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Code of Enforcement Procedure

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| 19.11.2008 | RT I 2008, 54, 304 | 27.12.2008 |
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| 30.05.2012 | RT I, 13.06.2012, 1 | 23.06.2012 |
| 13.06.2012 | RT I, 10.07.2012, 2 | 01.04.2013 |
| 05.12.2012 | RT I, 21.12.2012, 1 | 01.03.2013 |
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| 11.12.2013 | RT I, 23.12.2013, 1 | 01.01.2014 |
| 19.12.2013 | RT I, 14.01.2014, 1 | 24.01.2014 |
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| 11.06.2014 | RT I, 21.06.2014, 8 | 01.01.2015 |

19.06.2014

RT I, 29.06.2014, 109

01.07.2014, the titles of ministers substituted on the basis of subsection 107³ (4) of the Government of the Republic Act.

21.06.2019

RT I, 27.06.2019, 2

21.06.2019 - Judgment of the Constitutional Review Chamber of the Supreme Court declares the second sentence of subsection 100 (4) of the Code of Enforcement Procedure unconstitutional and invalid insofar as a bailiff has no discretion in deciding on return of deposits paid by participants in auctions held in execution proceedings as regards the issue to what extent the deposits have to be returned to the persons who paid them and to what extent they have to be transferred to the common part of the budget of the Estonian Chamber of Bailiffs and Trustees in Bankruptcy.

Part 1 GENERAL PROVISIONS

Chapter 1 ENFORCEMENT INSTRUMENTS AND ENFORCEMENT ORDERS

§ 1. Scope of application of Code

This Code provides for the rights and obligations of debtors, claimants and bailiffs and the procedure for the execution of enforcement instruments.

§ 2. Enforcement instruments

(1) On the basis of this Code, claims arising from the following enforcement instruments shall be fulfilled:

- 1) court judgments and rulings which have entered into force or are subject to immediate enforcement in civil matters;
- 2) judgments and rulings of administrative courts which have entered into force or are subject to immediate enforcement and concern the costs of proceedings and other public law claims for payment, and which concern the ordering of payment of compensation for damage caused in public law relationships and ensuring the fulfilment of financial claims;
[RT I, 31.01.2014, 6 - entry into force 01.02.2014]
- 3) court judgments and rulings which have entered into force in criminal matters concerning criminal punishments consisting of claims for payment, procedure expenses and other claims for payment in criminal procedure;
- 4) court judgments and rulings which have entered into force in misdemeanour matters concerning fines imposed as punishment for misdemeanours, the costs of misdemeanour proceedings and other public law claims for payment;
- 5) decisions recognised or subject to enforcement without recognition by courts of foreign states;
- 6) decisions of arbitral tribunals permanently operating in Estonia and decisions of another arbitral tribunals, which are declared to be subject to enforcement;
- 7) decisions of labour dispute committees and lease committees which have entered into force;

[RT I, 11.04.2014, 1 - entry into force 01.10.2014]

7¹) decisions of the public procurement appeals committee concerning claims for payment which have entered into force;

[RT I 2007, 15, 76 - entry into force 01.05.2007]

7²) decisions of the court of honour of the Bar Association entered into force;

[RT I, 21.12.2012, 1 - entry into force 01.03.2013]

8) agreements entered into in the proceedings conducted by out-of-court dispute settlement bodies provided by law, including agreements certified by the Legal Chancellor in conciliation proceedings;

9) decisions and rulings of extra-judicial bodies concerning fines imposed as punishment for misdemeanours, claims for payment of cautionary fines imposed in written caution proceedings, costs of misdemeanour proceedings and other public law claims for payment;

[RT I 2008, 54, 304 - entry into force 27.12.2008]

10) orders of investigative bodies or the Prosecutor's Office for collection of information needed to impose fines to the extent of assets or for deciding confiscation of property which was obtained by a criminal offence, and for reimbursement of the expenses relating to criminal proceedings in pre-trial proceedings;

[RT I 2007, 2, 7 - entry into force 01.02.2007]

11) administrative acts on the basis of which penalty payments and costs of substitutive enforcement are collected;

12) administrative acts issued by tax authorities concerning compulsory enforcement of tax liabilities and other financial obligations;

13) precepts for the collection of state fees issued by the administrative agency which performed an act subject to a state fee;

14) decisions of county governors in expropriation proceedings regarding immovables;

14¹) decisions of the Minister responsible for the area in expropriation proceedings regarding immovables;

[RT I, 13.06.2012, 1 - entry into force 23.06.2012]

14²) decisions of rural municipality governments or city governments in expropriation proceedings regarding immovables;

[RT I, 13.06.2012, 1 - entry into force 23.06.2012]

15) statements of compulsory auctions on the basis of which a person who purchases an immovable is entered in the land register as the owner of the immovable, upon reclamation of possession of the immovable;

16) bailiffs' decisions on bailiff's fee and enforcement costs and imposition of penalty payments;

[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

17) invoices for notary fees for notarial acts and expenses relating thereto;

[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

17¹) [repealed - RT I, 23.12.2013, 1 - entry into force 01.01.2014]

18) agreements concerning financial claims authenticated by a notary according to which a debtor has consented to be subject to immediate compulsory enforcement after the claim falls due;

18¹) agreements concerning claims for support authenticated by a notary according to which a debtor has consented to be subject to immediate compulsory enforcement;

[RT I 2009, 68, 463 - entry into force 01.01.2010]

19) agreements authenticated by a notary which prescribe the obligation of the owner of an immovable or a ship entered in the register of ships or an object encumbered with a registered security over movables to be subject to immediate compulsory enforcement for the satisfaction of a claim secured by the mortgage, maritime mortgage or registered security over movables;

[RT I 2009, 30, 178 - entry into force 01.10.2009]

19¹) agreements authenticated by a notary which prescribe the obligation of the owner of a structure as a movable or a part thereof to be subject to immediate compulsory enforcement for the satisfaction of a claim secured by a pledge contract of a structure or a part thereof;

19²) agreements authenticated by a notary which prescribe the obligation of the owner of an immovable to be subject to immediate compulsory enforcement for the satisfaction of a financial claim secured by a real encumbrance;

[RT I 2009, 68, 463 - entry into force 01.01.2010]

19³) agreements specified in subsection 35¹(9) of the Land Reform Act and entered into in writing which prescribe the obligation of the owner of an immovable to be subject to immediate compulsory enforcement for the satisfaction of a financial claim secured by a real encumbrance;

[RT I, 14.01.2014, 1 - entry into force 24.01.2014]

20) decisions on the imposition of a fine for delay made upon monitoring of parking;

21) in the cases provided by law, administrative acts for the performance financial obligations in public law;

22) decisions of the Council or of the Commission issued on the basis of Article 256 of the Treaty establishing the European Community which impose a pecuniary obligation on persons other than States;

[RT I 2006, 61, 457 - entry into force 01.01.2007]

23) decisions of the Office for Harmonisation in the Internal Market specified in Article 82 of Council Regulation (EC) No 40/94 on the Community trade mark (OJ L 011, 14.01.1994, pp. 1-36) and Article 71 of Council Regulation (EC) No 6/2002 on Community designs (OJ L 003, 05.01.2002, pp. 1-24);

[RT I 2009, 4, 24 - entry into force 01.03.2009]

24) agreements entered into in the course of conciliation proceedings and certified and declared to be subject to execution pursuant to the procedure provided for in Chapter 62¹ of the Code of Civil Procedure;

[RT I 2009, 59, 385 - entry into force 01.01.2010]

25) agreements certified by a conciliation body pursuant to the procedure provided for in § 26 of the Conciliation Act;

[RT I 2009, 59, 385 - entry into force 01.01.2010]

26) agreements authenticated by a notary and specified in subsection 14 (3) or (4) of the Conciliation Act.

[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

(2) The agreements specified in clause (1) 19) of this section apply to the legal successors of owners of immovables or ships only if corresponding notations have been made in the land register or the register of ships.

(3) Compulsory enforcement shall not be conducted on the basis of an enforcement instrument specified in clause (1) 15) of this section if the possessor possesses a thing on the basis of a right which has not expired or been terminated due to compulsory enforcement. A dispute on the extinguishment of the right shall be adjudicated by a county court on the basis of an action of the possessor.

§ 3. Organisation of enforcement

(1) The enforcement of enforcement instruments is organised by bailiffs, unless otherwise prescribed by law.

(2) The legal status and disciplinary liability of bailiffs is provided for in the Bailiffs Act.

§ 4. Territorial jurisdiction

(1) A claim against the assets of a debtor shall be filed by a bailiff in whose territorial jurisdiction determined by a regulation of the Minister responsible for the area the residence or seat of the debtor is or in whose territorial jurisdiction the assets of the debtor are located, unless otherwise provided for in this Code.

(2) If there are no assets against which a claim can be filed in the residence or seat of a debtor, a bailiff may continue the commenced proceedings outside of his or her territorial jurisdiction.

(3) If a debtor leaves for the territorial jurisdiction of another bailiff and no assets against which a claim may be filed remain in the previous residence of the debtor, the bailiff who commenced the proceedings may complete the proceedings.

(4) A bailiff shall perform enforcement actions only in the territory of the Republic of Estonia. The law of the state where the enforcement proceedings are conducted applies to the enforcement proceedings conducted in a foreign state. In order to receive information necessary for the execution of an enforcement instrument in a foreign state, a person has the right to address the Ministry of Justice of the Republic of Estonia.

§ 5. Participants in enforcement proceedings

(1) A person who has filed a claim for fulfilment (claimant), a person against whom a claim has been filed for fulfilment (debtor), and other persons whose rights are affected by enforcement proceedings are participants in enforcement proceedings.

(2) Among others, persons who have the right impeding compulsory enforcement or a claim which grants the right to receive a part of the proceeds of the sale of assets, and who inform a bailiff of their right and reason the right at the request of the bailiff or participants in proceedings are participants in enforcement proceedings.

(3) Among others, persons for whose benefit a right or an entry ensuring a right has been entered in the land register by the time a notation concerning prohibition is entered in the register are participants in enforcement proceedings regarding an immovable.

§ 6. [Repealed - RT I 2009, 68, 463 - entry into force 01.01.2010]

§ 7. Refusal to perform enforcement action

(1) A bailiff shall refuse to perform an enforcement action only for reasons provided by law.

(2) If a bailiff refuses to perform an enforcement action, he or she shall immediately make a decision reasoning the refusal in which he or she also explains the procedure for appeal against the decision. The bailiff shall deliver the decision to the person concerned pursuant to the procedure prescribed in civil procedure.

(3) A bailiff shall not refuse to accept procedural documents from court for delivery unless otherwise provided by law.

[RT I 2008, 59, 330 - entry into force 01.01.2009]

§ 8. Obligations of bailiffs

A bailiff is required to take immediately all the measures permitted by law in order to enforce an enforcement instrument, collect information necessary for enforcement proceedings and explain the rights and obligations of participants in enforcement proceedings to participants.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

§ 9. Removal of bailiff and requirements for impartial observers

(1) A bailiff shall not conduct enforcement proceedings and shall remove himself or herself by a decision if he or she is:

- 1) a debtor or a claimant or their representative, unless the bailiff collects enforcement costs;
- 2) a descendant or ascendant or a sister, half-sister, brother or half-brother of a debtor or a claimant or if he or she has been married to a sister, half-sister, brother or half-brother of a debtor or a claimant;
- 3) a step-parent or foster-parent or a stepchild or foster-child of a debtor or a claimant;

- 4) an adoptive parent or adoptive child of a debtor or a claimant;
- 5) a spouse of a debtor or a claimant, a person permanently living together with a debtor or a claimant, even if the marriage or permanent cohabitation has ended;
- 6) is directly or indirectly interested in the compulsory enforcement or if other circumstances which create doubt as to his or her impartiality exist.

(1¹) A bailiff shall also remove himself or herself in the case a person connected with the bailiff within the meaning of subsection 117 (1) of the Bankruptcy Act, an employee of the bailiff's office or another bailiff with whom the bailiff operates a common office is a participant in the proceedings or beneficiary of the enforcement action. Transfer of an enforcement action to a bailiff's assistant or a substitute bailiff is not a justifying circumstance.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(2) In the case specified in clause (1) 6) of this section, collection of a bailiff's fee is not deemed to be a circumstance causing partiality.

(3) On the bases specified in subsections (1) and (1¹) of this section, a participant in enforcement proceedings or his or her representative may submit a reasoned application for the removal of a bailiff. The application may be submitted immediately after becoming aware of the circumstance which is the basis for the removal.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(4) If a bailiff does not remove himself or herself on the basis of an application, the person who submitted the application may submit the application for the removal of the bailiff to a court within ten days after the delivery of the decision on the refusal of removal.

(5) Upon receipt of the application specified in subsection (4) of this section, a court shall hear the opinion of the bailiff and participants in the enforcement proceedings. The court shall adjudicate a removal by a ruling.

(6) Upon removal of a bailiff, an enforcement instrument shall be given to another bailiff on the basis of an application of a claimant. If all bailiffs servicing a territorial jurisdiction are removed, an enforcement instrument shall be given to a bailiff who is the closest to the residence or seat of a debtor on the basis of an application of a claimant for enforcement. If the claimant fails to submit an application for transfer within five working days after the delivery of the ruling, a court shall determine the transfer of the matter to another bailiff on the basis of an application of the removed bailiff.

(7) The provisions of clauses (1) 1), 2), 5) and 6) of this section also apply to impartial observers participating in enforcement proceedings. Acting as a bailiff or employment in a bailiff's office does not impede acting as an impartial observer.

§ 10. Delivery of documents

(1) A bailiff shall deliver an enforcement notice to a debtor and a statement of seizure of property and a report on an auction, and his or her decisions on the complaints filed against the activities of the bailiff and other documents provided by law to participants in the enforcement proceedings. A debtor may disclose, upon receipt of an enforcement notice, the manner in which procedural documents are to be forwarded to him or her and the contact details of the location where the documents are to be forwarded in order to be deemed to be delivered by a bailiff. A bailiff may, upon delivery of an enforcement notice or any other procedural document in person, oblige a debtor to communicate to the bailiff his or her contact details which would enable to deliver documents to the debtor. If a debtor fails to communicate his or her contact details or the contact details communicated are incorrect, a bailiff may deliver the documents, which shall be delivered according to law, to the debtor in a manner chosen by the bailiff.

[RT I 2008, 59, 330 - entry into force 01.01.2009]

(2) The provisions of civil procedure regarding the delivery of procedural documents apply to delivery of documents, unless otherwise provided for in this Code. A bailiff may also deliver a document in person. The acts of a court prescribed for delivery of documents in civil procedure shall be performed by a bailiff. In the case provided for in § 327 of the Code of Civil Procedure, a bailiff may deposit the document in the bailiff's office located in the place of delivery of the document.

(2¹) A bailiff is required to perform all the acts necessary for the delivery of a procedural document received by him or her for delivery within two months as of receipt of a procedural document for delivery.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(3) If a participant in proceedings has been represented in previous court proceedings by a representative, the documents may be delivered to the representative.

(4) A notice or other documents which need not be delivered to participants in proceedings but which affect the rights of participants in proceedings shall be delivered to the participants in the proceedings in a manner chosen by a bailiff.

(5) If a document specified in subsection (4) of this section is sent by post, the document is deemed to have been received three days after being posted and, if a document is sent to a foreign state, seven days after being posted, unless the recipient proves that he or she received the document later or has not received the document.
[RT I 2006, 7, 42 - entry into force 04.02.2006]

§ 11. Competence of court in enforcement proceedings and exclusive jurisdiction

(1) In accordance with this Code, the following is in the competence of a county court:

- 1) imposition of fines;
- 2) making of rulings on the imposition of compelled attendance, detention and arrest regarding persons;
- 3) grant of search permits;
- 4) review of complaints filed against decisions of bailiffs;
- 5) adjudication of actions related to enforcement proceedings;
- 6) appointment and release of compulsory administrators;
- 7) making other decisions in the cases prescribed in this Code.

(2) The matters specified in subsection (1) of this section are in the exclusive jurisdiction of a county court in the territorial jurisdiction of which the enforcement proceedings are conducted or should be conducted.

(3) Instead of the judge, an assistant judge may make court rulings concerning the imposition of fines and compulsory administration provided for in this Code.

[RT I 2006, 7, 42 - entry into force 04.02.2006]

Chapter 2 PREREQUISITES FOR ENFORCEMENT OF ENFORCEMENT INSTRUMENT

§ 12. Notation on entry into force of enforcement instrument

(1) A court decision which has entered into force or a decision of a labour dispute committee and a lease committee which has entered into force and which bears a notation on entry into force shall be accepted for enforcement. A notation on entry into force shall not be appended to a decision subject to immediate enforcement.

[RT I, 11.04.2014, 1 - entry into force 01.10.2014]

(2) A notation on entry into force to a decision of a labour dispute committee and lease committee shall be issued by the corresponding committee after the entry into force of the decision.

[RT I, 11.04.2014, 1 - entry into force 01.10.2014]

(2¹) The Ministry of Justice shall annex a confirmation concerning execution of the decision to an enforcement instrument specified in clause 2 (1) 22) of this Code.

[RT I 2006, 61, 457 - entry into force 01.01.2007]

(2²) The Patent Office shall annex a confirmation concerning execution of the decision to an enforcement instrument specified in clause 2 (1) 23) of this Code.

[RT I 2009, 4, 24 - entry into force 01.03.2009]

(3) An enforcement instrument specified in subsection (1) and (2) of this section may be also accepted for enforcement without a notation on entry into force and without the submission of the document in physical form if entry into force of the decision can be verified in another technically secure manner. The Minister responsible for the area may establish more specific requirements for verification in another manner of the entry into force of enforcement instruments.

(4) A bailiff has the right to terminate proceedings if it becomes evident that an enforcement instrument was accepted for processing in violation of the requirements of this section.

§ 13. Enforcement proceedings regarding property of spouse

(1) The fact that a movable in the possession of a spouse who is a debtor or in the common possession of spouses is in the ownership of the spouse who is a debtor is presumed to be the benefit of a claimant in enforcement proceedings regarding the property of the spouse. A bailiff may seize and sell the specified movable. This presumption shall not apply if the spouses live separately and the movable is in the possession of the spouse who is not the debtor.

(2) In the case of a thing which, due to its nature, is suitable for the personal use of one spouse, it is presumed that the thing belongs to the spouse who should use the thing arising from the nature of the thing.

§ 14. Making claim for payment on joint property of spouses

(1) Making a claim for payment on the joint property of spouses is permitted with the consent of the spouse who is not a debtor if an enforcement instrument which requires both spouses to perform the obligation exists.

(2) A claimant may demand that joint property be divided and a claim for payment be made on the part of the joint property belonging to a debtor. The limitation period for division of joint property is one year as of the date on which enforcement proceedings for the satisfaction of a claim out of the separate property of the debtor failed.

§ 15. Making claim for payment on partnership property

In order to make a claim for payment on partnership property, an enforcement instrument applying to all partners is required.

§ 16. Continuation of enforcement proceedings after death of debtor

(1) Enforcement proceedings initiated before the death of a debtor continue in respect of the estate of the debtor, unless otherwise prescribed by law.

(2) If an enforcement action has to be performed in the presence of a debtor or the debtor has to be informed of the action, a court shall designate a temporary representative for a successor on the basis of an application of a claimant if the estate has not yet been accepted, the successor is not known or it is not known whether the successor accepts the estate. A representative shall not be designated if the estate is administered by an administrator or an executor of the will.

§ 17. Enforcement proceedings before expiry of term for renunciation of succession or acceptance of estate

Before the expiry of the term for the renunciation of an estate or the acceptance of succession, enforcement proceedings on the basis of a claim against an estate may be conducted only in respect of the estate. In such case, a claim for payment shall not be made against the estate on the basis of the personal obligations of the successor.

§ 18. Acceptance of enforcement instrument for enforcement upon transfer of legal succession and possession of property

(1) If an enforcement instrument also applies to the legal successor of a claimant or a debtor indicated therein, a bailiff shall accept the enforcement instrument for enforcement if the legal succession has been proven to the bailiff by a court decision, an extract from the public register or a document authenticated by a notary. The same applies to the enforcement of a court decision in respect of the possessor of the disputed thing if the possessor has changed after the court decision is made.

(1¹) Transfer of maintenance claim to the state pursuant to subsection 10 (1) of the Maintenance Allowance Act is proved by a decision to grant maintenance allowance.
[RT I 2007, 25, 130 - entry into force 01.01.2008]

(2) The provisions of subsection (1) of this section apply to a successor also if a court decision made in respect of a provisional successor or an executor of the will applies to the successor.

(3) If a claimant fails to prove the transfer of rights by a document specified in subsection (1) of this section, the claimant may file an action against a debtor seeking recognition of the transfer of a right or obligation arising from an enforcement instrument.

§ 19. Beginning of enforcement proceedings in case of temporary claim or contingent claim

(1) If the falling due of a claim contained in an enforcement instrument depends on the expiry of a term or fulfilment of a condition or due date, the enforcement acts may be commenced after the expiry of the term or fulfilment of the condition or due date.

(2) Fulfilment of the conditions shall be proved to a bailiff by written documents.

§ 20. Enforcement proceedings depending on security of claimant

If enforcement proceedings depend on the security of a claimant, enforcement proceedings may be commenced only if grant of security is certified by a written document and the copy of the document has been delivered to a debtor or is delivered to the debtor together with the enforcement notice.

§ 21. Simultaneous mutual enforcement

(1) If the execution of an enforcement instrument depends on the concurrent performance of the obligation of a claimant to a debtor, a bailiff shall not commence enforcement proceedings before the obligation of the claimant has been performed or if the claimant or bailiff has offered to the debtor performance of the obligation of the claimant and the debtor has unjustifiably refused to accept the performance or has delayed acceptance of the performance for other reasons.

(2) An offer specified in subsection (1) of this section need not be made if a claimant submits a written document certifying that the obligation of the claimant has been performed or that a debtor delays acceptance of the performance and a copy of the document has been communicated to the debtor or is communicated to the debtor together with the enforcement notice.

§ 22. Issue of document necessary for enforcement to claimant

If a claimant needs a right of succession certificate or another document for compulsory enforcement, the claimant may, instead of a debtor, demand that a notary or an administrative agency issue such. In such case, the claimant shall submit the enforcement instrument.

Chapter 3 GENERAL CONDITIONS FOR ENFORCEMENT PROCEDURE

Division 1 Commencement of Enforcement Proceedings

§ 23. Submission of application for enforcement and enforcement instrument

(1) A bailiff shall conduct enforcement proceedings on the basis of an application of a claimant (hereinafter *application for enforcement*) and an enforcement instrument. A bailiff shall conduct enforcement proceedings regardless of the application of the claimant if a decision on payment of the bailiffs' fee or on ordering payment of the enforcement costs constitutes the enforcement instrument, and in other cases provided by law.

(2) An application for enforcement shall be submitted to a bailiff in writing and it shall set out:

- 1) the name of the bailiff;
- 2) the name, personal identification code or date of birth, residence and telecommunications numbers of a claimant and a debtor and in the case of a legal person its registry code and in the absence of the registry code a reference to the legal basis for the legal person, its seat and telecommunications numbers;
- 3) if, upon submission of the application, the claimant is represented by a representative, the name of the representative and the legal basis for the representation;
- 4) if possible, information on the assets of the debtor.

(3) If a claimant wishes to make a claim for payment on an immovable, an application shall, if possible, also set out information on the immovable on which the claim for payment is to be made. In the case of several immovables, the claimant shall specify against which immovable the claimant wishes to make the claim for payment.

(4) An enforcement instrument shall be appended to an application for enforcement. An enforcement instrument shall be submitted as an original document or as a copy which is certified notarially or pursuant to the procedure equivalent to notarial certification. A court judgment may be submitted as a copy certified by the court office. An enforcement instrument issued by a body conducting extra-judicial proceedings in misdemeanour procedure shall be appended as a copy certified by the body conducting the proceedings.

(4¹) In the case of the enforcement instruments specified in clauses 2 (1) 19) and 19¹) of this Act, a pledge contract, security agreement and the basis for the principal and collateral claims and detailed calculation shall be submitted to a bailiff.

[RT I, 06.12.2010, 1 - entry into force 05.04.2011]

(4²) If a community of apartment owners wishes to make a claim for payment on an apartment ownership, documentation concerning the amount fallen due of the liabilities specified in subsections 13 (4) of the

Apartment Ownership Act and the basis for further cost accounting shall be appended to the application for enforcement.

[RT I, 13.03.2014, 3 - entry into force 23.03.2014]

(4³) If an apartment association wishes to make a claim for payment on an apartment ownership, documentation concerning the amount fallen due of the liabilities specified in subsections 7 (3) of the Apartment Associations Act and the basis for further cost accounting shall be appended to the application for enforcement.

[RT I, 13.03.2014, 3 - entry into force 23.03.2014]

(5) If an application for enforcement is submitted by a representative on behalf of a claimant and a bailiff cannot immediately verify the existence of the right of representation, a document certifying the right of representation shall be appended to the application.

(6) An application for enforcement and an enforcement instrument may be submitted by electronic means. The application shall bear the digital signature of the sender or be communicated in any other technically secure manner. The Minister responsible for the area may establish technical requirements for electronic submission of applications for enforcement and enforcement instruments.

§ 23¹. Distribution of claims governed by public law

(1) The Government of the Republic may establish by a regulation the procedure for distribution of claims governed by public law between bailiffs.

(2) If the Government of the Republic has established the procedure for distribution of claims governed by public law between bailiffs by a regulation, the claims governed by public law covered by the procedure may be submitted to bailiffs for execution only through the Chamber of Bailiffs and Bankruptcy Trustees (hereinafter *Chamber*) by forwarding the respective claims to the Chamber through the information system for submission and distribution of claims governed by public law. In such case a bailiff shall not accept claims covered by the specified procedure for execution in a manner other than through the Chamber.

[RT I, 31.12.2012, 5 - entry into force 01.01.2014]

§ 24. Delivery of enforcement notices to debtors

(1) If the conditions for the commencement of enforcement proceedings are complied with, a bailiff shall deliver an enforcement notice to a debtor. The format of enforcement notices shall be established by the Minister responsible for the area.

(2) Upon delivery of an enforcement notice to a debtor, enforcement proceedings are deemed to have commenced. Upon calculation of compliance with and suspension of the term and the incurred enforcement costs, the time when a bailiff receives the application of a claimant, if the enforcement notice is delivered to a debtor, is deemed to be the beginning of enforcement proceedings.

(3) An enforcement notice shall set out:

- 1) the name of both a claimant and a debtor;
- 2) the marking of the enforcement instrument;
- 3) a proposal for voluntary compliance with the enforcement instrument and the term for voluntary compliance;
- 4) a warning that upon failure to voluntarily comply with the enforcement instrument, enforcement actions may be taken in respect of a debtor;
- 5) a reference to the right of the debtor to apply for meeting the bailiff in connection with the enforcement instrument;
- 6) a reference to the right of the debtor to submit an action for the compulsory enforcement to be declared inadmissible pursuant to the procedure prescribed in this Code and the term for the submission of the action;
- 7) a reference to the right of the debtor to pay the bailiff's basic fee at half the amount if the debtor complies with the enforcement instrument within the prescribed term.

[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

(4) A copy of the enforcement instrument shall be appended to an enforcement notice.

(5) In the case of an enforcement notice which is to be delivered publicly, the enforcement notice is deemed to be delivered to a debtor ten days after publication in the publication *Ametlikud Teadaanded*. Information published in the publication *Ametlikud Teadaanded* shall be determined by a regulation of the Minister responsible for the area.

[RT I 2006, 55, 412 - entry into force 01.01.2007]

§ 25. Term for voluntary compliance with enforcement instrument

(1) If no term is specified for voluntary compliance with an enforcement instrument by law or a court decision, the term shall be specified by a bailiff. The term shall not be shorter than ten days or longer than thirty days, unless otherwise prescribed in this Code. With the consent of a claimant, the bailiff may specify a term for voluntary compliance with an enforcement instrument which is longer than thirty days.

(2) Upon compliance with an enforcement instrument before the expiry of the term for voluntary compliance with the enforcement instrument, a debtor may be required to pay the bailiff's basic fee only in the amount of one-half of the fee prescribed by law.

[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

Division 2 Rights of Bailiffs

§ 26. Right to demand information

(1) A bailiff has the right to demand that a debtor submit oral and written information necessary for enforcement proceedings and present a document or another object necessary for enforcement proceedings. A bailiff has the right to demand that a person submit an identity document in enforcement proceedings and the person is obliged to submit the respective document to the bailiff.

(2) A bailiff has the right to address a third person in order to receive oral and written information necessary for enforcement proceedings and to also request information concerning the residence or seat and contact details of a debtor if there is reason to presume that the third person has such information. A bailiff has the right to demand data concerning the claim for payment of a debtor required for enforcement proceedings from the employer of the debtor and from other persons obligated with respect to the debtor. A third person is required to submit information unless he or she has the right pursuant to law to refuse to disclose information.

[RT I 2007, 25, 130 - entry into force 01.01.2008]

(3) A bailiff may demand that a credit institution submit information on the accounts and deposits of a debtor and the use of other services offered to the debtor by the credit institution, and the registrar of the Estonian Central Register of Securities submit information on the securities account of a debtor.

(4) A bailiff has, on the basis of an enforcement instrument submitted for enforcement, the right to demand that the chief processor of a state or local government database submit information on a debtor's residence, employer, sources of income, dependants and the property belonging to the debtor and on obligations which encumber the property. The chief processor of the database is required to submit the information immediately in writing or electronically.

§ 26¹. Imposition of penalty payment

(1) A bailiff shall make a decision for the performance of an obligation and a warning concerning the imposition of a penalty payment:

- 1) to a person required to provide information in the case of failure to perform the obligation provided for in § 26 of this Act;
- 2) to a third person obligated with respect to a debtor if the third person refuses without legal basis to enforce the instrument of seizure or does not enforce it as required.

(2) The written warning specified in subsection (1) of this section shall include:

- 1) the given name and surname and address of the addressee or the name and postal address of the legal person;
- 2) the decision compliance with which is requested;
- 3) the date by which the decision can be voluntarily complied with;
- 4) if the decision contains an obligation to refrain from a certain act, the date need not be indicated;
- 5) the amount of the penalty payment applied upon failure to comply with the decision;
- 6) the name of the bailiff which issued the warning;
- 7) the date on which the warning was prepared.

(3) The term for voluntary compliance with a decision granted in a warning shall allow the addressee to perform the obligation.

(4) The prescribed amount of penalty payment is indicated in a warning to impose penalty payment. If penalty payment is imposed for the first time, the amount thereof shall not be less than 192 euros or more than 767 euros, and upon repeated imposition of penalty payments the amount thereof shall not be more than 1917 euros.

(5) A bailiff may impose penalty payments on natural persons, legal persons governed by private law or legal persons governed by public law. No penalty payments are imposed on state and local government agencies.

(6) Penalty payments shall be collected into the state budget.

(7) Penalty payments may be imposed if a valid decision is communicated to an addressee and the decision is not complied with during the term indicated in a warning. The decision and the warning shall be delivered to the obligated person pursuant to the procedure provided for in section 10 of this Code.

(8) The bailiff which made a decision may postpone the imposition of penalty payments at a reasoned request of the addressee of penalty payments and issue a new warning where a new term is set for compliance with the decision. The term shall not be longer than two months.

(9) A bailiff may repeatedly impose penalty payments on a person until the obligation is performed or an appeal is filed against the decision made concerning the imposition of penalty payment.

(10) No penalty payments shall be imposed, if:

1) the bases for the imposition of penalty payments provided for in subsection (7) of this section have ceased to exist;

2) the provision of law which was the basis of the decision is repealed;

3) the imposition of penalty payments is postponed.

[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

§ 27. Hindering of enforcement

(1) If enforcement is hindered or there is reason to presume hindering, a bailiff may apply for the involvement of a police officer in an enforcement action.

(2) A bailiff has the right to remove a person who hinders enforcement from the enforcement action.

§ 28. Search of premises, plots of land and debtor

(1) With the consent of a debtor, a bailiff may enter the premises in the possession of the debtor or stay on plots of land in the possession of the debtor or search these only if necessary for the execution of an enforcement instrument. In such case, the bailiff has the right to open closed house and apartment doors and storage spaces or have these opened.

(2) Without the consent of a debtor, it is permitted to enter premises in the possession of the debtor or stay on plots of land in the possession of the debtor or search these only on the basis of a court ruling.

(3) Persons in whose common or direct possession the premises or plots of land which comply with the requirements provided for in subsections (1) and (2) of this section are shall also tolerate the search of the premises and plots of land.

(4) Before the beginning of a search, a bailiff shall present a court ruling and give a copy of the ruling to a debtor.

(5) A debtor may be searched only on the basis of a court ruling. A person may be searched only by a bailiff who is of the same sex as the person to be searched, and in the presence of impartial observers who are of the same sex as the person to be searched. If a bailiff is not of the same sex as the person to be searched, the bailiff has the right to involve a police officer who is of the same sex as the person to be searched in the search.

(6) A court shall make a ruling specified in this section not later than on the working day following the receipt of the application from a bailiff.

§ 29. Summoning of impartial observer to enforcement action

If enforcement is hindered or there is reason to presume that it is hindered or if a debtor, a representative of the debtor, an adult family member of the debtor or a person who is in the service of the family is not present at the enforcement action performed on the premises or a plot of land of the debtor, a bailiff shall summon two adult impartial observers, a representative of the local government or a police officer to the enforcement action.

§ 30. Enforcement on days off and in night time

Enforcement actions on days off, public holidays and in the night time are performed only in cases of urgency.

§ 31. Fulfilment of financial claim in prison

(1) A prison shall transfer each month the amount to be withheld from the remuneration of a prisoner or other money received by the prisoner to the official bank account of the bailiff who sent the financial claim for fulfilment. The amount to be withheld shall be calculated pursuant to § 44 of the Imprisonment Act.

(2) In order to distribute the money received by a prisoner, a bailiff shall prepare a calculation and transfer the money to claimants.

§ 32. Proof of rights of bailiff

A bailiff shall prove by an enforcement instrument to debtors and third persons his or her right to perform enforcement actions, including the right to accept payments and performance of other obligations. A claimant cannot rely on the fact that the bailiff does not have the right to perform the enforcement action in respect of debtors or third persons.

Division 3

Documentation of Enforcement Actions and Receipt of Money

§ 33. Registration of applications for enforcement and enforcement files

- (1) An application for enforcement shall be registered in a bailiff's office.
- (2) An enforcement file which sets out the enforcement actions and communicated notices in chronological order shall be opened regarding an enforcement matter. The documents received in the enforcement matter and issued by a bailiff or copies thereof shall be recorded in the enforcement file.
- (3) Upon return or delivery of a document, a copy of the document shall be preserved in the enforcement file by a bailiff.
- (4) If an enforcement instrument contains several financial claims, one enforcement file shall be opened regarding these claims and the claims shall be totalled, unless the claimant applies for the opening of several enforcement files.
- (5) If a fine or pecuniary punishment or a fine to the extent of assets has been imposed on a debtor for a misdemeanour by an enforcement instrument and a court has ordered enforcement in parts, separate enforcement files shall be opened regarding the specified claims, if the first instalment has fallen due.
- (6) A bailiff shall register and record enforcement instruments and enforcement actions electronically pursuant to the procedure established by a regulation of the Minister responsible for the area.

§ 34. Information on enforcement actions entered in enforcement files

- (1) A bailiff shall enter the following information in an enforcement file regarding each enforcement action:
 - 1) the time and place of performance of the enforcement action;
 - 2) a short description of the content of the enforcement action;
 - 3) the names of persons who were present at the enforcement action;
 - 4) the signatures of persons who were present at the enforcement action and a notation that the entry was signed after it was read or examined and approved;
 - 5) the signature of the bailiff.
- (2) If a person who is present at an enforcement action cannot or does not wish to sign an entry, the reason for refusal to sign shall be indicated in the file.
- (3) If a bailiff has prepared an instrument concerning an enforcement action which is formalised according to a regulation of the Minister responsible for the area, the information contained in the instrument need not be indicated in the enforcement file.

§ 35. Access to enforcement files

- (1) A participant in enforcement proceedings may access an enforcement file and has the right to receive copies of and statements from the file.
- (2) A fee chargeable for copies and statements is prescribed in the Bailiffs Act.

§ 36. Receipt

- (1) If a debtor has performed an obligation in part or in full, a bailiff shall issue a receipt to the debtor concerning the performance at the request of the latter.
- (2) The provisions of subsection (1) of this section do not preclude or restrict the right of a debtor to demand a receipt from the claimant concerning the performance.
- (3) A bailiff shall transfer the money accepted on the basis of a receipt to the official bank account of the bailiff not later than on the working day following the acceptance of the money.

Division 4

Enforcement Costs and Payment of Money to Claimant

§ 37. Enforcement costs

(1) Enforcement costs include a bailiff's fee and the costs necessary for enforcement proceedings incurred by a bailiff and a claimant or a third person after the commencement of enforcement proceedings, including:

- 1) fees and levies for inquiries made in order to determine the personal data and information concerning property;
- 2) costs of delivery of documents related to enforcement proceedings;
- 3) costs related to transport, storage and guarding of seized property and other costs related to the preservation of property;

- 4) costs related to opening, closing, removal, demolition and cleaning of rooms or other objects;
- 5) travel and accommodation expenses related to enforcement actions;
- 6) expenses related to compelled attendance of the debtor;
- 7) costs of organisation of an auction, including costs related to payment of the purchase price. The costs for legal assistance used by a bailiff or a claimant in order to resolve legal issues arisen upon commencement of enforcement proceedings or in the course of the proceedings are not deemed to be necessary expenses. The costs of management of a bailiff's office are not deemed to be necessary expenses either.

(2) A court shall decide on the compensation for procedural costs borne in court pursuant to the procedure prescribed in civil procedure.

(3) The bases and procedure for the calculation of enforcement costs and the extent and upper limit of compensation for the costs shall be established by a regulation of the Minister responsible for the area.

§ 38. Collection of enforcement costs from debtor

(1) Enforcement costs shall be borne by a debtor.

(2) The enforcement costs shall be collected from a debtor by a bailiff who made a decision on enforcement costs on the basis of the decision on enforcement costs.

(3) If debtors are joint and several debtors according to an enforcement instrument, they are jointly and severally liable for the payment of enforcement costs.

§ 39. Proof of enforcement costs

At the request of a debtor or a claimant, a bailiff shall submit documentary evidence on the enforcement costs.

§ 40. Advance payment of enforcement costs

(1) A bailiff may demand by a decision that a claimant make an advance payment for particularly high enforcement costs, such as costs related to the transport, storage and guarding of goods and other similar costs, to the official bank account of the bailiff by the specified due date.

(2) An advance payment of enforcement costs shall not be demanded from a natural person who submits:

- 1) a court decision for enforcement in the course of making of which he or she has received state procedural aid for the payment of procedural costs;
- 2) a court judgment for enforcement made in criminal proceedings by which a claim for compensation for damage caused by a criminal offence is satisfied;
- 3) an enforcement instrument for collection of maintenance support.

(3) If a claimant informs of his or her refusal to consent to the advance payment of enforcement costs, or the advance payment is not received in the bank account by the specified due date and this impedes the enforcement proceedings, a bailiff may refuse to perform the enforcement action. The bailiff shall immediately inform the claimant of refusal to perform the enforcement action.

(4) If a bailiff has commenced enforcement proceedings and specified a later term for advance payment of the enforcement costs, the bailiff may suspend the enforcement proceedings if the advance payment of the enforcement costs is not made by the prescribed due date. The bailiff shall inform the claimant immediately of suspension of the enforcement proceedings.

(5) A claimant may be required to pay an advance payment of the bailiff's fee to the extent and pursuant to the procedure prescribed in the Bailiffs Act.

§ 41. Return of advance payment of enforcement costs

(1) If enforcement costs are collected from a debtor in full, a bailiff shall return the advance payment of the enforcement costs to the claimant.

(2) If enforcement costs have not been collected from a debtor within a reasonable period of time, a bailiff shall repay to the claimant at least one-half of the advance payment of the enforcement costs paid by the claimant.

§ 42. Repayment of enforcement costs upon revocation of enforcement instrument

A debtor has the right to demand repayment of the enforcement costs paid from a claimant, if an enforcement instrument which is the basis for the compulsory enforcement is revoked. In such case the enforcement instrument is a revoking court decision or a decision of a body conducting extra-judicial proceedings and a decision of a bailiff concerning the costs.

§ 43. Payment of money to claimant from bailiff's official bank account

(1) A bailiff shall transfer the money received on an official bank account of the bailiff as a result of compulsory enforcement out of a debtor's assets to a claimant within ten working days after the receipt of the money.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(1¹) A bailiff shall transfer the money received on an official bank account of the bailiff as a result of seizure of a bank account of a debtor to the claimant pursuant to the procedure provided for in subsection (1) of this section but not earlier than three working days after delivery of the instrument of seizure to the debtor. A bailiff shall transfer to the claimant the sums received after delivery of the instrument of seizure to the debtor pursuant to the procedure provided for in subsection (1) of this section but not earlier than three working days after the receipt of the money.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(2) Money to be paid to a claimant or a debtor shall be transferred from the official bank account of a bailiff to the bank account of the person. If the person does not have a bank account, money may be paid on the basis of a cheque drawn in the name of the person or by post. In order to transfer money by post, a bailiff shall issue a written order and append thereto a list of recipients of money which also sets out the addresses of the persons and the amounts to be transferred.

(3) Money which has not been accepted by a claimant shall be kept in the official bank account for five years as of the receipt, unless otherwise provided by law. After five years, money shall be repaid to a debtor; if repayment is impossible, it shall be transferred into the state budget.

Division 5

Postponement of Enforcement Action, Suspension and Termination of Enforcement Proceedings

§ 44. Postponement of enforcement action

A bailiff may postpone an enforcement action on the basis of an application of the claimant or a corresponding court decision or when the person conducting the enforcement proceedings is changed.

[RT I, 31.12.2012, 5 - entry into force 10.01.2013]

§ 45. Suspension, extension and deferral of enforcement proceedings based on court ruling

On the basis of an application of a debtor, a court may suspend enforcement proceedings or extend or defer enforcement if continuation of the proceedings is unfair in respect of the debtor. In such case, the interests of the claimant and other circumstances shall be taken into account, including the family and economic situation of the debtor.

§ 46. Suspension of enforcement proceedings based on decision of bailiff

(1) A bailiff shall suspend enforcement proceedings:

- 1) on the basis of an application of a claimant;
- 2) upon submission of a court decision if, according to the decision, the enforcement proceedings or the enforcement action shall be suspended;
- 3) upon submission of a court decision if, according to the decision, the enforcement action may be performed or the enforcement proceedings may be continued only against security;
- 4) upon submission of a written certificate if it is evident from the certificate that the payment term of a claim filed for enforcement is postponed;
- 5) if a debtor acquires restricted active legal capacity, until a guardian is appointed to him or her;
- 6) upon the death of the spouse or an ascendant or descendant or a sister or brother of a debtor – on the basis of an application as of the date of death for the term of thirty days;

7) if a right entered in the land register in respect of an immovable which is the object of enforcement proceedings becomes evident provided that the right precludes or impedes the sale of the immovable;
8) on another basis provided by law.

(2) A bailiff may suspend enforcement proceedings:

- 1) if a complaint is filed against the activities of the bailiff;
- 2) if a debtor becomes seriously ill or in-patient health services are provided to him or her;
- 3) if the debtor is in compulsory military service, alternative service or reserve service;

[RT I, 10.07.2012, 2 - entry into force 01.04.2013]

- 4) on another basis provided by law.

§ 47. Consequences of suspension of enforcement proceedings and resumption of enforcement proceedings

(1) If enforcement proceedings are suspended, the enforcement actions performed shall remain in force.

(1¹) If enforcement proceedings are suspended, a bailiff shall send the decision on suspension of enforcement proceedings immediately to the third person who enforces the bailiff's instrument of seizure with respect to the property of a debtor. Fulfilment of a claim on the basis of an instrument of seizure is suspended for the time of suspension of enforcement proceedings. Notations concerning prohibition on the property of the debtor remain in force.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(2) Enforcement proceedings are resumed after the circumstance which caused the suspension ceases to exist. If enforcement proceedings are resumed, a bailiff shall forward the respective information to the third person obligated with respect to a debtor and such information shall be the basis for continuation of the enforcement of the instrument of seizure.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(3) If circumstances change, a court may revoke or amend a ruling to suspend enforcement proceedings.

§ 48. Bases for termination of enforcement proceedings

(1) A bailiff shall terminate enforcement proceedings:

- 1) on the basis of an application of a claimant;
- 2) upon submission of a written document if it is evident from the document that the claim of the claimant has been satisfied;
- 3) if money required for the satisfaction of a claim has been paid to the bailiff or an action indicated in the enforcement instrument is performed;
- 4) upon submission of a court decision by which an enforcement instrument accepted for enforcement or an obligation to immediately enforce it is revoked or compulsory enforcement is deemed to be inadmissible or termination of the compulsory enforcement is ordered;
- 5) upon submission of a written document if it is evident from the document that a security necessary to prevent enforcement is provided;
- 6) in the case of the death or termination of a claimant or debtor if the claim or obligation cannot be transferred to the successors or legal successors of the deceased;
- 7) upon unjustified commencement of enforcement proceedings due to failure to comply with the conditions of enforcement proceedings;
- 8) on another basis provided by law.

(2) If a movable of a debtor in respect of which a claimant has the right of security to secure a claim is in the direct possession of the claimant, a bailiff shall, at the request of the debtor, terminate enforcement proceedings regarding the remaining assets of the debtor if the amount of the claim is covered by the specified movable. If the claimant also has such right regarding the thing arising from another claim, the request is satisfied only if the other claim is also covered by the value of the thing.

§ 49. Consequences of termination of enforcement proceedings

(1) Upon termination of enforcement proceedings, a bailiff shall immediately release the property from seizure and submit an application to the registrar for deletion of a notation concerning prohibition, except upon enforcement of a ruling on securing of an action. An enforcement instrument shall be returned to the claimant.

(2) Termination of enforcement proceedings shall not prejudice the right of a claimant to apply to a bailiff again if a claim arising from an enforcement instrument is actually not fulfilled. The claimant shall not re-apply to a bailiff if the claimant has waived the claim in writing.

§ 50. Procedure for suspension and termination of enforcement proceedings

(1) Enforcement proceedings shall be suspended or terminated by a decision of a bailiff. Prior to it, a claimant and a debtor may be heard.

(2) A decision to terminate and suspend proceedings shall be sent to a debtor and a claimant. The decision shall be sent to a third person if the suspension or termination is applied for by a third person.
[RT I 2006, 7, 42 - entry into force 04.02.2006]

§ 51. Termination of enforcement proceedings upon declaration of bankruptcy

(1) Enforcement proceedings shall terminate upon declaration of bankruptcy.

(2) After declaration of bankruptcy, a bailiff shall, at the request of a trustee in bankruptcy, transfer the documents relating to enforcement proceedings and the property of a debtor in the possession of the bailiff or deposited with a third person to the trustee in bankruptcy and inform a claimant thereof. If a judgement or ruling made in a misdemeanour matter or a criminal matter is being processed by a bailiff and enforcement proceedings are terminated due to declaration of bankruptcy, a bailiff shall notify a claimant of the possibility to apply for substitutive punishment.
[RT I 2009, 68, 463 - entry into force 01.01.2010]

(3) A legal instrument on transfer of documents which sets out the list of documents, the transferred property, the name of the trustee in bankruptcy and the date of preparation of the legal instrument shall be prepared concerning the delivery of documents. The enforcement instrument shall be appended to the legal instrument.

Part 2

ENFORCEMENT PROCEEDINGS IN CASE OF FINANCIAL CLAIMS

Chapter 4

GENERAL PROVISIONS FOR MAKING CLAIMS FOR PAYMENT ON PROPERTY

§ 52. Manners of making claims for payment on property

(1) Upon claiming payment for property, the property shall be seized and sold. A claim of a claimant shall be satisfied out of the money received from the sale of the property.
[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

(2) Upon claiming payment for an immovable, compulsory administration of the immovable may be ordered. In the case of compulsory administration, a claim of a claimant shall be satisfied out of the fruits received from the compulsory administration.

(3) In the case of a financial claim filed against the state or a local government, a claim for payment shall be made for money. If making a claim for payment for money has not succeeded within a reasonable period of time, the claim for payment shall be made for things.

§ 53. Extent of seizure of property

(1) It is prohibited to seize more of the property of a debtor than necessary for the satisfaction of a claim of a claimant and for covering the enforcement costs, unless it is impossible to satisfy the claim of the claimant in any other manner.

(2) Property shall not be seized if it may be presumed that the money received from the sale of the things seized covers only the enforcement costs.

(3) A bailiff shall determine the order of seizure of property after hearing the proposal of a claimant. The order shall be determined taking account of the fact that the claim of the claimant must be satisfied in the fastest manner and that the legitimate interests of a debtor are not damaged.

§ 54. Restraint on disposition as result of seizure of property

(1) As of seizure, a debtor shall not dispose of the seized property. If, upon seizure of property, the seizure also extends to movables, movables may be disposed of within the limits of regular management.

(2) A disposition in violation of the restraint on disposition is void, unless otherwise provided by law.

(3) In the case of prohibition on the disposition of ownership, limited real right or proprietary right, a notation concerning prohibition shall be entered in the relevant register pursuant to the procedure provided by law. A notation concerning prohibition prohibits the making of entries to the respective extent in the register without the application or consent of a bailiff.

[RT I 2008, 59, 330 - entry into force 01.01.2009]

§ 55. Invalidity of seizure

Seizure is invalid and no legal consequences arise from seizure upon material violation of procedural provisions concerning seizure, particularly if:

- 1) property is seized without a valid enforcement instrument;
- 2) no enforcement notice has been delivered to a debtor;
- 3) property was seized by an incompetent person;
- 4) a debtor has, to an essential extent, not been notified of his or her rights in enforcement proceedings and this causes violation of the rights of the debtor.

§ 56. Extent of satisfaction of claim

(1) A claim of a claimant shall be satisfied together with the fine for delay and other collateral claims the extent of which arises from an enforcement instrument.

(2) Upon distribution of money received from enforcement proceedings (hereinafter *enforcement revenue*), first the expenses borne by a debtor, thereafter the collectable collateral claims and finally the principal debt and the interest calculated after seizure are deleted from the debt of a debtor.

(3) The fine for delay shall be calculated until the date of the auction or until the date of sale of the thing in any other manner or until the end of compulsory administration.

§ 57. Refund of remainder of money to debtor

The amount which remains from money received from the sale of property in enforcement proceedings after the enforcement costs are covered and the claim is satisfied shall be refunded to a debtor within five working days after the distribution of money.

§ 58. Claims in foreign currency

Claims in foreign currency and other rights shall be recalculated in enforcement proceedings into euros on the basis of the daily rate of the European Central Bank as at the date of satisfaction of the claim or distribution of the enforcement revenue or preparation of the distribution plan.

[RT I 2010, 22, 108 - entry into force 01.01.2011]

Chapter 5

LIST OF ASSETS AND DEBTOR'S OATH

§ 59. Obligation to provide information

(1) A debtor shall provide a bailiff with information on the assets of the debtor, which the bailiff needs in connection with the enforcement proceedings.

(2) Third persons who are in possession of property belonging to a debtor or have proprietary obligations to the debtor are also required to provide information concerning the property of the debtor.

(3) Employees of a debtor and former employees whose employment relationship has terminated during the year preceding the commencement of the enforcement proceedings are also required to provide the information specified in subsection (1) of this section.

§ 60. List of assets

(1) A debtor is required, at the request of a bailiff, to submit a list of the assets of the debtor, including obligations.

(2) A list of assets shall, in addition to the existing assets, set out:

- 1) assets which a debtor has transferred to persons connected with him or her within the meaning of § 117 of the Bankruptcy Act for a charge during the year preceding commencement of the enforcement proceedings;
- 2) assets which a debtor has given as a gift during two years preceding commencement of the enforcement proceedings.

(3) Assets which cannot be seized shall be indicated in a list of assets only if substitute seizure of property is presumed possible.

§ 61. Debtor's oath

(1) At the request of a bailiff or a claimant, a court may require a debtor to swear in court that the information submitted to the bailiff concerning his or her assets is correct to the debtor's knowledge.

(2) A debtor shall take an oath orally in court:

"I (name) swear by my honour and conscience that the information submitted to the bailiff concerning my assets is correct to my knowledge."

The debtor shall sign the text of the oath.

(3) In the case of a debtor who is a legal person, a debtor's oath may be taken from a member of its management body, its liquidator, a partner of a general partnership or a limited partnership, a shareholder whose holding represents at least one-tenth of the share capital, a procurator or a person responsible for accounting.

(4) In the case of a debtor who is a legal person, a debtor's oath may be also taken from a member of its management body, its liquidator, procurator or a person responsible for accounting if they were released from their obligation within one year after the commencement of enforcement proceedings.

§ 62. Submission of list of assets and ensuring taking of oath

(1) If a debtor, without good reason, fails to submit a list of assets to the bailiff or fails to perform the obligation to take an oath, a court may impose compelled attendance and, if necessary, detention in respect of the person who is required to submit the list or take the oath.

(2) A ruling on detention shall, inter alia, indicate the following:

- 1) information on a claimant and a debtor;
- 2) the reason for the detention;
- 3) the duration of the detention, which is deemed to terminate at the time of taking a debtor's oath or the end of serving the detention.

(3) A ruling on detention need not be delivered before its enforcement. Upon detention, a copy of the ruling on detention shall be delivered to a debtor against a signature.

(4) A debtor may be sentenced to detention for up to thirty days.

(5) A debtor shall be released from detention if he or she submits a list of assets or takes an oath.

(6) Detention shall be served at a house of detention of the location of the court who adjudicated on the matter or of the residence of a detained person under the conditions provided for in the Imprisonment Act. The provisions of the Code of Criminal Procedure concerning compelled attendance apply to compelled attendance, unless otherwise provided for in this Code.

(7) A debtor may file an appeal against a ruling by which a court imposed detention and arrest with regard to the debtor according to the Code of Civil Procedure.

(8) One year after taking an oath, a debtor is required to take an oath once again only if a bailiff has reason to believe that the debtor has acquired assets after taking the oath.

§ 63. Enforcement register

(1) Enforcement register is a database belonging to the State Information Systems maintained for processing of procedural information and personal data in enforcement proceedings the objective of which is:

- 1) to provide an overview of enforcement matters being processed by bailiffs;
- 2) to reflect information concerning acts performed in the course of enforcement proceedings;
- 3) to ensure collection of enforcement statistics;
- 4) to enable electronic forwarding of data and documents;
- 5) to distribute claims governed by public law between bailiffs pursuant to the procedure established on the basis of subsection 23¹ of this Act.

[RT I, 31.12.2012, 5 - entry into force 01.01.2014]

(2) The following information shall be entered in the database

- 1) information concerning enforcement matters in which proceedings are conducted and terminated enforcement matters;
- 2) information concerning acts performed in the course of enforcement proceedings;
- 3) digital documents related to enforcement proceedings;
- 4) information concerning the bodies conducting the proceedings, parties to the proceedings and participants in the proceedings.

(3) The information system of the enforcement register and the information system for submission and distribution of claims governed by public law and the statutes thereof is established by a regulation of the Minister responsible for the area.
[RT I, 31.12.2012, 5 - entry into force 01.01.2014]

(4) The chief processor of the enforcement register is the Ministry of Justice. The authorised processor of the enforcement register is the person appointed by the Minister responsible for the area.

(5) The Minister responsible for the area may establish by a regulation the procedure for data processing in the enforcement register and for release of information from the enforcement register.
[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

§ 63¹. Electronic seizure system

(1) Electronic seizure system is an information channel created between the information system of the enforcement register and credit institutions or other interested parties, the objective of which is to ensure electronic submission of information concerning a debtor's account and seizure thereof to credit institutions and to enable inquiries about the existence and balance of an account.

(2) The electronic seizure system and its statutes shall be established by the Minister responsible for the area.

(3) The chief processor of the electronic seizure system is the Ministry of Justice. The authorised processor of the electronic seizure system is the person appointed by the Minister responsible for the area.

(4) The Minister responsible for the area shall establish, by a regulation, the procedure and technical requirements for electronic control of opening of accounts and the procedure for data processing in the electronic seizure system and for release of information from the electronic seizure system.
[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

Chapter 6 MAKING CLAIM FOR PAYMENT FOR MOVABLES

Division 1 Seizure

§ 64. Seizure of things in possession of debtor

(1) In order to seize things in the possession of a debtor, a bailiff shall record the things and restrain disposition thereof. Entering of a notation concerning prohibition on disposition of things in the register on the basis of an application of a bailiff shall also be deemed to be seizure of assets if this is done before delivery of the instrument of seizure pursuant to § 75 of this Code.

(2) If a delay arising from delivery of an enforcement notice may significantly damage attainment of the objectives of compulsory enforcement, a bailiff may seize the assets of a debtor or have a notice of prohibition made in the register before the enforcement notice is sent.

(3) A bailiff may take possession of a thing in the indirect possession of a debtor only with the consent of a direct possessor. If the direct possessor refuses to deliver the thing, the bailiff may seize the right of claim of the debtor in respect of third persons.

(4) If a bailiff has reason to believe that property of a debtor has been transferred to the possession of a third person in order to evade seizure, the bailiff has the right to seize the property in the possession of the third person.

(5) A bailiff shall transfer confiscated cash to his or her official bank account not later than on the following working day.
[RT I 2006, 7, 42 - entry into force 04.02.2006]

§ 65. Right of security on seized assets

(1) The right of security on seized things arises for a claimant as of the time of seizure.

(2) The right of security on seized assets grants a claimant the same rights as the right of security established on the basis of a contract or created pursuant to law, unless otherwise provided by law.

(3) The right of security on seized assets which was created during an earlier seizure is of higher ranking than the right created during a later seizure. The right of security created before seizure on the basis of a contract or pursuant to law is of higher ranking than the right of security on seized assets of a claimant.

(4) The right of security on seized assets created on the basis of a claim for support for a child is of higher ranking than the other rights of security on seized assets regardless of the time of seizure. The rights of security on seized assets created on the basis of a claim for support for a child are of the same ranking.
[RT I 2007, 25, 130 - entry into force 01.01.2008]

§ 66. Things not subject to seizure

(1) The following things cannot be seized or sold in the course of enforcement proceedings:

- 1) personal effects of a debtor and household effects, kitchenware, bedclothes, beds and other things used for domestic purposes which are essential to satisfy household needs, taking account of the amount of the debt of the debtor;
 - 2) at least one technical device which ensures a debtor the use of the right to receive information prescribed in subsection 44 (1) of the Constitution of the Republic of Estonia (RT 1992, 26, 349; RT I 2003, 29, 174; 64, 429);
 - 3) foodstuffs necessary for a debtor and his or her family for one month and heating material necessary for one heating period to heat the dwelling or, if there is no such supply by the time of enforcement and acquisition of the supply is not ensured in any other manner, a sum of money necessary for acquisition of the supply;
 - 4) farming equipment, cattle, fertilizers and primary agricultural products of a person engaged in agriculture, which are essential for a debtor to maintain him or her and his or her family until the next harvest;
 - 5) objects essential to continue the economic or professional activities or the employment or service relationship of a natural person;
 - 6) books and other objects used by a debtor or his or her family member in studies or worship activities;
 - 7) accounting records, family records, marriage rings, orders and decorations belonging to a debtor;
 - 8) artificial limbs, spectacles and other medical devices necessary due to a physical disability, which are used by a debtor or his or her family member;
 - 9) objects necessary for a funeral in the family of a debtor;
 - 10) the museum collections of state museums, municipal museums and museums of legal persons in public law and museum objects belonging to the collections, and the museum collections or museum objects of state museums granted for use to a foundation;
 - 11) records;
- [RT I, 21.03.2011, 1 - entry into force 01.01.2012]
- 12) other things the seizure of which is in conflict with law or good morals.

(2) Things specified in clauses (1) 1), 2), 4) and 5) of this section may be seized if compulsory enforcement is demanded by a seller on the basis of a financial claim secured by an ownership reservation due to the sale of the specified things.

(3) Things necessary for worship activities specified in clause (1) 6) of this section may be seized if the manner of use of the things is contrary to good morals or punishable.

(4) State assets in restricted commerce or things which the state or a local government which a debtor needs for the performance of public duties and the seizure of which is contrary to public interests shall not be seized. Before the decision is made, the opinion of a representative of a competent ministry or agency shall be heard.

§ 67. Animals not subject to seizure

(1) Animals kept at home for non-commercial purposes shall not be seized.

(2) On the basis of an application of a claimant, a court may allow the seizure of an animal with high value if prohibition on seizure significantly violates the interests of the claimant in the case of which the interests of animal protection or the legitimate interests of a debtor cannot be taken into account.

§ 68. Substitute seizure

(1) A thing specified in clauses 66 (1) 1), 2) and 5) of this Code may be seized if a claimant, before taking the thing, gives to a debtor a substitute thing, which is usable but less valuable, or gives money for the acquisition of a substitute thing (hereinafter *substitute seizure*). The value of the substitute thing or money paid for the acquisition of the substitute thing shall be compensated for the claimant from the revenue of compulsory enforcement as enforcement costs.

(2) If a claimant is unable or cannot be expected to replace a thing on time, a bailiff may organise the substitute seizure of the thing provided that a debtor receives the money necessary for the replacement of the thing from the revenue of compulsory enforcement as enforcement costs.

(3) A bailiff shall decide on substitute seizure on the basis of an application of a claimant and shall determine the value of a substitute thing offered or the sum necessary for the replacement of a thing.

(4) Money given to a debtor for the acquisition of a substitute thing shall not be seized.

§ 69. Preliminary seizure

(1) If it may be presumed that a thing that cannot be seized may become subject to seizure in the near future, the thing may be seized but it shall remain in the possession of a debtor. Enforcement proceedings in respect of a thing subject to preliminary seizure may be continued only after the thing becomes subject to seizure.

(2) A bailiff shall release a thing from seizure if the thing has not become subject to seizure within six months as of the preliminary seizure.

§ 70. Persons present at recording assets

(1) Assets shall be recorded in the presence of a debtor, a representative of the debtor or an adult family member of the debtor. If a debtor, a representative of the debtor or an adult family member of the debtor is not present at the recording of assets, a bailiff shall summon two impartial observers or a police officer to be present at the seizure of assets.

(2) A claimant or a representative of the claimant may be present at the recording of assets.

§ 71. Leaving thing in possession of debtor

(1) A bailiff may leave a seized thing in the possession of a debtor, unless this compromises the satisfaction of a claim of a claimant. Cash, valuables or securities in the form of documents shall not be left in the possession of a debtor.

(2) If a thing is left in the possession of a debtor, it shall be sealed or otherwise marked to endure visible representation that the thing is under seizure.

§ 72. Deposit of seized things with third persons

(1) If a bailiff does not take possession of a seized thing or leave it in the possession of a debtor, the bailiff may deposit the thing with a third person.

(2) A depositary of assets shall be appointed with an agreement between a debtor and a claimant.

(3) If a debtor and a claimant fail to reach an agreement as regards a depositary of assets, the depositary of assets shall be appointed by a bailiff. A bailiff shall not appoint a claimant or a person with similar economic interests or relatives or relatives by marriage of the bailiff as the depositary of assets.

(4) A thing shall be deposited on the basis of an instrument of seizure. Upon depositing, a bailiff shall explain the obligations of a depositary and the consequences of violation of obligations to the depositary.

(5) If a depositary unjustifiably fails to return a deposited thing at the request of a bailiff, a claimant may demand that the thing be taken from the depositary. If it is necessary to enter the premises or a plot of land used by the depositary for the taking of the thing, it may be done on the basis of a court ruling. The court ruling shall be made on the basis of an application of the bailiff.

(6) The remuneration of a depositary and expenses incurred for the deposit of a thing shall be included in enforcement costs.

(7) The provisions of the Law of Obligations Act concerning the liability of depositaries apply to the liability of a depositary for the preservation and return of things. A claimant is deemed to be the depositor of assets.

§ 73. Objections of third persons to seizure

(1) A pledgee or a person with similar preferential rights in respect of a thing shall not contest seizure of the thing.

(2) If a third person alleges upon seizure that a thing subject to seizure is in the ownership of the person, a notation concerning an objection shall be entered in the instrument of seizure. A bailiff shall explain to the third person that the person has the right to file an action to release the assets from seizure.

§ 74. Valuation of seized thing

(1) Upon seizure, a thing shall be evaluated and the price of the thing shall be indicated in the instrument of seizure.

(2) If a thing cannot be evaluated during seizure, it shall be done immediately after seizure. The valuation results shall be indicated in the instrument of seizure.

- (3) Seized things shall be evaluated with the agreement of a debtor and a claimant.
- (4) If a debtor and a claimant fail to reach an agreement on the valuation of things and if at least one of them is not present at the seizure, assets shall be evaluated by a bailiff.
- (5) A bailiff shall evaluate a thing on the basis of its usual value, taking account among other things of the rights of third persons encumbering the thing and their possible extinguishment.
- (6) If valuation of a thing turns out to be complicated, a bailiff shall have the assets evaluated by an expert.
- (7) A debtor and a claimant may contest the price determined by a bailiff by a complaint filed to the bailiff pursuant to the procedure provided for in § 217 of this Code.
- (8) Upon contestation of a price, a bailiff shall apply that a court designate an expert for the organisation of a new valuation.
- (9) The valuation costs of an expert designated by a court shall be borne by a person who contested a valuation. The person who contested the valuation shall pay the valuation costs in advance. If the person fails to pay the costs by the time designated by a court, he or she is deemed not to have contested the valuation.
[RT I 2006, 7, 42 - entry into force 04.02.2006]

§ 75. Instrument of seizure

- (1) A bailiff shall prepare an instrument concerning a seizure of a thing and the format of the instrument shall be established by a regulation of the Minister responsible for the area.
- (2) An instrument shall be signed by a bailiff, a depositary of assets, a debtor and other persons present at a seizure. If signature is refused, a corresponding notation shall be entered in the instrument.
- (3) An instrument shall be prepared in a single copy which remains in an enforcement file. A copy of the instrument shall be given to a debtor or a representative of the debtor or an adult family member of the debtor who is present, a claimant and a depositary of assets.
- (4) If a debtor is not present at a seizure, an instrument of seizure shall be delivered to the debtor. In such case, assets are deemed to be seized as of delivery of the instrument.
- (5) If a debtor or a claimant who is present at a seizure of assets has not submitted applications or notations concerning the seized assets, they have no right to file a complaint on incorrect preparation of an instrument or to rely afterwards on the fact that the instrument is incorrect.

§ 76. Seizure of thing for benefit of other claimant

- (1) In order to seize a seized thing for the second time, a bailiff shall add the information on another claimant and a notation that the thing is already seized in an instrument of seizure.
- (2) If a thing was seized for the first time by another bailiff or the Tax and Customs Board, a copy of the instrument of seizure shall be delivered to them.
- (3) A notice on each seizure shall be delivered to a debtor and a claimant.

§ 77. Release of thing from seizure

- (1) At the request of a claimant and with the consent of a debtor, a bailiff shall release a thing from seizure, even if other seized assets are not sufficient to execute an enforcement instrument.
- (2) A bailiff shall release a thing from seizure on the basis of an application of a third person if it is evident that he or she has seized a thing belonging to the third person. The bailiff shall inform a claimant immediately of release of the thing from seizure.
- (3) If a third person applies for release of a thing from seizure and a bailiff refuses to release the thing from seizure, the bailiff shall explain to the third person the right to file an action for release of assets from seizure.
- (4) A bailiff shall release a thing from seizure if the thing cannot be sold within a reasonable period of time. The bailiff shall inform a claimant immediately of release of the thing from seizure.
- (5) Upon release of a thing subject to registration from seizure, the registrar shall delete the notation concerning prohibition entered in the register on the basis of a proposal of a bailiff.

Division 2

Sale in Enforcement Proceedings

§ 78. Public auction

- (1) A bailiff shall sell seized movables at a public electronic auction, unless otherwise provided in this Code.
- (2) If an electronic auction cannot be conducted for reasons beyond the control of a bailiff, an auction may be conducted orally.
- (3) If the price of seized movables pursuant to the instrument of seizure is up to 2000 euros, a bailiff may authorise the Chamber to sell the movables.
[RT I 2010, 22, 108 - entry into force 01.01.2011]

§ 79. [Repealed - RT I 2006, 7, 42 - entry into force 04.02.2006]

§ 80. Time of auction

- (1) The time of an auction shall be determined by a bailiff.
- (2) A bailiff shall not organise an auction earlier than ten days after the seizure of a thing, unless a claimant and a debtor agree on an earlier date.
- (3) A bailiff may organise an auction earlier than ten days after the seizure thereof if, upon compliance with the term, the value of the thing to be put at auction would probably significantly decrease or if unreasonably high deposit costs are involved in depositing of the thing.

§ 81. Place of auction

- (1) Electronic auctions are conducted in an electronic auction environment (hereinafter *auction environment*) in on-line environment.
- (2) If a bailiff organises a public oral auction, he or she shall determine the place of the oral auction, taking account of the possibilities to sell a thing and the costs relating to the auction.
[RT I 2009, 68, 463 - entry into force 01.01.2010]

§ 82. Starting price at auction

- (1) The starting price of a thing at an auction is the price which is based on its valuation and set out in an instrument of seizure.
- (2) A bailiff has the right to change the starting price on the basis of a declaration and reasoning of the rights after the announcement of an auction is published if the price set out in an instrument of seizure is obviously significantly different from its market price. The right which is not given notice of or reasoned after the announcement of the auction is published shall not be taken into account upon determination of the starting price.
- (3) Before changing a starting price, a bailiff shall ask the opinion of a claimant and a debtor in this respect.

§ 83. Deposit at auction

- (1) In the case of an auction, a bailiff may determine a deposit for the auction participants in the amount of up to 10 per cent of the starting price. If deposit is determined, a person who wishes to participate in the auction shall pay the deposit.
[RT I, 31.12.2012, 5 - entry into force 10.01.2013]
- (2) A deposit shall be paid to the account specified by the bailiff or in cash to the bailiff upon registration for the auction. If the deposit is paid to the account specified by the bailiff, the deposit is deemed to be paid as of the crediting of the account of the bailiff in the amount of the deposit. The deposit may be paid in cash if the amount of the deposit does not exceed 640 euros.
[RT I, 31.12.2012, 5 - entry into force 10.01.2013]
- (2¹) If the deposit is paid in the auction environment using the method of payment provided by the service provider which enables immediate receipt thereof, the deposit is deemed paid to the bailiff as of the crediting of the central account of the Chamber in the amount of the deposit. The person participating in the auction shall cover the costs relating to the payment of the deposit in the specified manner.
[RT I, 31.12.2012, 5 - entry into force 10.01.2013]

(2²) The Minister responsible for the area shall establish, by a regulation, a more detailed procedure and requirements for payment of deposits in auction environments using a method of payment which enables immediate receipt provided by the provider of the payment method.
[RT I, 31.12.2012, 5 - entry into force 10.01.2013]

(3) A bailiff may also accept as a deposit a permanent payment warranty, irrevocable payment warranty or unconditional payment warranty of a credit institution of Estonia or another Member State of the European Union issued in the amount of the deposit.

(4) A deposit need not be paid:

- 1) by the state and a local government or *Eesti Pank*;
- 2) by a claimant and a pledgee if their claim covers the required deposit.

(5) A deposit paid by a purchaser shall be included in the purchase price and, in the case of others who participated in the auction, a deposit shall be refunded on the working day following the date of the auction.

§ 84. Notification of auction

(1) An announcement of an auction shall set out:

- 1) the beginning and place of the auction and the procedure and term for registration for auction;

[RT I, 31.12.2012, 5 - entry into force 10.01.2013]

- 2) a general description of the things sold at the auction;

3) the starting price, the procedure for payment and the amount of deposit and term for the payment of the purchase price and deposit;

[RT I, 31.12.2012, 5 - entry into force 10.01.2013]

- 4) the time and place for examining the things at auction;

5) the ascertained rights of third persons encumbering a thing at auction and other encumbrances and restrictions relating to the thing;

6) a proposal to inform a bailiff of one's rights with regard to the thing at auction before the auction if the bailiff has not been informed of the rights, and the reasons of such rights at the request of the bailiff;

7) a proposal to persons who have rights obstructing the auction to terminate or suspend the auction with the agreement of a claimant or on the basis of a court decision before the date of distribution of the revenue;

- 8) [Repealed - RT I 2006, 7, 42 - entry into force 04.02.2006]

9) in the case of organisation of an electronic auction, the time when the auction ends and the interval of the end-of-auction feature.

[RT I, 31.12.2012, 5 - entry into force 01.01.2013]

(2) An announcement shall be published at least ten days before the auction in the publication *Ametlikud Teadaanded* and in a public computer network. A bailiff may also publish an announcement in a newspaper which is on sale at the place of the auction. At the request of a claimant or a debtor, a bailiff shall publish the announcement in other publications at the expense of the claimant or the debtor.

[RT I, 31.12.2012, 5 - entry into force 10.01.2013]

(2¹) [Repealed - RT I, 31.12.2012, 5 - entry into force 10.01.2013]

(3) A debtor and a claimant shall be informed of the content of the announcement of the auction at least ten days before the auction.

(4) A bailiff may also publish an announcement of an auction less than ten days before the auction or the auction may be given notice of in a manner or within a term different from that provided for in subsections (2) and (3) of this section if the thing may get destroyed or damaged or its value may decrease significantly.

[RT I 2006, 7, 42 - entry into force 04.02.2006]

§ 85. Right to examine things at auction

(1) Interested persons have the right to examine the things at auction as of the publication of the announcement until the beginning of the auction.

(2) A bailiff shall determine specific times for the examination of things. If the things are in the possession of a debtor, the debtor has the right to demand that examination take place within the period of time prescribed for enforcement actions. The bailiff shall take the interests of the owner into consideration.

(3) Interested persons have the right to examine applications submitted regarding a thing at auction and certificates concerning the thing, including the valuation report.

§ 86. Written bid

(1) A person who wishes to purchase a movable at an oral auction of the movable may, until the beginning of the auction, submit to a bailiff a written bid which shall set out:

[RT I 2009, 68, 463 - entry into force 01.01.2010]

- 1) the name, residence or seat of the person proposing the price;
- 2) a general description of the thing;

3) the price proposed for the thing.

(2) A written bid shall be submitted in a closed envelope. The envelope shall be opened at the auction.

§ 87. Person permitted to bid at auction

(1) All persons may participate in an auction as bidders unless otherwise provided by law. A debtor and a claimant may also bid at an auction.

(2) A bailiff or a person who has been present at the seizure of assets as an impartial observer and a person who organises an auction or is an impartial observer upon conduct of the auction and a person acting for the account of such person shall not participate in the auction personally or through a representative. The bailiff shall inform oral auction participants thereof before the beginning of the auction.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(3) Sale of property to a person specified in subsection (2) of this section and disposal of a thing by the specified person are void. If a new auction has to be organised for this reason, the person who committed the violation shall bear the costs of organising the auction and pay the difference between the price offered by the person and the price offered at the new auction if the price offered at the new auction is lower than the price offered by the person.

§ 87¹. Procedure for registration for auction

(1) Registration for an auction takes place before the beginning of the auction.

(2) If a movable which value does not exceed 1000 euros is sold by auction, registration for the auction is possible immediately prior to bidding.

(3) A person who wishes to participate in an auction shall register himself or herself pursuant to the procedure and within the term set out in the announcement of the auction and pay a deposit pursuant to the procedure provided for in subsections 83 (2) and (2¹) of this Code.

(4) A person is registered as a participant in an auction if his or her registration application and annexes thereto comply with the requirements of the auction, the deposit is paid and the person may participate in the auction as a bidder.

[RT I, 31.12.2012, 5 - entry into force 10.01.2013]

§ 88. Procedure for oral auction

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(1) At the beginning of an oral auction, a bailiff shall announce the important conditions relating to the property, claimants participating in proceedings, their claims, time of seizure of things, submitted applications, conditions of the oral auction and the starting price. The conditions of an oral auction include the bidding increment at the oral auction, which is determined by the bailiff taking account of the value of the thing at auction.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(2) At the beginning of an oral auction, a bailiff shall justify the determination of a starting price which is different from the one specified in the instrument of seizure.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(3) After the conditions are announced, a bailiff shall open received written bids and make a proposal to make more bids.

(4) Property shall be sold at an oral auction in the order set out in the instrument of seizure.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(5) An oral auction shall be conducted in the presence of two impartial observers, a representative of the local government or a police officer.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

§ 88¹. Procedure for electronic auction

(1) At the beginning of an auction, a bailiff shall announce the important conditions relating to the property and the auction pursuant to § 84 of this Code and the starting price in the auction environment. A bailiff shall determine the bidding increment at the auction taking account of the value of the thing at auction. In justified

cases a bailiff may determine a starting price which is different from the one specified in an instrument of seizure.

(2) An electronic auction shall be opened in the on-line environment in a manner specified in subsection 84 (2) of this Code at the time announced to the public. An electronic auction shall be open for at least five working days. The duration of an auction may be shortened in the case specified in subsection 80 (3) of this Code.

(3) [Repealed - RT I, 31.12.2012, 5 - entry into force 10.01.2013]

(4) After an auction is opened the participants start bidding from the starting price. The auction participants shall enter their bids in electronic form in full euros in accordance with the bidding increment.
[RT I 2010, 22, 108 - entry into force 01.01.2011]

(5) An electronic auction terminates at the time specified in the announcement of the auction. If a new bid is made during the interval by which the end of an auction is extended before the time the auction ends, the end of the auction is extended by the extension interval and the auction shall last until bids are made. The interval by which an auction is extended is from 1 to 60 minutes. If an auction has not ended earlier in the case of an auction with the extended end-of-auction feature, the action shall end when 120 hours have expired from the end of the auction set out in the announcement.

[RT I, 31.12.2012, 5 - entry into force 01.01.2013]

(6) The Minister responsible for the area may establish by a regulation technical requirements for conducting electronic auctions.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

§ 88². Procedure for simplified auction

(1) A simplified auction shall be conducted by a person authorised by the Chamber. A simplified auction shall be conducted efficiently and at the minimum possible cost.

(2) An announcement of a simplified auction shall be published at least three working days before the auction is held. An announcement shall set out a general description of the things sold at the auction and the time and place for examining the things at auction.

(3) A debtor and a claimant shall be informed of the content of the announcement of the simplified auction at least three working days before the auction.

(4) The terms specified in subsections (2) and (3) of this section shall not apply in the case of auctions of highly perishable things.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

§ 89. Rejection of bids

(1) A bailiff shall reject an invalid bid. The following, in particular, are deemed to be invalid bids:

- 1) bids which do not cover the starting price;
- 2) bids of persons who are not allowed to participate in the auction;
- 3) contingent bids.

(2) A bailiff may reject a bid intended to cause an auction to fail.

(3) If the validity of a bid depends on the extent of the right of representation of the person representing a bidder or the consent of another person, a bailiff shall reject the bid unless the right of representation or consent is proved immediately.

§ 90. Duration of oral auction

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(1) An oral auction shall be continued until no outbids are submitted on the proposal of a bailiff to submit bids.
[RT I 2009, 68, 463 - entry into force 01.01.2010]

(2) [Repealed - RT I 2009, 68, 463 - entry into force 01.01.2010]

§ 91. Declaration of best bid

(1) At an oral auction a bailiff shall announce the last outbid and the end of the auction at the auction. The last outbid at an oral auction is declared to be the best after it has been announced three times.

(2) At an electronic auction the bid with the highest price submitted in the auction environment by the end of the auction is declared to be the best.

(3) If the best bidder has assigned the rights of a purchaser to another person and the other person also assumes the obligations arising from the best bid, the appropriate applications shall be submitted to the bailiff during the term of payment of the purchase price.
[RT I, 31.12.2012, 5 - entry into force 10.01.2013]

(4) A bailiff shall refuse to declare a bid to be the best if the conditions of the auction have been materially violated or the right of a third person obstructs the auction or continuation of the auction.

(5) The best bid shall be announced to the participants of an oral auction at the place of the auction on the day of the auction and in the case of an electronic auction in the auction environment on the working day following the date of the auction. If a bidder participates in opening of the bids, he or she shall be deemed to be informed of the results of the auction. In exceptional cases, a bailiff may postpone the announcement by up to seven days. The bailiff shall notify the participants in the auction immediately of postponement.
[RT I, 31.12.2012, 5 - entry into force 10.01.2013]

(6) Declaration of the best bid is valid as of the time of its announcement.
[RT I 2009, 68, 463 - entry into force 01.01.2010]

§ 92. Objections of persons present at oral auction

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(1) After the announcement of the last outbid, persons who are present may submit objections concerning the conduct of an auction. A bailiff shall inform them of the right.

(2) A bailiff shall enter the objections in the report on the auction.

(3) If the persons present submit no objections, they have no right to file complaints against the incorrect preparation of a report or rely on the fact that the report is incorrect or the conditions of an auction were materially violated later.

§ 92¹. Objections of participants in electronic auction

Participants in an electronic auction may submit objections concerning the conduct of the auction within the working day following the date of termination of the auction. The provisions of sections 92 (2) and (3) of this Code shall apply to objections submitted and consequences of failure to submit objections.
[RT I 2009, 68, 463 - entry into force 01.01.2010]

§ 93. Obligation to pay purchase price immediately

(1) The winner of an oral auction shall pay the purchase price immediately after the end of the auction.
[RT I 2009, 68, 463 - entry into force 01.01.2010]

(2) If the purchase price exceeds 12,700 euros, the winner of an oral auction shall pay one-tenth of the purchase price immediately after the end of the auction, the rest of the price shall be paid within fifteen days. If a debtor is the purchaser, he or she shall pay the total purchase price immediately.
[RT I 2010, 22, 108 - entry into force 01.01.2011]

(2¹) The winner of an electronic auction shall pay the purchase price on the working day following the date of termination of the auction in a manner provided for in subsection (3) of this section. If the purchase price exceeds 12,700 euros, one-tenth of the purchase price shall be paid on the working day following the date of termination of the auction, the rest of the price shall be paid within fifteen days. If a debtor is the purchaser, he or she shall pay the total purchase price on the working day following the date of the auction.
[RT I 2010, 22, 108 - entry into force 01.01.2011]

(3) For the purposes of subsections (1) and (2) of this section, immediate payment means payment of the purchase price in cash or to the account specified by the bailiff. If the purchase price is paid to the account specified by the bailiff, the purchase price is deemed paid to the bailiff as of the crediting of the account of the bailiff in the amount of the purchase price. A bailiff may accept as immediate payment also a permanent payment warranty, irrevocable payment warranty or unconditional payment warranty of a credit institution of Estonia or another Member State of the European Union provided at least in the amount of the purchase price.
[RT I, 31.12.2012, 5 - entry into force 10.01.2013]

(4) If a claimant is the purchaser and his or her claim exceeds or is equal to the purchase price, the claim of the claimant shall be set off to the extent which corresponds to the share the claimant would be entitled to receive upon distribution of revenue received from the sale of the property purchased by the claimant. The claimant

shall pay the share of the purchase price which was not set off to the official bank account of the bailiff pursuant to the procedure provided for in this section.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(5) A thing shall be delivered to the purchaser after payment of the total purchase price.

(5¹) If the purchase price is paid in the auction environment by means of the method of payment provided by the service provider and enabling immediate receipt thereof, the purchase price is deemed to have been paid to the bailiff as of the crediting of the central account of the Chamber in the amount of the purchase price. The buyer shall cover the costs relating to the payment of the deposit in the specified manner.

[RT I, 31.12.2012, 5 - entry into force 10.01.2013]

(5²) The Minister responsible for the area shall establish, by a regulation, a more detailed procedure and requirements for payment of the purchase price in auction environments using a method of payment which enables immediate receipt provided by the provider of the payment service.

[RT I, 31.12.2012, 5 - entry into force 10.01.2013]

(6) A bailiff shall extend the term for the payment of the purchase price provided for in subsection (2) of this section at the request of the purchaser by additional fifteen days. A bailiff shall formalise the extension of the term for the payment of the purchase price as a decision. The decision shall be forwarded to the debtor, the claimant, the person who submitted the best bid and persons whose rights regarding the thing at auction are known to the bailiff.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

§ 93¹. Payment of purchase price by loan

(1) If a purchaser wishes to buy a thing sold at an auction by a loan granted by a credit institution, he or she shall notify a bailiff thereof immediately after his or her bid is declared to be the best. Notification of the bailiff on the date of declaring the bid to be the best is deemed to be immediate notification.

(2) The obligation provided for in § 93 of this Code to pay one-tenth of the purchase price or the total purchase price immediately does not apply to the purchaser upon payment of the purchase price by a loan. The purchaser undertakes to pay the total purchase price or ensure performance of the obligation to pay the purchase price by a credit institution within fifteen days as of the day following the date the bid is declared to be the best.

(3) A debtor shall not apply for payment of the purchase price by a loan.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

§ 94. Increase of paid amount

(1) If it becomes evident after an auction that the right of security or another right taken into account upon determination of a starting price is invalid or has extinguished, the purchaser who knew or should have known that the right is invalid or has extinguished shall also pay, in addition to the purchase price, the amount taken into account upon determination of the starting price to the extent of the value of the right.

(2) The provisions of subsection (1) of this section also apply if the right is conditional and a suspensive condition is not fulfilled or a resolutive condition is fulfilled and the purchaser knew or should have known that upon submitting the bid.

§ 95. Acceptance of revenue of auction

(1) An amount of money corresponding to the best bid is deemed to be the revenue of an auction. The revenue of an auction shall be accepted by a bailiff. The procedure for the acceptance of the revenue and transfer of the revenue to a claimant shall be established by a regulation of the Minister responsible for the area.

(2) An amount remaining after the covering of enforcement costs and satisfaction of claims shall be returned to a debtor.

§ 96. Report on auction

(1) A bailiff shall prepare a report on an auction which shall be signed by the bailiff and impartial observers. The format of the report shall be established by a regulation of the Minister responsible for the area.

(2) A report at an auction shall, inter alia, set out the following information:

- 1) information on the thing at auction;
- 2) the name and personal identification code or register code of the purchaser;
- 3) the price of the best bid and the manner and term of payment;
- 4) the conditions of transfer of the thing.

(3) If a thing has to be registered in the name of the purchaser in a register, the registration shall be done on the basis of a copy of the report on the auction.

(4) A bailiff shall deliver a report on an auction to the claimant, the debtor, the person who submitted the best bid and the persons whose rights regarding the thing at auction are known to the bailiff.

§ 97. Termination of auction before sale of things

(1) An oral auction shall be terminated if, after the beginning of an oral auction but before the declaration of the last bid as the best, a debtor or a third person who has the right to satisfy the claim of a claimant pays a sum of money to a bailiff which is necessary to satisfy the claim of the claimant and cover the enforcement costs.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(1¹) If the property of a debtor is sold at an electronic auction, the debtor has the right to satisfy the claim of a claimant before the end of an electronic auction. If a debtor or a third person pays a sum of money to the bailiff which is necessary to satisfy the claim of the claimant and cover the enforcement costs, the bailiff shall immediately cancel the auction conducted in the auction environment and notify the participants in the auction of termination of the auction. The deposit paid by the participants in the auction shall be refunded not later than on the following working day.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(2) The sale of the rest of the things at an auction shall be terminated if the sum received from the sale of a portion of the things is sufficient to satisfy the claim of a claimant and cover the enforcement costs.

§ 98. Legal consequences of auction

(1) Ownership regarding a thing sold at an auction is created upon delivery of the thing on the basis of a report on the auction.

(2) No ownership is created if seizure is void or the essential conditions of an auction have been violated and a court has declared the auction to be invalid. This applies regardless of the fact whether the person who purchased a thing at an auction knew of the aforementioned circumstances.

(3) For the creation of ownership, the prerequisites provided for in the Law of Property Act need not be complied with, in particular a claim set out in an enforcement instrument need not actually exist and a thing sold at an auction need not belong to a debtor. This does not preclude filing of claims for compensation for unlawfully caused damage.

(4) If an acquirer has paid the price at an auction and, due to reasons specified in subsection (2) of this section, no ownership is created, the acquirer may file a claim against a claimant arising from unjustified enrichment. This does not preclude claims for compensation for unlawfully caused damage.

(5) The right of pre-emption cannot be exercised at an auction.

§ 99. Failure of auction

(1) A bailiff shall declare an auction to have failed, if:

1) no participants appear at the auction or no written or electronic bids are submitted;

[RT I 2009, 68, 463 - entry into force 01.01.2010]

2) no bids are submitted at least to the extent of the starting price;

3) the best bidder fails to pay the purchase price or one-tenth of the purchase price by the prescribed time;

4) all bids are rejected.

(2) Upon failure of an auction, the right of security of a claimant regarding seized assets shall continue.

§ 99¹. Suspension of auction due to interruption in auction environment

If there is an interruption in the auction environment during the end of an auction, the auction shall be suspended for the term of the interruption and it shall continue after the end of the interruption. The time of the end of the auction shall be postponed by the term of the interruption.

[RT I, 31.12.2012, 5 - entry into force 01.01.2013]

§ 100. Repeated auction

(1) Upon failure of an auction, a claimant may demand that a repeated auction be organised.

(1¹) If a repeated auction is organised, a bailiff shall select either an electronic or oral auction.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(2) A repeated auction shall not be organised earlier than ten days after the first auction is declared to have failed, except in the case provided for in subsection 84 (4) of this Code.

(3) If a purchaser violates the obligation to pay the purchase price or one-tenth of the purchase price for a thing purchased at an auction, the thing shall be immediately submitted to a repeated auction. Upon conducting an oral auction a bailiff shall inform the participants of the possibility of a repeated auction upon termination of the auction. In such case, the bailiff does not have the right to reduce the price of the thing at the repeated auction. [RT I 2009, 68, 463 - entry into force 01.01.2010]

(4) An initial purchaser shall not participate in a repeated auction organised due to the circumstances specified in subsection (3) of this section. The deposit paid thereby shall not be refunded and shall be transferred to the common budget section of the Chamber. The initial purchaser shall pay the difference between the price offered by the initial purchaser and the price offered at the repeated auction if the price offered at the repeated auction is lower than the price offered by the initial purchaser. The debtor shall have the right to collect the specified price difference from the initial purchaser.

[RT I, 31.12.2012, 5 - entry into force 10.01.2013]

[RT I, 27.06.2019, 2 - entry into force 21.06.2019 - Judgment of the Constitutional Review Chamber of the Supreme Court declares the second sentence of subsection 100 (4) of the Code of Enforcement Procedure unconstitutional and invalid insofar as a bailiff has no discretion in deciding on return of deposits paid by participants in auctions held in execution proceedings as regards the issue to what extent the deposits have to be returned to the persons who paid them and to what extent they have to be transferred to the common part of the budget of the Estonian Chamber of Bailiffs and Trustees in Bankruptcy.]

(5) A repeated auction shall be conducted pursuant to the procedure prescribed for the first auction. A bailiff may reduce the price of things, but not more than by 25 per cent compared to the starting price of the previous auction, after asking the opinion of a debtor and a claimant concerning the reduction of the price. The price of the things shall not be reduced more than 70 per cent compared to the starting price at the first auction.

[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

§ 101. Sale of thing in other manner

(1) On the basis of an application of a claimant and a debtor, a bailiff may sell seized things in a manner different from an oral or electronic auction if the auction has failed or it can be presumed that the thing cannot be sold at an auction or the revenue presumably received from the thing at an auction is significantly smaller as compared to the revenue received when the thing is sold in any other manner.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(2) If an auction has failed due to violation of the obligation to pay the purchase price, a bailiff may sell assets in another manner different from an auction only if the repeated auction has also failed.

(3) A bailiff shall deliver a notice to a debtor and a claimant concerning the intention to sell things in another manner. Without the consent of a party, the claimant shall not sell the things before seven days have passed after delivery of the notice.

(4) Upon sale in another manner, a bailiff may discount the assets, but not more than 50 per cent compared to the value set out in an instrument of seizure, after requesting the opinion of a debtor and a claimant concerning the discount.

(5) A bailiff may sell a thing to a claimant. In such case, the claim of the claimant shall be set off and the purchase price is deemed to be paid by a debtor to the claimant to the extent of the debt. If the purchase price is lower than or equal to the claimant's claim, the provisions of subsection 93 (4) of this Code apply to set-off of the claimant's claim.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(6) A bailiff shall prepare a report concerning the sale of a thing in another manner in the format approved by the Minister responsible for the area. The right of ownership shall be entered in a register on the basis of a copy of the report.

(7) The provisions concerning the legal consequences of an auction apply to the legal consequences of sale in another manner, unless otherwise provided by law.

§ 101¹. Sale of movables of negligible value in another manner

(1) If, pursuant to the instrument of seizure, the price of seized movables does not exceed 100 euros and organisation of an auction is inexpedient, a bailiff shall sell the thing in another manner. The bailiff may also organise the sale of things through persons who engage in the sale of things in their ordinary course of business.

(2) A bailiff shall make a decision on sale of things of negligible value in another manner and deliver it to the debtor and the claimant. The bailiff shall *inter alia* set out in the decision the list of the things sold in another manner, the requirements for discounting the things, the minimum selling price and the place of sale of the things.

(3) Information concerning the sale of movables of negligible value in another manner shall be published on the website of the Chamber at least three working days before the delivery of the thing for sale. The information shall *inter alia* set out the name of the bailiff, general description of the things sold and the place of sale.

(4) The term specified in subsection (3) of this section shall not apply if the thing may become unfit for use.

(5) In the case of sale of movables of negligible value in another manner, the asset may be discounted every five working days by up to ten percent compared to the price set out in the instrument of seizure. If a thing cannot be sold, the thing shall be returned to the debtor. Things which cannot be returned to the debtor may be destroyed or transferred for charitable reasons.

(6) A bailiff shall enter in an enforcement file the name of the things sold, details of the selling price, time of selling thereof and the person through whom the bailiff organised the sale of the thing.

[RT I, 31.12.2012, 5 - entry into force 10.01.2013]

§ 102. Sale of thing under supervision of bailiff

(1) On the basis of an application of a debtor and with a consent of a claimant, a bailiff may permit that the debtor sell a seized thing under the supervision of the bailiff.

(2) A bailiff may permit that a debtor sell a thing also regardless of a consent of a claimant if an auction failed or it can be presumed that the thing cannot be sold at an auction or the revenue presumably received from the thing at an auction is significantly smaller as compared to the revenue received when the sale of the thing is organised by the debtor. If an auction failed due to violation of the obligation to pay the purchase price, a bailiff may permit that the debtor sell things without the consent of the claimant only if the repeated auction has also failed.

(3) A bailiff shall deliver to a claimant a notice concerning the request of a debtor to sell a thing in another manner, unless a consent of the claimant to sell the things in another manner is submitted to the bailiff. The bailiff shall not grant consent to the debtor for the sale of the thing before seven days have passed after the delivery of the notice to the claimant, unless the claimant responds to the notice earlier.

(4) A bailiff shall not permit that a debtor sells assets at a price which is lower than that indicated in an instrument of seizure of assets. The bailiff shall ensure that the revenue received from the sale of a thing is paid to the official bank account of the bailiff.

(5) A bailiff may consent to the sale of a thing to a claimant. In such case, the claim of the claimant shall be set off and the purchase price is deemed to be paid by a debtor to the claimant to the extent of the debt. If the purchase price is lower than or equal to the claimant's claim, the provisions of subsection 93 (4) of this Code apply to set-off of the claimant's claim.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(6) A thing shall be sold under the supervision of a bailiff pursuant to the procedure prescribed in the Law of Obligations Act. The bailiff shall grant consent for the sale.

§ 103. Passing of risk of accidental loss of sold thing and liability for defects of thing

(1) Upon sale of a thing in enforcement proceedings, the risk of accidental loss of the sold thing passes to a purchaser as of the time of delivery of the thing. As of delivery, the purchaser shall incur all costs and encumbrances relating to the thing and receive all the profit.

(2) Upon sale of a thing in enforcement proceedings, a bailiff or a debtor shall not be liable for any defects in the sold thing. This does not preclude the possible liability of the debtor for unlawfully caused damage.

(3) The provisions of subsections (1) and (2) of this section shall not apply if a thing is sold by a debtor under the supervision of a bailiff.

§ 104. Extinguishment of real rights of third persons upon sale

(1) When ownership is created regarding a thing sold by a bailiff, the real rights of a third person regarding the transferred thing which encumbered a movable shall extinguish, unless otherwise provided by law. The right of a claimant is also deemed to have extinguished, if a claim for payment is made to satisfy a claim arising from the right.

(2) A real right of a third person regarding a sold thing does not extinguish if a proprietor of the right and a purchaser agree thereon or if the right was created before the right based on which enforcement proceedings are conducted.

(3) If a thing is sold by a debtor under the supervision of a bailiff, the rights of third persons regarding the thing extinguish pursuant to the provisions of the Law of Property Act.

Division 3

Distribution of Revenue between Claimants

§ 105. Distribution of revenue received from sale of things

(1) A bailiff shall distribute the revenue received from the sale of things between claimants and other persons entitled to participate in the revenue in the order of creation of the rights of security or according to an agreement between claimants. The rights of security which were created at one and the same time have the same ranking upon distribution of the revenue.

(2) A bailiff shall transfer the money to claimants and other persons entitled to participate in the revenue within ten working days as of the receipt of the money on the official bank account of the bailiff or, in the case of a distribution plan, as of approval of the distribution plan, but not before entry of the mortgage to be entered in the land register in order to secure an obligation to pay the loan granted by a credit institution for financing the purchase of an immovable in enforcement proceedings.
[RT I 2009, 68, 463 - entry into force 01.01.2010]

§ 106. Distribution of revenue pursuant to distribution plan

(1) If the received revenue is not sufficient to satisfy all claims and claimants are unable to reach an agreement as regards the distribution of money, a bailiff shall organise the distribution of revenue between the claimants participating in the enforcement proceedings pursuant to a distribution plan.

(2) A distribution plan shall be prepared and revenue shall be distributed on the basis of the ranking of rights of security. Enforcement costs are deducted from the revenue to be distributed pursuant to the distribution plan.

(3) If, upon preparation of a distribution plan, it is unclear whether a purchaser has to pay an additional amount according to § 94 of this Code, the additional amount shall be indicated in the distribution plan as conditional and shall be distributed later upon its receipt.

(4) A bailiff shall deliver a distribution plan to claimants and inform them of the right to file a claim for amendment of the plan upon disagreement with the plan.

§ 107. Consideration of temporary claim and contingent claim

(1) Upon distribution of revenue, a temporary claim is deemed to fall due and the claim is subject to satisfaction.

(2) If a claim is not subject to interest payments, a bailiff shall, according to § 94 of the Law of Obligations Act, deduct from the sum of the claim the interest for the period as of the date of payment of revenue until the claim falls due.

(3) If a claim is contingent upon a suspensive condition, a bailiff shall deposit the amount for the benefit of a claimant. The amount shall be deposited under the same conditions as the conditions for the claim. The bailiff shall pay the deposited amount to an entitled person when the claim falls due.

(4) In the case specified in subsection (3) of this section, the right of an entitled person to a deposited amount shall extinguish ten years after the amount is deposited if the entitled person has not made an appearance to receive the deposited amount within the term.

(5) After the expiry of the term provided for in subsection (4) of this section, the deposited amount shall be paid to a person who was the owner of the thing at the time it was sold. If the owner does not demand payment of the amount within one year after the creation of the right of claim, the money shall be transferred into the state budget.

§ 108. Application of person who is not claimant for satisfaction of claim out of revenue

(1) A pledgee or another person with the right of pre-emption in respect of a thing may, before the distribution of revenue, submit an application to a bailiff in which the person applies for the preferred satisfaction of his or her claim from the revenue, regardless of whether or not his or her claim has fallen due. Documents which certify the right shall be appended to the application.

(2) A person whose right is extinguished by compulsory enforcement may, before the sale of a thing, submit an application to a bailiff in which the person applies for compensation for the extinguished right out of revenue. Documents which certify the right shall be appended to the application.

(3) A bailiff shall forward an application of a third person together with the documents which certify the right to a debtor and claimants.

(4) A bailiff shall take a claim of a pledgee or another person with the right of pre-emption into account upon distribution of revenue and preparation of a distribution plan on the basis of the ranking of the right if the right of security of a person who submitted an application is evident from a publicly reliable register or a contract on which pledge or another pre-emptive right is based is authenticated by a notary.

(5) A bailiff shall take a claim of the proprietor of a right which extinguished upon compulsory enforcement into account if the right has been certified before sale, on the basis of the earlier ranking of the right. If the right is not evident from a publicly reliable register, the claim shall be satisfied after the claims of claimants. If the right has not been given notification of in due time, the claim arising from the right shall be satisfied after all other claims.

(6) If claimants and a debtor fail to inform a bailiff before the distribution of revenue that they contest an application, the claim of the person who submitted an application shall be taken into account upon distribution of revenue and preparation of a distribution plan, on the basis of the ranking of the claim of the person.

(7) If a claim of a person who submitted an application is not taken into account upon distribution of revenue and preparation of a distribution plan, a bailiff shall explain to the person who submitted the application an opportunity to file an action for the acceptance of the claim. The action may be filed within fifteen days after the time when the person who submitted the application became aware of refusal to take the claim of the person into account.

§ 109. Contestation and approval of distribution plan

(1) Within fifteen days after delivery of a distribution plan, a claimant may file an action against a bailiff and a concerned claimant for the contestation of a distribution plan with a county court of the seat of the bailiff's office conducting the distribution proceedings.

(2) A court may, for the period of the proceedings in respect of an action, suspend implementation of a distribution plan to the extent which is contested.

(3) If a bailiff has not been notified of an action for contestation of a distribution plan within twenty days as of delivery of the distribution plan to claimants, the distribution plan is deemed to have been approved and the bailiff shall pay the revenue taking into account the specifications provided for in subsection 105 (2) of this Code.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(4) At the request of a plaintiff, a court may amend a distribution plan or demand that a bailiff prepare a new distribution plan.

Chapter 7 MAKING CLAIM FOR PAYMENT ON PROPRIETARY RIGHTS

Division 1 General Provisions

§ 110. Application of provisions regarding making claim for payment on movables

The provisions regarding making a claim for payment on movables apply upon making a claim for payment on proprietary rights, unless otherwise provided for in this Chapter.

§ 111. Making claim for payment on claim

In order to make a claim for payment on a claim, a bailiff shall seize the claim and oblige a third person who has obligations to a debtor to perform the obligations to the bailiff for the benefit of a claimant. The bailiff shall, by an instrument of seizure, prohibit the debtor from disposing of the claim, in particular from collecting the claim.

§ 112. Claims on which claim for payment cannot be made

(1) A claim for payment cannot be made on a claim which cannot be assigned, unless otherwise provided by law.

(2) A claim for payment may be made on a claim the assignment of which is precluded or restricted by an agreement between parties.

(3) A claim for payment may be made on a claim which cannot be assigned because the obligation cannot be performed to any other than the existing creditor without changing the nature of the obligation, if the object owed can be seized.

(4) A claim for payment may be made on a claim for a compulsory portion of a spouse from an estate only if the claim for the compulsory portion has been recognised by an agreement or a debtor has filed an action for the collection of the compulsory portion. The same applies to a claim of a donor for the reclamation of a gift and to a claim of a debtor for compensation for non-proprietary damage.

§ 113. Seizure of contingent claim and future claim

(1) A contingent claim may be seized.

(2) A future claim may be seized if it is possible to sufficiently define the claim at the time of the seizure.

§ 114. Instrument of seizure of claim

(1) An instrument of seizure of a claim shall contain the following information:

- 1) the amount to be collected;
- 2) a general description of the claim to be seized;
- 3) a reference to an enforcement instrument;
- 4) an order to perform the obligation to a bailiff instead of a debtor.

(2) Seizure of a future claim shall be set out in an instrument of seizure.

(3) A bailiff shall deliver an instrument of seizure to a third person who has obligations to a debtor. The bailiff shall deliver the instrument of seizure to the debtor immediately after the delivery of the instrument to the third person who has obligations to a debtor.

(4) A claim has been seized if an instrument of seizure has been delivered to a third person who has obligations to a debtor.

(5) If a bailiff has sent an instrument of seizure of a claim to a third person for enforcement, the instrument of seizure is also deemed to be in force in respect of the claims of a debtor which arise in the future. The instrument of seizure is in force until the claim is fulfilled. When the claim is fulfilled, the bailiff shall promptly cancel the instrument of seizure and notify a third person who has obligations to the debtor of the cancellation of the instrument of seizure.

[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

§ 115. Making claim for payment on debtor's account

(1) A claim for payment may be made on a debtor's account. A credit institution shall issue information to a bailiff concerning the existence or absence of an account.

(2) An account shall be seized on the basis of an instrument of seizure to the extent indicated therein. The money on the account shall be transferred pursuant to an instrument of seizure to the extent of the seized amount to the official bank account of a bailiff unless a ruling on securing an action other than a ruling on securing an action concerning a claim for support for a child made during court proceedings is the enforcement instrument. If, at the moment of seizure, money to the extent indicated in the instrument of seizure is not on the account of a debtor, the amounts received on the account after the moment of seizure are also deemed to be seized up to the outstanding amount. The amount received on the account after the moment of seizure shall be transferred to the official bank account of a bailiff until the enforcement of the instrument of seizure.

[RT I 2007, 25, 130 - entry into force 01.01.2008]

(3) An instrument of seizure shall be forwarded to a credit institution electronically so that bailiffs can use it through the compulsory information system. An account shall be deemed to be seized after the credit institution has received an electronic instrument of seizure. A bailiff shall forward the instrument of seizure to a debtor immediately after receiving information from the credit institution concerning establishment of electronic seizure.

(4) A credit institution which does not use the system of electronic seizure undertakes to accept an instrument of seizure on paper or with a digital signature and to organise immediate enforcement of the instrument of seizure. The credit institution shall immediately inform a bailiff if there are no financial resources for enforcement of the instrument of seizure on the seized account at the moment of seizure. The bailiff shall

forward the instrument of seizure to a debtor immediately after he or she becomes aware of full or partial enforcement of the instrument of seizure.

(5) If a bailiff has sent an instrument of seizure of an account of a debtor to a credit institution for enforcement, the instrument of seizure is also deemed to be in force in respect of the accounts to be opened by the debtor in the future. An account opened is deemed seized from the opening of the account unless the opening of the account is controlled electronically through the electronic seizure system provided for in § 63¹ of this Act.
[RT I, 14.03.2011, 1 - entry into force 01.01.2012]

(51) A credit institution may refuse to open an account for a debtor if an instrument of seizure received from a bailiff is subject to enforcement in the same credit institution regarding an account of the debtor.
[RT I, 14.03.2011, 1 - entry into force 01.01.2012]

(6) After the enforcement of an instrument of seizure, an account of the person shall be released from seizure. When the claim is satisfied, a bailiff shall promptly cancel all the instruments of seizure prepared for the fulfilment of this claim and notify each credit institution to which the instrument of seizure was sent of the cancellation of the instrument of seizure.
[RT I, 14.03.2011, 1 - entry into force 01.01.2012]

(7) The format of instruments of seizure and the procedure and technical requirements for electronic seizure shall be established by the Minister responsible for the area.

§ 116. Specifications for seizure of claim secured by mortgage and real encumbrance

(1) In order to seize a claim secured by a mortgage, an entry concerning the seizure of the mortgage shall be made in the land register on the basis of an instrument of seizure in addition to the delivery of an instrument of seizure. A bailiff shall send the instrument of seizure and an application for the entry of a notation concerning prohibition to the land registry department.
[RT I 2010, 38, 231 - entry into force 01.07.2010]

(2) If an instrument of seizure is delivered to a third person who has obligations to a debtor before the entry of the seizure, the seizure is enforced in respect of the person as of the time of the delivery.

(3) The provisions of subsections (1) and (2) of this section also apply to claims for payment made on real encumbrances and to seizure of claims secured by maritime mortgages or the right of security entered in the civil aircraft register, unless otherwise provided by law.

§ 117. Explanations of third person who has obligations to debtor

(1) A bailiff shall oblige a third person who has obligations to a debtor to inform the bailiff at the request of a claimant within the term determined by the bailiff whether:

- 1) the person recognises existence of a claim of the debtor and is ready to perform the obligation;
- 2) other persons have submitted claims regarding the claim and the content of the claims;
- 3) the claim of the debtor has already been seized for the benefit of other claimants and the content of their claims.

(2) A third person who has obligations to a debtor shall be liable for damage caused to a claimant due to the failure of the third person to perform obligations.

(3) A bailiff shall communicate the received information immediately to a claimant.

§ 118. Collection of claims from third persons

(1) In the case of seizure of a claim, a claimant has the right to demand that a third person perform an obligation instead of a debtor for the benefit of the claimant to a bailiff, including the right to file an action against a third person who has obligations to the debtor. In the case of several claimants, each of them may file an action for the satisfaction of a claim for all claimants.

(2) A debtor shall provide information necessary for the collection of a claim and the documents relating to the claim to a claimant. In order to receive information, the claimant may request that an oath be taken from the debtor and, in order to receive the documents, request that a bailiff perform the enforcement actions necessary for the reclamation of a movable.

(3) In a court action, a claimant who has filed an action for the satisfaction of a claim against a third person who has obligations to a debtor shall apply for the involvement of the debtor as a third person from a court, unless the residence or seat of the debtor is outside of the Republic of Estonia and the debtor does not have a representative in Estonia or the involvement means public delivery.

(4) A debtor may demand that a claimant compensate for damage arising from the delay in filing an action or failure to involve the debtor in proceedings as a third person.

§ 119. Distribution of revenue received from financial claim

(1) If several bailiffs have seized a financial claim for the benefit of several claimants, a third person who has obligations to a debtor, including a credit institution, shall pay money to the bailiffs in the order of receipt of instruments of seizure. An instrument of seizure prepared on the basis of a claim for support for a child shall be deemed to be received first regardless of the moment of the receipt.

[RT I 2007, 25, 130 - entry into force 01.01.2008]

(2) If money received from a claim is not sufficient for the satisfaction of all claims for payment, a bailiff shall distribute the money according to the chronological order of instruments of seizure pursuant to the procedure prescribed for the distribution of revenue received from the sale of movables.

§ 120. Preliminary seizure of claim

(1) Before seizure, a claimant may have a bailiff deliver, on the basis of an enforcement instrument, to a debtor and a third person who has obligations to the debtor a notice regarding the fact that, due to the planned seizure, the third person who has obligations to the debtor shall not make payments to the debtor and the debtor is not permitted to dispose of the claim, in particular collect the claim.

(2) A notice of preliminary seizure delivered to a third person who has obligations to a debtor has the same legal consequences as seizure conducted in the course of enforcement proceedings if a claim is seized within thirty days after the delivery of the notice.

§ 121. Making claim for payment on claim in other manner

(1) On the basis of an application of a claimant or a debtor, a bailiff may make a claim for payment on a claim in any other manner than by demanding that a third person perform obligations in respect of the debtor if the seized claim is contingent or postponed or if collection of the claim is aggravated due to a counter-claim or for other reasons. The bailiff may sell the claim.

(2) A bailiff shall deliver an application for making a claim for payment on a claim in any other manner to a claimant or a debtor, unless the consent of the counterparty regarding making a claim for payment on a claim in the other manner is submitted to the bailiff. The bailiff shall not decide on making a claim for payment on a claim in any other manner earlier than eight days after delivery of the notice to the counterparty of the publisher of the notice, unless the counterparty has responded to the notice earlier.

§ 122. Specifications for making claim for payment on claim for transfer of possession of movable or right of ownership

(1) Upon seizure of the possession of a movable or a right of ownership, a thing shall be delivered to a bailiff.

(2) Upon delivery of a thing, the right of security is created on the thing for the benefit of a claimant.

(3) If a claim for the transfer of the possession of a movable or a right of ownership is seized for the benefit of several claimants, a third person who has obligations to a debtor shall deliver the thing to a bailiff who was the first to deliver the instrument of seizure to the person. If a person who has obligations to the debtor does not deliver the thing to the bailiff, the claimant has the right to file an action for delivery of the thing.

(4) The provisions regarding the sale of seized things apply to the sale of delivered things and distribution of the revenue received from the sale.

[RT I 2006, 7, 42 - entry into force 04.02.2006]

§ 123. Specifications for making claim for payment on claim for transfer of possession of immovable or right of ownership

(1) Upon seizure of a claim for the transfer of the possession of an immovable or a right of ownership, a thing shall be transferred to the possession of a bailiff or to the possession of a third person designated by the bailiff or shall be left in the possession of a third person who has obligations to the debtor.

(2) If a claim for the transfer of the possession of an immovable or a right of ownership is seized for the benefit of several claimants, a third person who has obligations to a debtor shall deliver a thing to a bailiff or to the possession of a third person designated thereby who was the first to deliver the instrument of seizure to the person.

(3) A preliminary notation for the benefit of the claimant shall be entered in the land register on the basis of a unilateral written application of a bailiff.

(4) A claim for payment shall be made on an immovable pursuant to the procedure provided for making of claims for payment on immovables. If a person who has obligations to a debtor does not deliver a thing, the claimant has the right to file an action for delivery of the thing.

(5) The provisions of subsections (1) to (4) of this section also apply upon making a claim for payment on a claim for the transfer of possession or ownership of a ship entered in a ship register or aircraft entered in a civil aircraft register.

[RT I 2006, 7, 42 - entry into force 04.02.2006]

§ 124. Making claim for payment on securities

(1) In order to seize securities listed in § 2 of the Estonian Central Register of Securities Act, a bailiff shall send an order to make a notation concerning prohibition on the disposal of rights and obligations. A security is seized as of its freezing in the register. The registrar is required to organise freezing immediately after the receipt of an order to seize.

(2) After the delivery of an order, a bailiff shall deliver a notice concerning the seizure of securities immediately to a debtor.

(3) If a security exists on paper, a bailiff shall take possession of the security from a debtor.

(4) A bailiff shall sell securities according to the provisions regarding making claims for payment on movables. A bailiff has the right to register a registered security in the name of a purchaser and submit the necessary applications therefor instead of a debtor.

(5) A bailiff shall present a bill of exchange, cheque or a bond for payment if this is possible arising from the security.

(6) In order to sell securities registered in the Estonian Central Register of Securities, a bailiff shall submit an order to the registrar for the transfer of the seized securities to the official bank account of the bailiff. An order shall be communicated to the registrar by post or, upon existence of the necessary technical conditions and a corresponding agreement, electronically so that the bailiff can use it through the compulsory information system. The registrar shall enforce the order by way of debiting the securities account of the debtor and crediting the securities account of the bailiff.

(7) A bailiff shall sell securities transferred to the official bank account of the bailiff according to the provisions regarding making claims for payment on movables, by transferring the securities to a purchaser by way of a transfer of securities provided for in the Estonian Central Register of Securities Act. The bailiff may also sell securities listed on the exchange or admitted for trading on a regulated securities market on the corresponding stock exchange or regulated market, taking account of the requirements provided for in the rules and regulation of the corresponding stock exchange or regulated market concerning the conducting of transactions and settlement.

(8) Securities on which a claim for payment cannot be made may be prescribed by law.

§ 125. Making claim for payment on share of private limited company

(1) If a share of a private limited company is not entered in the Estonian Central Register of Securities, the share is deemed to be seized pursuant to the procedure provided for the seizure of movables. A bailiff shall inform the management board of the private limited company of the seizure.

(2) A bailiff shall sell a share of a private limited company according to the provisions regarding making claims for payment on movables.

(3) The bailiff who sells a share shall send a notice concerning the transfer of the share in the form established by the Minister responsible for the area to the registrar of the commercial register within two days as of the auction.

[RT I 2009, 51, 349 - entry into force 15.11.2009]

§ 125¹. Making claim for payment on membership of building association

(1) Membership of a building association is deemed to be seized pursuant to the procedure provided for the seizure of movables. A bailiff shall inform the management board of the building association and the registrar of the non-profit associations and foundations register of the seizure.

(2) A bailiff shall sell membership of a building association according to the provisions regarding making claims for payment on movables.

(3) A bailiff who sells a share shall send a notice concerning the transfer of the membership in the form established by the Minister responsible for the area to the building association and the registrar of the non-profit associations and foundations register within two days as of the auction.
[RT I 2009, 51, 349 - entry into force 15.11.2009]

§ 126. Making claim for payment on portion of partner in partnership property

In order to make a claim for payment on a portion of a partner in partnership property, a claimant shall cancel a contract of partnership pursuant to the procedure provided for in the Law of Obligations Act. In the case of cancellation, a claim for payment may be made on the portion belonging to the partner upon distribution of assets.

§ 127. Making claim for payment on inalienable right

(1) A claim for payment may be made on an inalienable right in the manner determined by a bailiff if the exercise of the right can be transferred to another person and unless otherwise provided by law.

(2) Upon compulsory enforcement of a right of use, a bailiff may determine the administration of the right. In such case, seizure means transfer of a thing used to the administrator, unless this has already been done by a court decision.

§ 128. Making claim for payment on author's proprietary rights

Enforcement proceedings are permitted in respect of proprietary rights of an author if the author has commenced the exercise thereof and a work has been published with the consent of the author. Transfer of proprietary copyrights to a third person is also deemed to be exercise, regardless of the fact whether the third person has commenced to exercise the right.

§ 129. Making claim for payment on other proprietary rights

(1) If, upon seizure of a right, there is no third person who has obligations to a debtor or the circle of third persons cannot be determined exactly, the seizure is valid as of delivery of an instrument of seizure with a prohibition on the disposal of the right to the debtor, unless otherwise provided by law.

(2) A notation concerning prohibition on disposal shall be entered in a register concerning a prohibition on the disposal of a right entered in a public register.

Division 2

Specifications for Seizure of Income

§ 130. Seizure of income

(1) The right of security acquired upon seizure of a claim for payment for wages or another similar claim for payment of income also extends to amounts which fall due after the seizure.

(2) Seizure of remuneration or salary also extends to income which a debtor may receive in connection with transfer to another job or position or in connection with an increase in the remuneration or salary.

(3) If a debtor commences employment with the same employer within six months as of the termination of the employment or service relationship, an earlier instrument of seizure is deemed to be valid in respect of the employer.

(4) Upon seizure of income, taxes, contributions to a mandatory funded pension, health insurance taxes and unemployment insurance premiums are not deemed to be income.

§ 131. Income on which claim for payment cannot be made

(1) A claim for payment cannot be made on the following income:

- 1) state family benefits;
- 2) social benefits for disabled persons;
- 3) social benefit within the meaning of the Social Welfare Act;
- 4) compensation paid on the basis of subsection 35¹(3) of the Artificial Insemination and Embryo Protection Act;
- 5) unemployment allowances, grants, transport and accommodation benefits and business start up subsidy paid through the Estonian Unemployment Insurance Fund;
- 6) compensation paid for causing of a bodily injury or health disorder, except compensation for lost income and compensation for non-patrimonial damage;
- 7) alimony based on law;
- 8) parental benefit;

- 9) health insurance benefit within the meaning of the Health Insurance Act, except benefits for temporary incapacity for work;
 - 10) state pension to the extent provided by law;
 - 11) support on release from prison.
- [RT I, 14.03.2011, 1 - entry into force 24.03.2011]

(2) If making a claim for payment on other assets of a debtor have not led to or presumably do not lead to complete satisfaction of a claim of a claimant and if seizure is fair taking account of the type of the claim and the size of income, a claim for payment may be made on income specified in clauses (1) 6) to 8) of this section on the basis of an application of the claimant. If possible, a bailiff shall hear the debtor before the decision is made.

[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

§ 132. Share of income on which claim for payment cannot be made

(1) Income shall not be seized if it does not exceed the amount of minimum wages prescribed for one month or a corresponding proportion of income for a week or day.

(1¹) If making a claim for payment on other assets of a debtor has not led to or presumably does not lead to complete satisfaction of a claim for support for a child, up to fifty per cent of the income specified in subsection (1) of this section may be seized. If the amount seized out of the income of the debtor for the fulfilment of a claim for support of child is less than a half of the amount specified in subsection (1) of this section, up to one-third of the income of the debtor may be seized.

[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

(2) If, pursuant to law, a debtor maintains another person or pays alimony to him or her, the amount not subject to seizure increases by one-third of the minimum monthly wages per each dependant unless a claim for support for a child is subject to compulsory execution.

[RT I 2007, 25, 130 - entry into force 01.01.2008]

(3) Up to two-thirds of an amount equivalent to five times the minimum wages may be seized, and all the income which exceeds an amount equivalent to five times the minimum wages may be seized out of the proportion of income exceeding the amount not subject to seizure, provided that the amount subject to seizure does not exceed two-thirds of the total income. This provision does not apply if a claim for support is subject to compulsory execution.

[RT I 2007, 25, 130 - entry into force 01.01.2008]

§ 133. Release of income transferred to account from seizure

(1) A bailiff shall indicate in an instrument of seizure that the amount equal to the minimum monthly wage is not subject to monthly seizure and shall indicate, on the basis of the data known to him or her, the amount not subject to seizure per dependants of a debtor. A bailiff shall, on the basis of an application of the debtor, annul the seizure of the account within three working days to the extent which guarantees the income not subject to seizure for the debtor (the restrictions provided for in §§ 131 and 132 of this Code).

[RT I 2006, 7, 42 - entry into force 04.02.2006]

(1¹) If the income of more than one month is transferred to a debtor's account, a bailiff shall, on the basis of an application of the debtor, annul the seizure of the account within three working days to the extent which guarantees the income not subject to seizure for the debtor per each prepaid month in adherence with the restrictions provided for in §§ 131 and 132 of this Code. If the period for use of the income transferred to the debtor's account cannot be determined, a bailiff shall transfer the income per one month not subject to seizure to the debtor.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(2) Until resolution of an application, a bailiff may suspend transfer of money to claimants from a seized account and release the account from seizure to the extent which is required to maintain a debtor and his or her family member.

§ 134. Changes in circumstances on which calculation of income is based

(1) In the case of changes in the circumstances on the basis of which a proportion of income on which a claim for payment cannot be made is calculated, a bailiff shall amend the instrument of seizure on the basis of an application of a debtor or a claimant.

(2) Until delivery of an amended instrument, a third person who has obligations to a debtor may perform the obligation according to the earlier instrument.

§ 135. Making claim for payment on concealed income

(1) If a person to whom a debtor provides services is obliged to pay money to a third person or perform an act which, due to the nature of their relationship, may be deemed to be full or partial pay for the services of the debtor, the claim of the third person may be seized on the basis of an enforcement instrument concerning the debtor similarly to the claim of the debtor. Upon seizure of the claim for payment of the debtor also includes the claim of the third person against a third person who has obligations to the debtor. The instrument of seizure shall be delivered to the third person and the debtor.

(2) [Repealed - RT I 2006, 7, 42 - entry into force 04.02.2006]

(3) In the case specified in subsection (1) of this section, a bailiff shall seize a claim on the basis of the information submitted by a claimant. A third person may file an action for release of property from seizure or for declaration of compulsory enforcement inadmissible for other reasons. The action shall be filed against the claimant.

[RT I 2006, 7, 42 - entry into force 04.02.2006]

§ 136. Taking income into account upon distribution of money between claimants

(1) In a distribution plan, income shall be taken into account together with the amounts which fall due in the future.

(2) Within five working days after a proportion of income falls due, a bailiff shall pay from the deposited amount the amount belonging to a claimant.

[RT I 2006, 7, 42 - entry into force 04.02.2006]

Chapter 8 MAKING CLAIM FOR PAYMENT ON IMMOVABLE

Division 1 General Provisions

§ 137. Application of provisions regarding making claim for payment on movables

The corresponding provisions regarding making a claim for payment on movables apply upon making a claim for payment on immovables, unless the provisions of this Chapter provide otherwise.

§ 138. Application of provisions to rights equivalent to immovables and to ships and aircraft

(1) The provisions of this Chapter also apply to enforcement proceedings regarding rights equivalent to immovables and aircrafts entered in the Estonian aircraft register, unless otherwise provided by law. The provisions of this Chapter apply to ships entered in a ship register with the specifications prescribed in the Law of Maritime Property Act.

(2) A claim for payment may be made on a share of an immovable or a right equivalent to an immovable if the share is a legal share of a co-owner or the claim of a claimant is based on the right encumbering the legal share.

§ 139. Extent of making claim for payment on immovable

Making a claim for payment on an immovable also includes things to which a mortgage extends, unless otherwise provided by law.

§ 140. Making claim for payment on immovable

(1) In order to fulfil a claim of a claimant, a claim for payment may be made on an immovable if a debtor is entered in the land register as an owner of the immovable or the debtor is a universal successor of the owner entered in the and register.

(2) A claimant shall submit a reference to the land register to a bailiff.
[RT I, 21.06.2014, 8 - entry into force 01.01.2015]

(3) Upon transfer of an immovable to a universal successor, documents certifying universal succession shall be submitted.

§ 141. Making claim for payment on several immovables

In order to make a claim for payment on several immovables, one procedure may be conducted if this is done due to one claim against the same debtor or the same right established regarding the immovables or due to a claim for which owners of the immovables are liable as joint and several debtors.

Division 2

Seizure

§ 142. Seizure of immovable

(1) In order to seize an immovable, a bailiff shall record an immovable and its accessories and other objects to which a mortgage extends, prohibit their disposal and have a notation concerning prohibition on the use of the immovable entered in the land register.

(2) If seizure extends to a claim of the owner of an immovable against a third person, a bailiff shall prohibit satisfaction of the claim by a third person who has obligations to a debtor on the basis of an application of a claimant.

(3) Upon seizure of an immovable, no right of security is created on seized assets.

§ 143. Instrument of seizure of immovable

An instrument of seizure of an immovable shall set out the following:

- 1) the enforcement instrument on which the claim for payment is based;
- 2) information concerning the immovable in the land register;
- 3) accessories and essential parts of the immovable;
- 4) the price of the immovable;
- 5) dimensions of buildings, number and purposes of rooms.

§ 144. Valuation of immovables

(1) Upon valuation of an immovable, a bailiff shall take the rights entered in the land register before the notation concerning prohibition into account according to the content of the land register.

(2) Rights entered in the land register as a preliminary notation or objection shall be taken into account upon valuation as rights entered in the land register.

§ 145. Entry of notation concerning prohibition in land register

(1) After preparation of an instrument of seizure of an immovable, a bailiff shall immediately send to the land registry department a copy of an enforcement instrument and a unilateral application for entry of a notation concerning prohibition on disposal of the immovable in the land register.

(2) After a notation concerning prohibition is made, the land registry department shall send an extract of the register part and copies of the documents on the basis of which the entries are made and which contain information on the residence or seat of the persons entered therein and their representatives to a bailiff.

(3) A land registry department shall inform a bailiff of an application which has been submitted to the land registry department before the receipt of an application for a notation concerning prohibition and forward the copies of the documents on the basis of which the entry is applied for.

(4) If a delay arising from the delivery of an enforcement notice may significantly damage attainment of the objectives of compulsory enforcement, a bailiff may also seize the immovable of a debtor or have a notation concerning prohibition entered in the register before the enforcement notice is sent.

§ 146. Extent of seizure

(1) Accessories of an immovable cannot be seized as movables. Other things to which a mortgage extends may be seized as movables if they have not been seized together with the immovable.

(2) Seizure of an immovable includes agricultural and forestry produce of the immovable, and claims arising from the insurance thereof if the produce are still permanently attached to the land or are the accessories of the immovable.

(3) Seizure of an immovable does not include lease and commercial lease claims or claims relating to the immovable arising from repeated payments, particularly claims for a payment for the right of superficies or a payment secured by real encumbrance.

(4) Seizure of an immovable does not restrict the right of a commercial lessee to receive the fruit of the immovable.

(5) Upon ordering compulsory administration to an immovable, seizure also extends to the assets provided for in subsections (2) to (4) of this section.

§ 147. Ensuring of regular management

(1) A seized immovable shall remain in the possession of a debtor and, the debtor can administer and use it within the limits of regular management, unless compulsory administration is ordered for the immovable.

(2) If it may be presumed that a debtor endangers regular management or does it in the future, a court shall determine a measure necessary for the elimination of the danger on the basis of an application of a claimant. In particular, a supervisor or a compulsory administrator may be designated for the administration of an immovable.

(3) A supervisor shall monitor the performance of the obligations of a debtor and inform a bailiff of violations of the obligations. Upon designation of a supervisor, a court shall determine a reasonable remuneration for the supervisor which is included in the enforcement costs.

(4) The provisions of this Code concerning compulsory administration apply to the rights and obligations of a compulsory administrator.

§ 148. Validity of seizure

(1) Seizure is deemed to be valid as of the time when an instrument of seizure is delivered to a debtor or as of the time when a notation concerning prohibition is entered in the land register if this is done before the instrument is delivered to the debtor.

(2) If seizure extends to a claim of the owner of an immovable against a third person and a bailiff prohibits the third person from making payments to a debtor, the seizure regarding the third person is deemed to be valid as of the time when the person becomes aware of the seizure or after the delivery of a document prohibiting satisfaction of the claim is delivered to the person. The bailiff may organise preliminary seizure of the claim.

§ 149. Joining in compulsory enforcement

(1) If an application for making a claim for payment on an immovable is submitted after the seizure of the immovable for the benefit of another claimant, a bailiff shall make a decision to permit the person who submitted the application to participate in the proceedings. Another instrument of seizure shall not be prepared and a notation concerning prohibition shall not be entered in the land register.

(2) A claimant who has joined the proceedings has the same rights as the claimant on the basis of whose application an immovable was seized, unless otherwise provided by law.

§ 149¹. Specifications for seizure of apartment ownership

(1) If a bailiff seizes an apartment ownership and the claimant is not a community of apartment owners or an apartment association, it shall send a notice concerning the seizure to the community of apartment owners or the apartment association immediately after a notation concerning prohibition is entered in the land register.

(2) If the bailiff fails to identify the person of the administrator of a community of apartment owners or an apartment association within a reasonable period of time, the obligation specified in subsection (1) of this section shall be deemed to have been fulfilled if the notice was sent to another apartment owner of the same immovable property.

(3) Within ten days after the receipt of the notice specified in subsection (1) of this section:

1) the community of apartment owners shall submit documentation to the bailiff indicating the data specified in subsection 23 (4²) of this Code;

2) the apartment association shall submit documentation to the bailiff indicating the data specified in subsection 23 (4³) of this Code;

[RT I, 13.03.2014, 3 - entry into force 23.03.2014]

Division 3

Sale in Enforcement Proceedings

§ 150. Object of compulsory auction

(1) An object of a compulsory auction is an immovable and the objects seized together with the immovable the seizure of which is valid during the auction.

(2) The accessories of an immovable belonging to a third person which are in the possession of a debtor are also the objects of a compulsory auction, unless the third person has achieved release of the immovable from seizure by the time the auction is conducted and has informed the bailiff thereof.

§ 151. Separate and joint tender of immovables

(1) Immovables to be sold in the course of the same enforcement proceedings shall be sold at separate auctions.

(2) If immovables are encumbered with the same right, each participant in proceedings may demand that immovables be put at an auction jointly. Immovables may be also sold jointly at auction if, in the opinion of a bailiff, a joint bid results in greater revenue or saves enforcement costs.

§ 152. Preclusion of movables at auction of immovables

On the proposal of a claimant, a bailiff may determine that a movable is precluded from an auction of immovables and is transferred pursuant to the provisions concerning making claims for payment on movables if, upon the sale of the movables in such manner, it may be presumed that a higher price is received upon the sale of the movable or the separate sale of the movable is reasonable for other reasons.

§ 153. Notification of auction

(1) An announcement of an auction of an immovable shall, inter alia, set out:

- 1) the number of the register part of the immovable;
- 2) the location and size of the immovable;
- 3) the name of the owner of the immovable entered in the land register;
- 4) the name of the universal successor of the owner entered in the land register who is a debtor;
- 5) the ascertained rights of third persons encumbering the immovable together with their rankings and other restrictions on immovable property ownership;
- 6) a proposal to persons to inform a bailiff before the auction of the rights not registered by the time a notation concerning prohibition is entered in the land register and, at the request of a claimant, reason the rights.

(2) The period of time between publication of an announcement of an auction and a notice of an auction and the auction shall be not less than twenty days, unless a court determine otherwise. An auction announcement shall be published in the publication *Ametlikud Teadaanded* and on the Internet in at least one of the most commonly used portals for sale offers for immovables. A bailiff may also publish an announcement in a newspaper which is on sale at the place of the auction. At the request of a claimant or a debtor, a bailiff shall publish the announcement in another publication at the expense of the claimant or the debtor. A bailiff shall also publish photographs of the immovable property in an Internet announcement.

[RT I, 31.12.2012, 5 - entry into force 10.01.2013]

§ 153¹. Specifications for auction of apartment ownership

(1) A community of apartment owners shall submit additional documentation to the bailiff before an auction concerning the amount of the liabilities specified in subsection 13 (4) of the Apartment Ownership Act fallen due after submission of an application for enforcement or of the documentation specified in clause 149¹(3) 1) of this Code but before the auction is held.

(2) An apartment association shall submit additional documentation to the bailiff before an auction concerning the amount of the liabilities specified in subsection 7 (3) of the Apartment Associations Act fallen due after submission of an application for enforcement or of the documentation specified in clause 149¹(3) 2) of this Code but before the auction is held.

[RT I, 13.03.2014, 3 - entry into force 23.03.2014]

§ 154. Written bid

(1) A person wishing to buy an immovable at an oral auction may, until the beginning of the auction, submit a written bid to the bailiff which shall set out the information specified in subsection 86 (1) of this Code and the number of the register part and location of the immovable.

(2) A written bid shall be submitted in a sealed envelope with the notation "auction" and reference to the object of the auction. The envelope shall be opened at the oral auction.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

§ 155. Passing of risk of accidental loss of immovable

The risk of accidental loss of an immovable and objects sold together with the immovable passes to a purchaser at an auction after a bid is declared to be the best. As of the moment when the bid is declared to be the best, the purchaser shall incur all costs and duties and receive all the income.

§ 156. Acquisition of immovable

Ownership of an immovable sold at an auction is created on the basis of a report on the auction by making an entry in the land register.

§ 156¹. Acquisition of immovable by loan

(1) If an immovable is acquired by a loan, a purchaser shall notify a bailiff thereof pursuant to the procedure provided for in § 93¹ of this Code.

(2) If a purchaser and a credit institution agree on encumbrance of an immovable sold at an auction with mortgage as the security for a loan and on entry of an agreement concerning subjection to immediate compulsory execution in the land register, the purchaser shall inform thereof at the same time with informing of the intent to buy the immovable by a loan. The credit institution shall notify the bailiff of the time of authentication of the transaction by a notary, the name and contact details of the notary.

(3) When a credit institution issues a guarantee to a bailiff in a format which can be reproduced in writing or the bailiff receives a copy of the deposit receipt concerning transfer of the money to a notary's bank account, the bailiff shall immediately send to a notary a digitally signed report on the auction, an application for deletion of the notation concerning prohibition and the rights extinguishing with the enforcement procedure and his or her consent for entering the mortgage in the land register, unless otherwise agreed.

(4) A notary shall submit a real right contract for the establishment of mortgage, an agreement concerning the claims secured by the mortgage and subjection to immediate compulsory execution, a registration application and the documents specified in subsection (3) of this section to the land registry department.

(5) A notary shall transfer the sum of money deposited in the notary's bank account to the official bank account of a bailiff within 3 working days as of registration of the documents specified in subsection (4) of this section in the land registry journal.

(6) Upon failure to conclude the agreements specified in subsection (4) of this section within thirty days as of the preparation of the report on the auction, a notary shall return the documents specified in subsection (3) of this section to a bailiff and the money transferred to the notary's bank account pursuant to subsection (3) of this section to a credit institution.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

§ 157. Sale in other manner

Immovables may be sold under the supervision of a bailiff pursuant to the procedure provided for in § 102 of this Code.

[RT I 2006, 7, 42 - entry into force 04.02.2006]

§ 158. Rights preserved

(1) Upon sale of an immovable in enforcement proceedings, the rights arising from the land register which have the same ranking as or higher ranking than the claim of a claimant or the right securing the claim shall be preserved.

(2) If an immovable is sold in order to fulfil a claim which has several different rankings, the preservation of rights shall be based on a claim which has a higher ranking.

(3) Rights which have lower ranking than a claim shall extinguish when a bid is declared to be the best. The right belonging to a claimant and entered in the land register, if a claim for payment is made to satisfy the claim arising from the right, is also deemed to have extinguished.

(4) At an auction, the rights arising from a servitude do not extinguish if the servitude was established on the basis of the right arising from law to establish a servitude.

§ 159. Rights preserved based on agreement

(1) A right entered in the land register which would extinguish upon sale of an immovable and should be deleted from the land register shall be preserved if an entitled person and a purchaser agree thereon by an agreement authenticated by a notary and submit the agreement to a bailiff before submission of an application for the deletion of the rights from the land register.

(2) In the case specified in subsection (1) of this section, an agreement is deemed to be satisfaction of a claim of an entitled person out of an immovable.

(3) [Repealed - RT I 2006, 7, 42 - entry into force 04.02.2006]

§ 160. Entries in land register

(1) A bailiff shall submit to a land registry department a copy of the report at an auction, applications for the entry of a purchaser in the land register as the owner and for the deletion of a notation concerning prohibition and extinguishing rights immediately after the payment of the whole purchase price unless otherwise provided by law.

[RT I 2010, 38, 231 - entry into force 01.07.2010]

(1¹) The applications for entry of an owner and a mortgage shall be deemed to be applications submitted by a purchaser and a mortgagee in the cases specified in subsections (1) and (2) of this section. The purchaser is required to pay a state fee in the amount prescribed in the State Fees Act.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(1²) In the cases specified in subsections (1) and (2) of this section, an application for entry of an owner shall be deemed to be an application submitted by a purchaser. The purchaser is required to pay a state fee in the amount prescribed in the State Fees Act.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(2) In order to make an entry concerning the extinguishment of rights, the consent of holders of the rights to be extinguished within the meaning of § 34¹ of the Land Register Act is not required.

(3) If a purchaser applies, before the purchaser is entered in the land register as an owner, for the entry of the right regarding the immovable which was an auction or consents to the making of an entry, an entry shall not be made on such bases before the purchaser is entered in the land register as the owner.

§ 161. Cancellation of lease contracts and commercial lease contracts

A purchaser may cancel a lease contract or a commercial lease contract under the terms and conditions and within the term prescribed in § 323 of the Law of Obligations Act. The purchaser may not cancel the lease contract or commercial lease contract if a notation has been entered in the land register according to § 324 of the Law of Obligations Act and the notation cannot be deleted due to its ranking.

Division 4 Compulsory Administration of Immovable

§ 162. Ordering immovable to compulsory administration

(1) After seizure, a court shall order compulsory administration of an immovable and appoint an administrator on the basis of an application of a bailiff, claimant or debtor.

(2) Due to a claim arising from a right entered in the land register, compulsory administration of an immovable may be also ordered if a debtor has not been entered in the land register as the owner or is not the successor of the owner, but is the possessor of the immovable on the basis of a transaction for the acquisition of the immovable.

§ 163. Appointment of administrator

(1) A claimant or a bailiff and a relative or relative by marriage of the bailiff shall not be appointed as an administrator. A relative or relative by marriage of the claimant may be an administrator only with the written consent of the debtor and the claimant.

(2) A court has the right to replace an administrator if the administrator fails to perform the obligations thereof.

(3) If a court does not appoint an administrator, an immovable subject to compulsory administration remains in the possession of a debtor.

§ 164. Entry concerning compulsory administration and giving notification of compulsory administration

(1) An entry concerning compulsory administration and a compulsory administrator shall be made in the land register on the basis of a court ruling.

(2) A court shall deliver a notice on ordering the compulsory administration of an immovable to participants in the enforcement proceedings and a bailiff after an entry concerning compulsory administration is made in the land register.

§ 165. Possession of compulsory administrator

- (1) A compulsory administrator has the right to take possession of an immovable on the basis of a ruling which appoints him or her as the administrator of the immovable.
- (2) If, upon taking possession of an immovable, a debtor uses physical resistance, the compulsory administrator has the right to use the assistance of the police in order to eliminate the resistance and take possession of the immovable.
- (3) If an immovable is in the possession of a third person, a compulsory administrator may demand transfer of the possession on the basis of an enforcement instrument against a debtor and a ruling which appoints him or her the administrator of the immovable. If the immovable is in the possession of a commercial lessee, lessee or a usufructuary, the administrator shall be the indirect possessor and the administrator shall, by an instrument of seizure, be granted the right to collect claims instead of the debtor.

§ 166. Validity of seizure upon compulsory administration

- (1) Upon compulsory administration, an immovable is deemed to be seized as of the time when an administrator becomes the possessor of the immovable.
- (2) An administrator may apply to a bailiff for the bailiff to prohibit a third person who has obligations to a debtor to pay to the debtor.

§ 167. Functions of administrator

- (1) An administrator shall accept the transfer of an immovable on the basis of a ruling which orders compulsory administration of the immovable and requires the administrator to transfer the immovable with the same composition and in the same economic condition.
- (2) An administrator has the right and obligation to perform all transactions and acts which are necessary for preservation of the condition and for the regular management of an immovable. The administrator may collect claims related to the immovable and sell fruits not necessary for administration.
- (3) An administrator shall perform the commercial lease and lease contracts entered into before the seizure of an immovable. The administrator may enter into new commercial lease and lease contracts with a term until the end of the period of compulsory administration.
- (4) If an immovable remains under the administration of a debtor, the debtor shall manage the immovable pursuant to the same procedure as the administrator. The debtor may dispose of the property only with the consent of a bailiff.

§ 168. Supervision by bailiff

- (1) After asking an opinion of a claimant and a debtor, a bailiff shall issue instructions necessary for compulsory administration and exercise supervision over the management of the administrator.
- (2) If necessary, a bailiff may demand that an administrator provide a security.

§ 169. Liability and reporting obligation of administrator

- (1) An administrator is liable for the performance of his or her obligations to participants in the enforcement proceedings. The provisions concerning authorisation agreements apply to relations between an administrator and participants in proceedings, except provisions regulating payment of remuneration and cancellation of authorisation agreements.
- (2) An administrator is required to submit reports on the management of an immovable to a bailiff within the terms designated by the bailiff.
- (3) A debtor and a claimant have the right to examine the reports of an administrator.

§ 170. Payment of user fee

- (1) The rent or usufruct fee payable for the use of an immovable shall be paid to an administrator.
- (2) A court may determine that rent be paid on the official bank account of a bailiff if these amounts are not necessary to manage the immovable.

§ 171. Remuneration of administrator

- (1) Upon appointment of an administrator, a court shall approve the remuneration for the administrator which the administrator has the right to receive from the fruit of the immovable. If a debtor is the administrator, remuneration shall not be paid to the debtor.

(2) If the fruits received from an immovable in the course of administration do not cover the amount determined as remuneration for the administrator, the outstanding amount shall be added to the enforcement costs.

§ 172. Right of debtor to use seized immovable

(1) A debtor and his or her family members who reside in a dwelling located on an immovable during the seizure of the immovable may continue to reside there during the period of compulsory administration.

(2) A debtor shall compensate for the damage caused by the use of the immovable to a claimant.

§ 173. Termination of compulsory administration

(1) Compulsory administration shall be terminated by a decision of a bailiff after a claim of a claimant is satisfied.

(2) If continuation of compulsory administration would require disproportionate expenses and a claimant fails to pay an amount necessary for it in advance, a bailiff may have recourse to a court in order to decide on the continuation of compulsory administration or sale of the thing.

Division 5 Distribution of Revenue between Claimants

§ 174. Distribution of revenue received from sale and compulsory administration of immovable

(1) A bailiff shall distribute the revenue received from the sale and compulsory administration of an immovable between claimants and other persons entitled to participate in the distribution of revenue on the basis of the rankings arising from the land register and in the order of seizure or on the basis of an agreement between claimants. If seizures take place concurrently, claimants shall receive the same ranking upon distribution of revenue.

(2) According to a distribution plan, enforcement costs are deducted from the revenue to be distributed.

(3) Claims shall be satisfied out of the revenue and taken into account in a distribution plan in the following order and, in the case of the same ranking, in proportion to the amount of the claims:

1) in the case of compulsory administration preceding a compulsory auction, a claim of a claimant as an advance payment for compensation for the expenses incurred for maintenance of and necessary improvements to an immovable unless the expenses can be covered out of the income received from the immovable;

2) claims arising from rights entered in the land register according to the ranking of the right in the land register and their collateral claims to the extent provided by law;

2¹) claims for support for a child;

[RT I 2007, 25, 130 - entry into force 01.01.2008]

3) claims of claimants for securing of which seizure of an immovable has been carried out or compulsory enforcement has been joined and which are not satisfied according to clauses 1) to 2¹) of this subsection;

[RT I 2007, 25, 130 - entry into force 01.01.2008]

4) the rest of the claims.

(4) In the case of claims specified in clause (3) 3) of this section and in the case of several claimants, a claimant for whose benefit the seizure was carried out earlier or who joined compulsory enforcement shall be entitled to privileged claims.

§ 175. [Repealed - RT I 2006, 7, 42 - entry into force 04.02.2006]

§ 176. Rights of holders of rights deleted from land register

(1) If the right of a person entered in the land register extinguishes upon the sale of an immovable, the holder of the right may, pursuant to the procedure provided for in subsection 108 (2) of this Code, demand compensation for the deleted right according to the previous ranking of the deleted right.

(2) Compensation for personal servitude and real encumbrance established for an unspecified term shall be paid to an entitled person as monthly payments, which shall be calculated on the basis of the annual value of the right. The amount shall be paid for three months in advance.

(3) A claim for compensation provided for in subsection (2) of this section shall be taken account of in a distribution plan as a sum which corresponds to the total sum of all future payments but does not exceed 25 times the sum of the annual payment. The plan determines how the sum must be distributed when a person entitled to receive the sum dies or is terminated or the claim ceases to exist.

§ 177. Distribution plan upon compulsory administration

(1) Upon compulsory administration of an immovable, a bailiff shall prepare a distribution plan for the distribution of revenue received from compulsory administration between claimants for the whole period of compulsory administration.

(2) An administrator shall make payments on the basis of a distribution plan when the claims have fallen due.

Part 3

ENFORCEMENT PROCEEDINGS FOR EXTRADITION OF PERSON AND DELIVERY OF THING AND FOR PERFORMANCE OF CERTAIN ACTS OR REFRAINING FROM ACTS

§ 178. Reclamation of movable

(1) If, according to an enforcement instrument, a debtor is required to deliver a certain movable or a certain amount of fungible things or securities in the form of a document, a bailiff shall remove these from the debtor and hand them over to a claimant.

(2) If a thing is not found, a debtor shall inform a bailiff of the location of the thing.

(3) If a debtor fails to give notification of the location of a thing, the provisions of § 183 of this Code apply.

§ 179. Return of child and right to communicate with child

(1) In a matter concerning return of a child and the right to communicate with a child, a bailiff shall perform an enforcement action in the presence of a representative of the local government of the residence of the child or, as an exception, of the obligated person, and the representative shall have specific expertise in communication with children.

(2) If an obligated person impedes compulsory enforcement, the provisions of § 183 of this Code may be applied to the person.

(3) If necessary, a bailiff may raise a question regarding temporary placement of a child in a children's social welfare institution in front of a representative of the local government of the residence of the child or, as an exception, of the obligated person.

(4) A bailiff may use force in respect of a child or a person obligated to return the child or allow communication with the child only on the basis of a court decision. A court shall allow to use force for enforcement of a decision only if application of other measures is or will be unsuccessful or if prompt enforcement of the decision is necessary and the use of force is justified by the need to ensure the child's well-being which cannot be achieved in any other way.

[RT I 2008, 59, 330 - entry into force 01.01.2009]

§ 180. Release of immovable

(1) If a debtor must release, transfer or vacate an immovable, including apartment ownership or a part thereof, a dwelling or another room, a bailiff shall grant a term of up to three months to the debtor for the voluntary compliance with the enforcement instrument.

(2) A bailiff shall deliver an enforcement notice concerning the release of an immovable to a debtor not less than fourteen days before the planned compulsory enforcement. The enforcement notice shall, inter alia, set out the following:

- 1) the term for voluntary compliance with the enforcement instrument;
- 2) the right of a bailiff to vacate the immovable by way of compulsory enforcement and evict the debtor and the persons who are with the debtor;
- 3) the date of release of the immovable by way of compulsory enforcement;
- 4) the obligations of the debtor to release the immovable, find premises for the storage of property, inform the bailiff of the location of the premises and, if circumstances preventing eviction become evident, inform the bailiff thereof.

(3) If a debtor fails to voluntarily comply with an enforcement instrument within a prescribed period, a bailiff shall release the immovable from the possession of the debtor and grant it to the possession of the claimant. Things are subject to removal and persons are subject to eviction. If necessary, the bailiff shall involve the police in the release of the immovable.

(4) A bailiff shall separate movables which are not the object of compulsory enforcement and shall deliver these to a debtor or to the disposal of the debtor and, in the absence of the debtor, to his or her representative or to adult family members of the debtor. If none of the specified persons is present, the bailiff shall place the things in the storage facility of seized things at the expense of the debtor or organise their storage in another place. The bailiff shall not organise the storage of such property the sale of which is not expedient due to its low value, except things not subject to seizure. The specified property shall be subject to removal.

(5) If a debtor fails to reclaim the things specified in subsection (4) of this section within two months as of vacation of the rooms or reclaims the things without paying for the costs, a bailiff shall sell the things and deposit the received revenue. Things which cannot be sold shall be destroyed.

(6) A bailiff shall prepare a report on taking possession of an immovable, which shall be signed by the bailiff and the persons who were present at taking of possession.

§ 181. Release of thing in possession of third person

(1) If a thing claimed is in the direct possession of a third person and the person refuses to release the thing, the right to demand release of the thing shall be seized on the basis of an application of a claimant.

(2) If it is clearly obvious that a thing claimed has been transferred into the direct possession of a third person in order to prevent release, a bailiff has the right to release the thing from the possession of the third person.

§ 182. Enforcement proceedings for performance of act which can be performed by third person

(1) If a debtor fails to perform an obligation to perform an act which can be performed by a third person, a bailiff may permit a claimant to have the act performed at the expense of the debtor.

(2) On the basis of an enforcement instrument requiring performance of an act and an application of a claimant, a claim for payment may be made on the assets of a debtor to cover the costs incurred. The same applies if a third person requests an advance payment in order to perform an act.

(3) The provisions of subsections (1) and (2) of this section do not apply to enforcement proceedings aimed at release of things.

§ 183. Enforcement proceedings for performance of act which can be performed only by debtor

If an act can be performed only by a debtor but the debtor fails to do so by the designated due date or the debtor violates the obligation to tolerate a certain act or refrain from a certain act, a bailiff may impose a penalty payment on a debtor pursuant to the procedure specified in § 26¹ of this Code.
[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

§ 184. Enforcement of court judgment which requires making declaration of intention

(1) If a court judgment requires that a debtor make a declaration of intention, the court judgment which has entered into force shall replace the declaration of intention. If the declaration of intention depends on the performance of obligations by a claimant, the declaration of intention is deemed to be made if the claimant or a bailiff has offered performance of the obligation to the debtor according to this Code.

(2) [Repealed - RT I 2006, 7, 42 - entry into force 04.02.2006]

(3) [Repealed - RT I 2006, 7, 42 - entry into force 04.02.2006]

(4) Upon acquisition of assets in the case provided for in subsection (1) of this section, the legal consequences of acquisition of assets are the same as upon acquisition on the basis of a transaction.
[RT I 2006, 7, 42 - entry into force 04.02.2006]

§ 185. Delivery of thing in case of court decision which requires transfer of ownership

If a debtor is required to transfer ownership or create a right in a movable, the thing is deemed to be delivered if a bailiff removes the thing in order to deliver it to a claimant. The thing is deemed to be delivered on the basis of a transaction.

§ 186. Right of claimant to demand compensation

(1) If a court decision prescribes monetary compensation for violation of an obligation but a defendant fails to comply with the court decision, a claimant may demand only the payment of monetary compensation in enforcement proceedings.

(2) The provisions of this Part do not preclude or restrict the right of a claimant to demand that a debtor compensate for the damage caused by failure to comply with an enforcement instrument.

Part 4

RECOVERY OF ASSETS OF DEBTOR

§ 187. Recovery of assets of debtor in enforcement proceedings

(1) A claimant may file an action against a debtor and counterparty and demand that a court declare the transaction which damages the interests of claimants invalid (hereinafter *recovery*) on the bases and pursuant to the procedure provided for in this Part. For the purposes of this Part, disposal of an object in enforcement proceedings is also deemed to be a transaction.

(2) A claimant may demand recovery if the claimant has an enforcement instrument and the claim of the claimant has fallen due and making a claim for payment on the assets of a debtor has not brought about satisfaction of the claim of the claimant in full or there is reason to presume that making the claim for payment does not result in the satisfaction of the claim.

§ 188. General bases for recovery of transactions

(1) A court shall declare invalid a transaction which has been entered into by a debtor within three years before an action of a claimant for the declaration of the transaction invalid has been filed in order to knowingly damage the interests of the claimant if the counterparty knew or should have known thereof at the time of entry into the transaction.

(2) It is presumed that a counterparty knew or should have known that a transaction damages the interests of another creditor if the counterparty is a person connected with a debtor or the transaction was entered into six months before the commencement of enforcement proceedings or seizure of the assets of the debtor.

(3) Persons connected with a debtor shall be determined according to § 117 of the Bankruptcy Act.

§ 189. Recovery of gratuitous contract

(1) A court shall declare a gratuitous contract of a debtor invalid, unless the contract has been entered into earlier than two years before an action for declaration of the transaction invalid is filed.

(2) A court may revoke a contract of sale, barter agreement or any other contract on the bases provided for in subsection (1) of this section if due to a disparity in the obligations of the parties it is evident that the contract had even partly the nature of a gratuitous contract.

(3) Benefits and customary gifts which correspond to the financial situation of a debtor are not subject to recovery.

§ 190. Recovery of division of joint property

A court shall revoke the marital property contract between a debtor and his or her spouse or the agreement on the division of their joint property whereby the debtor renounced his or her property or share in the joint property to a material extent, if the marital property contract or the agreement on the division of joint property was entered into:

- 1) after the commencement of enforcement proceedings;
- 2) within one year before the commencement of enforcement proceedings;
- 3) before commencement of the term specified in clause 1) of this section but within two years before the commencement of the enforcement proceedings unless the debtor or his or her spouse proves that the debtor was solvent at the time of dividing the property or renouncing the property and did not become insolvent due to division of the joint property or renouncing of the property.

§ 191. Recovery of security

(1) A court shall revoke the grant of security if the security was granted:

- 1) after the commencement of enforcement proceedings;
- 2) in order to secure an obligation which had arisen within six months before the commencement of the enforcement proceedings if the debtor was not required to grant such security at the time when the obligation arose or if the debtor was insolvent at the time of granting the security and the person in whose favour the security was granted was or should have been aware of the insolvency;
- 3) within two years before the commencement of the enforcement proceedings if the security was granted in favour of a person connected with the debtor unless the person or the debtor proves that the debtor was solvent at the time of granting the security.

(2) Grant of security shall not be recovered if the security was granted in order to secure a loan or any other credit agreement and after granting the security the debtor came into possession of the amount of money

corresponding to the value of the security pursuant to the secured contract, except in the case specified in clause (1) 3) of this section.

(3) A person connected with a debtor is presumed to be aware of a debtor's insolvency.

§ 192. Legal acts of successors

If a successor has fulfilled a claim for a compulsory portion, a legacy or a testamentary obligation out of the share of an estate, a claimant who has a claim in respect of the estate and whose claim, in the event of bankruptcy proceedings regarding the estate, would be of a higher or the same ranking as compared to the claim of the recipient of the performance may demand declaration of the act invalid in the same manner as a gratuitous contract entered into by the successor is declared invalid.

§ 193. Calculation of terms

If, already before the receipt of an enforcement instrument or before a claim falls due, a claimant has informed a person who has concluded a transaction with a debtor in writing of an intention to file an action in order to declare the transaction invalid, the specified terms shall be calculated as of the time of receipt of the notice if the debtor has been unable to satisfy the claim of the claimant already at that time and if an action for recovery is filed within one year as of that time.

§ 194. Recovery in respect of legal successors

An action for recovery may be filed also in respect of the legal successor of a person who entered into a transaction with a debtor pursuant to the procedure established in § 116 of the Bankruptcy Act.

§ 195. Legal consequences of recovery of assets

(1) If a court revokes a transaction by way of recovery procedure, a counterparty is required to grant the proceeds of the transaction together with the fruits and other gain for the benefit of a claimant to the disposal of the bailiff conducting enforcement proceedings. The bailiff shall organise the distribution of the proceeds between claimants according to the order of filing of claims.

(2) The provisions of subsections 119 (2) to (4) of the Bankruptcy Act apply to the legal consequences of recovery.

(3) A counterparty may demand that a debtor return that which was delivered according to the transaction and, if returning is impossible, compensation for the value of that which was delivered within six months as of the entry into force of the court judgment on the basis of which assets were recovered from the counterparty, but if the counterparty has delivered the assets subject to recovery to the claimant without a court judgment, as of the date of delivery of the assets.

§ 196. Conditional declaration of invalidity of transaction

If a bailiff has only a court decision subject to immediate enforcement or a judgment with a reservation against a debtor, a court shall make, in a judgment declaring a transaction to be invalid, the admissibility of enforcement proceedings dependant on the entry into force or cessation of the reservation of the judgment made against the debtor.

§ 197. Commencement of bankruptcy proceedings

(1) If the bankruptcy of a debtor is declared, the right to conduct proceedings regarding a claim for annulment of a transaction filed by a creditor in bankruptcy proceedings is transferred to a trustee in bankruptcy. In such case, only a counterparty is deemed to be the defendant.

(2) If proceedings regarding a dispute concerning the annulment of a transaction are still conducted by a court during declaration of bankruptcy, judicial proceedings shall be terminated. On the basis of an application of a trustee in bankruptcy, the proceedings may be continued.

(3) A trustee in bankruptcy may amend an action.

(4) If a trustee in bankruptcy does not wish to continue proceedings, it may be continued regarding the procedure expenses on the basis of an application of a party. If the trustee in bankruptcy does not wish to continue proceedings, it does not deprive him or her from the right to file an action for recovery according to the Bankruptcy Act.

Part 5

SPECIFICATIONS FOR ENFORCEMENT OF DECISIONS, JUDGMENTS AND RULINGS IN MISDEMEANOUR AND CRIMINAL MATTERS

Chapter 9 ENFORCEMENT OF DECISIONS, JUDGMENTS AND RULINGS IN MISDEMEANOUR AND CRIMINAL MATTERS

Division 1 General Provisions

§ 198. Order of making of claim for payment

(1) A claim for payment shall be made on the property of a debtor in the following order:

- 1) money, valuables, securities and claims;
- 2) the rest of the movables;
- 3) immovables.

(2) Taking account of the order of making a claim for payment which is provided for in subsection (1) of this section, the last claim for payment shall be made on the share of a debtor in joint property.

Division 2 Payment of Fine Imposed as Punishment for Misdemeanour

§ 199. Procedure for collection of fines

(1) Enforcement proceedings for the collection of a fine imposed as punishment for a misdemeanour shall be conducted pursuant to a court judgment or the decision of an extra-judicial body which has entered into force and is sent to a bailiff for enforcement.

(2) Fines imposed as punishment for misdemeanours shall be transferred to the state budget. A bailiff shall inform a representative of a claimant thereof.

(3) If a rural municipality or city government conducting extra-judicial proceedings imposes a fine, the fine imposed as a punishment for a misdemeanour shall be transferred to the budget of the local government which made the corresponding decision.

(4) If a legal person in private law which has entered into a contract under public law with a rural municipality or city government conducts extra-judicial proceedings and has imposed a fine, the fine imposed as a punishment for a misdemeanour shall be transferred to the budget of the local government which has entered into a contract under public law with the legal person in private law.

§ 200. Term for payment of fine

(1) If a court or extra-judicial body has not ordered a fine to be paid in instalments, the fine shall be paid in full. A bailiff shall set a term for a debtor to pay the fine in full and the term shall not be shorter than ten days or longer than thirty days. The debtor shall submit a payment document to the bailiff concerning payment of the fine.

(2) If an extra-judicial body or a court has ordered a fine to be paid in instalments according to subsections 66 (2) and (3) of the Penal Code, the fine shall be paid in instalments and within the term prescribed by the decision or court judgment.

(3) If a fine is not paid within the designated term or the term for the payment of a fine in instalments is not complied with and the term for payment of the fine has not been extended, a bailiff shall make a claim for payment against the assets of a debtor pursuant to the procedure provided for in this Code.

§ 201. Substitution of fine by detention

(1) If a fine has not been paid in full by the designated due date or the due dates for the payment of instalments of a fine are not complied with and the term for payment of the fine has not been extended and a debtor has no assets on which a claim for payment could be made, a bailiff shall give notice to a claimant that payment

is impossible not later than one year after acceptance of the fine for processing by the bailiff and not later than three years after entry into force of the judgement in misdemeanour matter. If there are no circumstances which preclude substitution of punishment, the claimant shall send an application for the fine to be substituted by detention pursuant to § 72 of the Penal Code to the county court which ordered enforcement of the court judgment. The claimant shall inform the debtor and the bailiff of submission of such application.
[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

(1¹) If the term for payment of a fine is extended and a debtor fails to comply with the term prescribed in the judgement on the extension of the term for payment of the fine and the debtor has no assets against which a claim for payment could be made, a bailiff shall notify a claimant that payment is impossible at the latest two months after the due date for payment of the fine specified in the judgement on the extension of the term for payment of the fine but not later than after three months after entry into force of a judgment or decision made with regard to a misdemeanour. The claimant shall submit an application for the fine to be substituted by detention to the court and inform the bailiff and the debtor pursuant to the procedure provided for in subsection (1) of this section.

[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

(2) The amount of the fine which has been paid shall be indicated in an application specified in subsection (1) of this section.

(3) If a debtor pays a fine in full before the application of substitutive detention, a bailiff shall terminate proceedings for collection of the fine and notify the county court immediately of payment of the fine.

(4) A bailiff shall terminate enforcement proceedings concerning a claim for payment of a fine on the basis of a court ruling ordering detention.

§ 202. Termination of enforcement proceedings concerning claim for payment of fine due to expiry of limitation period for enforcement of court judgment or decision of extra-judicial body

(1) A bailiff shall terminate enforcement proceedings based on a court judgement made in a misdemeanour matter or a claim for the payment of a fine imposed pursuant to a decision of an extra-judicial body due to expiry of the limitation period if the fine has not been collected within the term provided for in § 82 of the Penal Code.

[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

(2) [Repealed - RT I 2009, 68, 463 - entry into force 01.01.2010]

§ 203. Termination of enforcement proceedings concerning claim for payment of fine due to death of natural person or dissolution of legal person

Upon the death of a natural person or dissolution of a legal person, a claim of payment shall not be made against the assets of the successor of the natural person or legal successor of the legal person and enforcement proceedings shall be terminated.

Division 3

Enforcement of Pecuniary Punishment and Fines to Extent of Assets Imposed for Criminal Offence

§ 204. Procedure for collection of amounts of pecuniary punishment and fines to extent of assets

(1) Enforcement proceedings for the collection of amounts imposed as pecuniary punishment and fines to the extent of assets imposed in criminal matters shall be conducted pursuant to a court judgment which has entered into force and has been sent to a bailiff for enforcement.

(2) The amounts of pecuniary punishment and fines to the extent of assets shall be transferred to the state budget.

§ 205. Term for payment of amounts of pecuniary punishment and fines to extent of assets

(1) Amounts of pecuniary punishment and fines to the extent of assets shall be paid in full, if a court has not ordered the amount of pecuniary punishment to be paid in instalments. A bailiff shall set a term for a debtor to pay the amount of pecuniary punishment or the fine to the extent of assets and the term shall not be shorter than sixty days or longer than ninety days. The debtor shall submit a payment document to the bailiff concerning payment of the amount of pecuniary punishment or the fine to the extent of assets.

(2) If a court has, pursuant to subsection 66 (1) of the Penal Code, ordered payment of an amount of pecuniary punishment in instalments or, pursuant to § 424 of the Code of Criminal Procedure, extended the term for payment of an amount of pecuniary punishment or fine to the extent of assets, the amount of pecuniary punishment or fine to the extent of assets shall be paid in the instalments and within the term prescribed by the court judgment or ruling.

§ 206. Consequences of failure to pay amounts of pecuniary punishment and fines to extent of assets

(1) If a debtor has failed to pay a sum of money imposed as a pecuniary punishment or fine to the extent of assets or a part of pecuniary punishment within a designated term, a bailiff shall explain to the debtor his or her right to request that a court extend enforcement of the pecuniary punishment or fine to the extent of assets according to § 424 of the Code of Criminal Procedure. The bailiff shall inform the debtor of the consequences of failure to pay the sum of money imposed as a pecuniary punishment or fine to the extent of assets.

(2) If the sum of money imposed as a pecuniary punishment or fine to the extent of assets is not paid by the designated due date or the terms for the payment of instalments of an amount of pecuniary punishment are not complied with and the term for payment of an amount of pecuniary punishment or a fine to the extent of assets has not been extended and a debtor has no assets against which a claim for payment could be made, a bailiff shall give notice to a claimant that payment is impossible not later than 3 years after acceptance of the pecuniary punishment or fine to the extent of assets for processing by the bailiff and not later than 7 years after the entry into force of the court judgment. If there are no circumstances which preclude substitution of punishment, the claimant shall send an application for the pecuniary punishment or fine to the extent of assets to be substituted by imprisonment pursuant to §§ 70 and 71 of the Penal Code to the county court which ordered enforcement of the court judgment. The claimant shall inform the debtor and the bailiff of submission of such application.
[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

(3) If a debtor pays the amount of pecuniary punishment or a fine to the extent of assets in full before the imposition of substitutive punishment, a bailiff shall terminate proceedings for the collection of such amounts and notify the county court immediately of payment of the amount of pecuniary punishment or the fine to the extent of assets in writing.

(4) If a court has made a ruling ordering substitutive punishment, a bailiff shall terminate enforcement proceedings for the collection of an amount of pecuniary punishment or a fine to the extent of assets on the basis of the ruling ordering substitutive punishment.

§ 207. Termination of enforcement proceedings for collection of amount of pecuniary punishment or fine to extent of assets due to expiry of limitation period of court judgment

(1) Enforcement proceedings the collection of an amount of pecuniary punishment or a fine to the extent of assets shall be terminated by a bailiff due to expiry of the limitation period if the said amount or fine has not been collected within the term provided for in § 82 of the Penal Code.
[RT I, 14.03.2011, 1 - entry into force 24.03.2011]

(2) [Repealed - RT I, 14.03.2011, 1 - entry into force 24.03.2011]

§ 208. Termination of enforcement proceedings for collection of amount of pecuniary punishment and fine to extent of assets due to death of natural person and for collection of amount of pecuniary punishment due to dissolution of legal person

Upon the death of a natural person or dissolution of a legal person, a claim of payment shall not be made against the assets of the successor of the natural person or legal successor of the legal person and enforcement proceedings shall be terminated.

Division 4

Enforcement of Other Claims for Payment in Misdemeanour Procedure and Criminal Procedure

§ 209. Enforcement of expenses in misdemeanour procedure and other public law claims for payment in misdemeanour matters

The provisions of subsections 199 (2) to (4), subsection 200 (1) and §§ 202 and 203 of this Code apply to the enforcement of expenses in misdemeanour proceedings determined by a court judgment or ruling or a decision or ruling of an extra-judicial body and other public law claims for payment.

§ 210. Procedure for enforcement of expenses in criminal procedure and other public law claims for payment

The provisions of subsection 204 (2), 205 (1) and §§ 207 and 208 of this Code apply to the enforcement of costs of criminal proceedings determined by a court judgment or ruling and other public law claims for payment in criminal matters.

§ 211. Establishment of procedure for receipt of public law claims for payment imposed in criminal or administrative matters or matters of misdemeanour

The procedure for the payment of a pecuniary punishment or fine to the extent of assets, expenses relating to criminal proceedings and other public law claims for payment imposed in a criminal matter into the state budget, the procedure for the payment of fines imposed by a court judgment or ruling, procedure expenses and other public law claims for payment imposed in administrative court procedure into the state budget and the procedure for the payment of fines or fines as a warning, procedure expenses and other public law claims for payment imposed in a matter of misdemeanour into the state budget shall be established by the Minister responsible for the area.

Part 6

DELIVERY OF DECLARATION OF INTENTION THROUGH BAILIFF

§ 212. Delivery of declaration of intention

A person may communicate a declaration of intention or a document to another person through a bailiff by submitting an application and documents to the bailiff.

§ 213. Application of Code of Civil Procedure

The provisions of the Code of Civil Procedure concerning delivery of enforcement instruments apply to delivery of declarations of intention through a bailiff, unless otherwise provided by law. A bailiff may use all manners for the delivery of documents which are permitted for courts.

§ 214. Public delivery of declaration of intention

Public delivery of a declaration of intention may be organised on the basis of a court ruling if communication of the declaration of intention in another manner is clearly impossible or the declaration of intention must be communicated to the public or an unknown person.

§ 215. Remuneration of bailiffs

A bailiff's fee for communication of a declaration of intention shall be provided for in the Bailiffs Act.

§ 216. Preparation of certificate of delivery

(1) A bailiff shall prepare a certificate of delivery concerning the delivery of a document in the format established by the Minister responsible for the area. One original copy of the certificate shall be issued to the sender of the document and it proves communication of the document.

(2) A notice and a certificate of delivery shall also set out the name of the person on the basis of whose application a document was delivered.

Part 7

APPEALS AND ACTIONS IN ENFORCEMENT PROCEEDINGS

§ 217. Complaints about decisions and activities of bailiff

(1) A participant in enforcement proceedings may file a complaint to a bailiff about a decision or the activities of a bailiff upon execution of an enforcement instrument or refusal to perform an enforcement action, within 10 days as of the day on which the complainant becomes or should have become aware of the decision or action, unless otherwise provided by law.

(2) A bailiff can restore the term specified in subsection (1) of this section pursuant to the procedure provided for in the Code of Civil Procedure. A complaint about a decision to refuse restoration of the term may be filed with the county court of the location of the bailiff's office. A ruling of a court of first instance concerning a complaint is not subject to appeal.

(3) A bailiff shall review a complaint about the activities of a bailiff in the presence of the participants in proceedings within fifteen days and make a decision within ten days after the review.

(4) A bailiff shall inform the participants in proceedings of the time of review of a complaint. Failure of participants in proceedings to be present at the examination of the complaint shall not constitute an impediment to the review of the complaint.

(5) A bailiff shall make a reasoned decision concerning a complaint and deliver it to the participants in proceedings.

(6) If a participant in proceedings fails to file a complaint within the term specified in subsection (1) of this section, the participant loses the right to rely later on facts which the participant in proceedings could have presented in the complaint.

§ 218. Appeal against decision of bailiff made regarding complaint

(1) A participant in proceedings may file an appeal against a decision of a bailiff made regarding a complaint to a county court in the jurisdiction of which the bailiff's office is located within ten days as of the delivery of the decision. An appeal against a decision or activities of a bailiff cannot be filed with a court without filing a complaint to the bailiff beforehand.

(2) A court shall review an appeal against a decision of a bailiff in proceedings on petition within fifteen days as of the filing of the appeal. A court may decide to suspend enforcement proceedings against a security or without a security or to continue enforcement proceedings against a security until adjudication of the appeal.

(3) Participants in proceedings and a bailiff may file an appeal against a county court ruling made regarding a decision of the bailiff. Appeals may be filed against the circuit court ruling on the appeal against the ruling.

§ 219. Filing of appeal against ruling of judge in enforcement proceedings

An appeal against a ruling of a judge may be filed in enforcement proceedings, unless otherwise provided by law.

§ 220. Contestation of acceptance of enforcement instrument for enforcement by person not specified in enforcement instrument

(1) A debtor may, by an action filed against a claimant, contest acceptance of an enforcement instrument for enforcement in the case provided for in § 18 of this Code and if enforcement proceedings have been commenced against a person not specified in the enforcement instrument.

(2) The limitation period for an action is 10 days as of the delivery of an enforcement notice to a debtor.

§ 221. Action for declaration of compulsory enforcement to be inadmissible

(1) On the basis of an enforcement instrument, a debtor may file an action against a claimant for declaration of compulsory enforcement to be inadmissible, in particular for reason that a claim has been satisfied, postponed or set off. Satisfaction of the action does not affect the validity or legal force of the enforcement instrument.

(1¹) In the case of another compulsory execution besides a judicial decision, particularly in the case of the enforcement instruments specified in clauses 2 (1) 18) to 19¹) of this Code, a debtor can also submit, in the action for declaration of compulsory enforcement to be inadmissible, all objections to the existence and validity of the claim arising from the enforcement instrument.

[RT I, 06.12.2010, 1 - entry into force 05.04.2011]

(2) In the case of a court decision, the objections specified in subsection (1) of this section are admissible only if the grounds on which they are based were created after the entry into force of the court decision.

(3) An action may be filed until the end of enforcement proceedings.

[RT I, 06.12.2010, 1 - entry into force 05.04.2011]

(4) If an action is satisfied, a claimant shall bear the enforcement costs.

§ 222. Action of third person for release of property from seizure or declaration of compulsory enforcement inadmissible for other reason

(1) A third person who has the right regarding an object of compulsory enforcement which prevents compulsory enforcement, especially the right of ownership or a limited real right, may file a claim for release of property from seizure or for declaration of compulsory enforcement inadmissible for other reasons with a court in the jurisdiction of which the compulsory enforcement is conducted.

(2) A third person may also file an action specified in subsection (1) of this section if a restraint on disposition specified in § 88 of the General Part of the Civil Code Act made for the benefit of the person is violated in enforcement proceedings.

(3) An action shall be filed against a claimant and a debtor.

(4) Upon satisfaction of an action, a bailiff shall release property from seizure and submit an application to a register for the deletion of a notation concerning prohibition.

(5) If, by the time an auction is conducted, the holder of the right which obstructs the conduct of an auction in respect of the seized property has failed to submit to a bailiff an agreement or a court decision for the release of the property from seizure or suspension or termination of enforcement proceedings and the property is sold at auction, the third person loses the right regarding the property and has the right to receive only the revenue of the auction.

§ 223. Action for declaration of auction invalid

(1) Within thirty days after the delivery of a report on an auction, a participant in enforcement proceedings may file an action with a court for the declaration of the auction invalid if property has been sold to a person who did not have the right to purchase the property or if the auction was conducted on the basis of a void seizure or other essential conditions of the auction were violated.

(2) Upon declaration of an auction invalid:

- 1) a debtor may demand that a purchaser release a sold thing pursuant to § 80 of the Law of Property Act or, if this is impossible, file a claim on the basis of the provisions of unjust enrichment;
- 2) a claimant may demand continuation of the enforcement proceedings;
- 3) a purchaser may demand refund of the purchase price and that a bailiff refund the enforcement costs, including the bailiff's fee;
- 4) a participant in proceedings may demand that a bailiff compensate for damage according to the Bailiffs Act.

Part 8 IMPLEMENTING PROVISION

§ 224. Entry into force and implementation of Code

This Code enters into force at the time and pursuant to the procedure provided for in the Code of Civil Procedure and the Code of Enforcement Procedure.