otherwise specified by a court.

(4) A guardian or a ward may apply for state legal aid in order to pay for the expenses and the remuneration. The state may prescribe supplementary financial support for the performance of guardianship through the Ministry of Justice. The minister responsible for the area may establish the remuneration paid to guardians at the state's expense and a specific procedure for the calculation of and maximum amounts of expenses incurred.

#### **§ 193. Court supervision**

(1) Courts shall exercise supervision over the activities of guardians. A guardian shall notify a court if he or she changes residence.

(2) A court may issue precepts to a guardian for the performance of his or her duties. Upon failure to adhere to the precepts a court has the right to release the guardian.

(3) A court may remove a guardian from performance of his or her duties in the interests of a ward until a decision is made concerning the release of the guardian.

#### **§ 194. Reporting obligation of guardian**

(1) A court may require a guardian to submit information concerning the performance of his or her duties at any time.

(2) A guardian shall submit an annual written report concerning administration of a ward's property and performance of his or her other duties to a court. The expenses incurred shall be indicated separately in the report and documents certifying the expenses shall be added thereto. The report shall set out the amount of money spent each month on an average as expenses incurred for everyday maintenance and no documents shall be added to certify these expenses.

[RT I, 27.06.2012, 4 - entry into force 07.07.2012]

(3) A court shall verify the contents of the report, assess whether the expenses incurred were justified and, if necessary, request explanations or the correction and amendment of the report.

[RT I, 27.06.2012, 4 - entry into force 07.07.2012]

(4) The written reports of guardians shall be stored in court.

## **Division 3**



# Termination of guardianship

## § 195. Termination of guardianship

(1) Guardianship terminates upon:

- 1) death of a ward;
- 2) restoration of a parent's right of custody;
- 3) adoption of a ward;
- 4) a ward becoming an adult.

(2) A guardian and a rural municipality or city government shall notify a court of the circumstances specified in subsection (1) of this section.

## § 196. Declaration of death of ward

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(1) [Repealed - RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(2) If a ward is declared dead or the time of his or her death is established, guardianship shall terminate upon entry into force of the ruling concerning declaration of his or her death or establishment of the time of his or her death.

## § 197. Release of guardian

(1) A court may release a guardian if the guardian does not comply with the requirements established for guardians any more due to material violation of his or her obligations or due to any other reason or if continuation of the performance of the guardian's duties would damage the interests of a ward.

(2) A court shall release a guardian on its own initiative or on the basis of an application of a person with a legitimate interest. A court may release a guardian on the basis of an application of the guardian.

(3) Upon releasing a guardian, a court shall specify further performance of guardianship. If several persons perform guardianship jointly and only one guardian is released, the other guardian shall continue to perform the duties of a guardian.

## § 198. Release of guardian who is legal person or rural municipality or city government

(1) A court shall release a guardian who is a legal person or rural municipality or city government and appoint another guardian if this is in the interests of a ward and a natural person suitable to act as a guardian is ready to perform the obligation of guardianship. Rural municipality or city government as a guardian may also be released at the request thereof if the court finds that another rural municipality government is more closely connected with the ward in conformity with subsection 176 (2) or 205 (3) of this Act.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(2) A rural municipality or city government or a legal person shall verify at least once a year the existence of the prerequisites specified in subsection (1) of this section and submit an application as soon as they become aware of fulfilment of the prerequisites.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(3) A court shall hear the legal person or rural municipality or city government before making a ruling.

## § 199. Handing over and reporting on property

A guardian shall, upon his or her release, hand over the administered property to the ward and submit a report on administration of the property.

## § 200. Continuation of transactions after termination of guardianship

A guardian has the right to perform guardianship until he or she becomes or should become aware of release of him or her from the duties of a guardian. A person who knew or should have known of the release of the guardian upon entering into transaction with the guardian shall not rely on it.

## § 201. Death of guardian

(1) Guardianship shall not terminate upon death of a guardian. In such case a new guardian shall be appointed.

(2) The successors of a guardian shall notify a court immediately of the death of the guardian. If several persons have been appointed as joint guardians, a guardian shall notify immediately of the death of the other guardian.

## **Chapter 13**

### **Guardianship over adult**

#### **§ 202. Applicable provisions**

The provisions regulating guardianship over a child shall apply to guardianship over an adult unless otherwise provided in this Chapter or the content of guardianship over the adult.

#### **§ 203. Prerequisites for establishment of guardianship**

(1) If an adult person is permanently unable to understand or direct his or her actions due to mental illness, mental disability or other mental disorder, a court shall appoint a guardian to him or her on the basis of an application of the person, his or her parent, spouse or adult child or rural municipality or city government or on its own initiative.

(2) A guardian shall be appointed only for the performance of the functions for which guardianship is required. Guardianship is not required if the interests of an adult can be protected by granting authorisation and through family members or other assistants. Upon establishment of guardianship, a court shall assess the person's capability to understand the legal consequences of contraction of marriage, acknowledgement of paternity and other transactions concerning family law.

(3) A guardian's duties may include exercise of a ward's rights against third persons.

(4) A court shall verify at least once every five years whether the continuation of guardianship over a ward is necessary for the protection of the interests of the ward and whether grounds exist for extension or restriction of the duties of the guardian by making a respective ruling.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

#### **§ 204. Natural person as guardian**

(1) A natural person who is suitable to protect the interests of the ward taking account of his or her personal characteristics and abilities shall be appointed guardian. Upon appointing a guardian the relationship between him or her and the ward shall be taken into account.

(2) An employee of the health care, social welfare or educational institution where an adult resides shall not be appointed guardian of the adult.

(3) If an adult makes or has made a proposal concerning the person of a guardian, the proposal shall be taken into account unless it is in conflict with his or her interests.

(4) A person may be appointed guardian only with his or her consent.

#### **§ 205. Legal person or rural municipality or city government as guardian**

(1) If a suitable natural person is not found to be appointed guardian a legal person may be appointed guardian with its consent.

(2) If a legal person becomes aware that it is possible to appoint a guardian who is a natural person to an adult, the legal person shall immediately notify a court and the rural municipality or city government thereof. A legal person shall verify at least once a year whether it is possible to appoint a guardian who is a natural person to a ward.

(3) If a suitable legal person cannot be appointed as a guardian, the rural municipality or city government with which the adult is most closely connected shall be appointed as a guardian. An adult is most closely connected with the rural municipality or city government, *inter alia*, where the adult is from, where the adult has lived for most part of the time, with which the adult has preserved essential ties, where the adult's close persons or assets are located or where the adult's residence according to the population register is.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(4) An employee of the health care or social welfare institution where the adult is staying shall not be appointed guardian who is a legal person.

#### **§ 206. Obligations of guardian**

(1) A guardian shall protect the proprietary and personal rights and interests of a ward. A guardian shall, *inter alia*, ensure that a ward receives health and social services to the required extent.

(2) If a guardian becomes aware of circumstances which enable to terminate the guardianship, he or she shall notify a court and rural municipality or city government thereof. The same applies to circumstances which enable to restrict or extend the duties of a guardian. A court shall decide on termination, restriction or extension of guardianship on its own initiative or on the basis of an application of a guardian, rural municipality or city government or ward.

#### **§ 207. Guardian as legal representative of ward**

- (1) A guardian is the legal representative of a ward within the scope of its duties.
- (2) A guardian requires the consent of a court also for:
- 1) cancellation or termination of a residential lease contract of a ward;
  - 2) termination of long-term contracts with the term of more than four years.

## **Chapter 14**

### **Special cases of guardianship**

#### **§ 208. Appointment of guardian to unborn child**

(1) A guardian may be appointed to a conceived but unborn child if this is necessary for the protection of the child's interests. A guardian shall not be appointed if the parents would have the right of custody in the case of birth of the child.

(2) The guardianship specified in subsection (1) of this section terminates as of the birth of the child.

#### **§ 209. Appointment of special guardian**

(1) A special guardian shall be appointed to a person under curatorship of a parent or to whom a guardian has been appointed for the act which cannot be performed by the parents or the guardian. A special guardian shall be appointed in particular for the administration of property acquired by succession or as a gift if the bequeather or donor has specified that the parents of guardian shall not administer the property.

(2) A special guardian shall be appointed also for the acts specified in subsection 180 (1) of this Act. A court may replace a declaration of intention of a ward by a court decision which has entered into force without appointing a special guardian if appointment of a special guardian would not be justified in the case of the particular act.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(3) In the case of a need to appoint a special guardian, a parent or a guardian shall immediately notify a court thereof. The provisions concerning appointment of a guardian shall not be applied upon appointment of a special guardian.

(4) If a special guardian is appointed for the performance of a single act, the special guardianship shall terminate after performance of the act. In other cases a court shall terminate special guardianship when the bases for the establishment thereof have ceased to exist.

## **Part 4**

### **IMPLEMENTING PROVISIONS**

#### **§ 210. Implementation of Act**

(1) This Act extends to all the family law relationships which have arisen by the time this Act enters into force unless otherwise prescribed in the following provisions.

(2) Acts in force at the time of the arising of circumstances or performance of acts apply to the circumstances which arose or acts which were performed before entry into force of this Act unless otherwise provided by this Act. If assets were acquired before 1 January 1995, the Family Law Act in force before entry into force of this Act applies to the issues concerning the ownership of assets.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(3) If conjugal relations terminated before 1 July 2010, joint property is created until termination of conjugal relations.

[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

## **§ 211. Marital property right**

(1) In the case of marriages contracted before entry into force of this Act, the provisions of this Act regarding jointness of property apply to the proprietary relations between spouses as of entry into force of this Act unless otherwise provided for in a marital property contract entered into before entry into force of this Act.  
[RT I, 29.06.2014, 3 - entry into force 01.01.2015]

(2) In the proprietary relationship of jointness of property the procedure for administration of separate property provided for in § 27<sup>1</sup> of this Act applies to the property acquired after entry into force of § 27<sup>1</sup>.  
[RT I, 29.06.2014, 3 - entry into force 01.01.2015]

## **§ 212. Application of proprietary relationship of set-off of assets increment**

(1) Spouses may, within one year after entry into force of this Act, notify jointly the registrar of the marital property register that they wish to transfer to the proprietary relationship of set-off of assets increment unless divorce proceedings have been commenced or the marital property contract entered into between the spouses prescribes otherwise. The notice shall be submitted together with an application for making an entry concerning the proprietary relationship of set-off of assets increment in the marital property register in a notarially authenticated form. Section 61 shall apply upon the submission of a notice, taking account of the specifications provided for in this section.

(2) In the case of submission of a notice, the joint property acquired until a ruling is made shall become property in the common ownership of the spouses. The legal shares of the spouses in common ownership shall be deemed to be equal.

(3) In the case of registered immovables and ships entered in the ship register, spouses may determine the legal shares otherwise within six months as of submission of the notice. For that purpose the spouses shall submit a notarially authenticated application to the land registry department for amendment of the relevant entry. The right to determine the legal shares otherwise terminates also if a compulsory auction is carried out with respect to a registered immovable or compulsory administration is established on a registered immovable or an application is submitted to the land registry department for the establishment of a judicial mortgage on a registered immovable.

(4) The presumption of the equality of the shares of the spouses provided for in subsection (2) of this section may be derogated by relying on a marital property register or land register entry.

(5) The notice provided for in subsection (1) of this section may be submitted to any registrar of the marital property register. If spouses own real estate, the court that received the application shall forward the application to the land registry department.

(6) A state fee need not be paid for making an entry in the marital property register on the basis of this section. The transaction value is deemed to be 319 euros.  
[RT I 2010, 22, 108 - entry into force 01.01.2011]

## **§ 213. Provision of maintenance to divorced spouse**

If a marriage was divorced before entry into force of this Act, the law in force earlier shall be applied to the requirement for the provision of maintenance to a spouse. This shall not concern the agreements concerning maintenance entered into between the spouses.

## **§ 214. Parent's right of custody**

(1) As of entry into force of this Act the parent's right of custody shall be deemed to belong to both parents jointly. A parent who has been deprived of parental rights on the basis of the Family Law Act which was in force earlier shall not have the right of custody.

(2) The decisions made, the established facts and measures specified by a court or administrative authority with respect to exercise of the parental rights before entry into force of this Act shall remain in force. Subsection 123 (2), § 123<sup>1</sup> and subsection 140 (2) of this Act apply to the amendment of such decisions, established facts and measures.  
[RT I, 29.06.2014, 3 - entry into force 09.07.2014]

(3) If, before entry into force of this Act, a court has determined the residence of one parent as the residence of a child, as of entry into force of this Act the parent's right of custody shall be deemed to belong only to the parent whose residence the court has determined as the residence of the child.

(4) If the parent's right of custody is deemed to belong to both parents jointly pursuant to subsection (1) or to one parent pursuant to subsection (3), the parents of a child may, within three years after entry into force of this Act, submit personally a joint application to a vital statistics official for termination of the joint right of custody and for grant of the parent's right of custody to one parent or for grant of the parent's right of custody to both parents jointly.  
[RT I, 27.06.2012, 4 - entry into force 07.07.2012]

**§ 215. Guardianship over minor**

As of the entry into force of this Act, the provisions of this Family Law Act shall be applied to the performance of guardianship over minors. The guardians appointed on the basis of the Act which was in force earlier shall remain guardians.

**§ 216. Guardianship over adult**

The guardianship established over adult persons upon divesting them of active legal capacity before entry into force of this Act shall become guardianship within the meaning of this Act. Upon establishment of guardianship, the specified duties (competence) of the guardian shall remain valid.

**§ 217. Date of termination of marriage**

A marriage is terminated upon registration of a divorce at a vital statistics office if the court order granting the divorce was issued before 1 January 1995.

**§ 218.–§ 230.**[Omitted from this text.]

**§ 231. Entry into force of Act**

This Act enters into force on 1 July 2010.